# CHAP. 4

# LEGAL DEVELOPMENTS

## RENT REGULATION IN THE EUROPEAN UNION

The sharp rise in rents in the private sector, particularly in cities with a strained rental market, is increasingly affecting European citizens who are having to pay more for housing. Across the European Union, about one third of the population is housed in private rental accommodation. In 2019, one in ten households spent more than 40% of their income on housing. Poor households are eight times more likely to be overburdened by housing costs (37.1% of them in 2019), than non-poor households (4.6%). The increasing disparity between rent and the decrease in household incomes is pushing public authorities to regulate the rental market in order to ensure access to affordable housing for all. Increasingly used across the EU, rent controls are becoming a key measure when the property market or social housing stock are unable to meet the needs of low-income and middle-class households.

*Affordability* is a key component of the right to housing. According to General Comment No. 4, which interprets Article 11(1) of the International Covenant on Economic, Social and Cultural Rights,[1] housing costs should be at a level that does not threaten or compromise people's other basic needs. States must therefore ensure that housing costs are not disproportionate to income levels.

Governments have a wide range of measures at their disposal to remedy market failures, including direct public expenditure, provision of subsidies or tax benefits and regulation of certain aspects of the rental relationship, such as rent prices.

Tenancy law is the responsibility of the Member States, which define and implement diverse national policies reflecting different models of social protection. The Tenancy Law and Housing Policy in Multi-Level Europe (Tenlaw) project is the first large-scale comparative study of tenancy law in the EU and its relationship to housing policy. It has prompted numerous reports and analyses of the potential future role of the EU in housing and tenancy law.[2]

The regulation of residential leases reflects an ongoing quest to strike a balance between landlords' rights to ownership and tenants' rights to housing. Governments are concerned that if landlords feel they are not benefiting sufficiently, they will decide not to rent out their properties at all or will consider other options like short-term rentals, lucrative alternatives that are not compatible with the need for secure and affordable housing. Rent regulation therefore has a dual purpose – preserving the supply of affordable housing and ensuring security for occupants. Controlling rent hikes helps to avoid compromising occupants' budgets and to limit evictions.

The right to property does not prevent controlling rents in principle. In the first instance, this right has undergone significant changes over the last century.[3] Nicolas Bernard, professor of law at the Université Saint-Louis in Brussels, explains how the social function of property rights has been enshrined in the constitutions of various EU countries. In the Italian Constitution, the law *'prescribes [property's] limitations, in order to ensure its social function and to make it accessible to all'*. In the German Basic Law, 'its use shall also serve the public good'. In the Spanish Constitution, the right to private property and to inheritance is recognised. The content of these rights shall be determined by the social function which they fulfil, *'in accordance with the law'*; finally, the Irish Constitution states that *'the exercise of the [property] rights [...] ought, in civil society, to be regulated by the principles of social justice'*.[4] Nicolas Bernard demonstrates how the various elements of property law, *fructus, abusus and usus*[5] have all been constrained to guarantee this social function. It is therefore the *fructus*, the power to make a profit from the property by collecting rent, that is limited in the case of rent controls.

Increasing numbers of people are denouncing the 'financialisation' of housing as an obstacle to the realisation of the right to housing. As housing is a basic necessity, it should not be subject to speculation, either for sale or rent. It is possible that the economic activity of investment and vulture funds is having a structural effect on rent increases due to the large number of dwellings they hold in their portfolios.

The European Convention on Human Rights (ECHR) and its Protocols do not guarantee a right to shelter or housing. In respect of Article 1 of Protocol No. 1, the ECHR has ruled in a number of cases that involve striking a balance between the respective rights of landlords and tenants under domestic law, guarantee a fair trial for both parties, ensure security of tenure for tenants, non-discrimination, etc.[6]

In *James and Others v. the United Kingdom*[7] the ECHR ruled on the balancing of landlords' and tenants' rights. It found that the *'margin of appreciation available to the legislature in implementing social and economic policies should be a wide one'* and respected the legislature's judgement as to what is in the *'public interest'*.[8]

Similarly, in *Mellacher and Others v. Austria*[9] the ECHR recognised that the legislature had a wide margin of appreciation and action in relation to a matter of public interest, such as home ownership. It held that the Austrian legislature could reasonably consider that social justice considerations required a reduction in rents and that despite their amount, the rent reductions imposed by the law did not necessarily place an excessive burden on landlords.[10]

ECHR case law is therefore not opposed to market regulation and rent controls, but it has ruled on the need to strike a balance between the public interest and the rights of the landlord. Article 1 of Protocol 1 of ECHR case law often refers to the concept of a *'fair and adequate rent'* in this regard:

- In *Aquilina v. Malta* (No. 40246/18), the ECHR held that the landlord was entitled to receive a fair rent for his property. It unanimously concluded that the Maltese State had violated Article 1 of Protocol No. 1 by failing to strike the requisite fair balance between the general interest of the community and the fundamental rights of the landlord.[11]
- In *Urbárska Obec Trenčianske Biskupice v. Slovakia* (No. 74258/01), the applicant was an association of landowners in Trenčín, Slovakia. In its judgement, the ECHR concluded that there had been a violation of Article 1 of Protocol No. 1 due to the compulsory letting of their property at a rent which was below the applicable property tax for which they were liable. The legal provisions in question resulted in disproportionate control of the applicant's property.[12]

While housing remains primarily a State responsibility, municipalities are playing an increasingly key role in this area. The right to adequate housing cannot be effectively implemented without the full involvement of local governments. Furthermore, different aspects of EU law and policy affect tenancy law significantly, even indirectly. These include tenants' rights as consumers, EU non-discrimination law, housing quality as a critical social issue in the EU being inextricably linked to the need for an energy transition to mitigate climate change, or the fight against homelessness and housing exclusion being closely linked to combating poverty.

Some European cities like Barcelona and Berlin have become pioneers in seeking regulations additional to national legislation locally. The conflict between more business-friendly single market regulations and the rights of municipalities to regulate in the public interest is growing as cities become increasingly ambitious and proactive problem-solvers when tackling the shortage of affordable housing.[13]

The European Commission's DG Grow, which governs EU policies on the single market, industry, entrepreneurship and small businesses, has repeatedly clashed with cities trying to restrict the expansion of Airbnb and other short-term rental platforms in order to avoid rising rents. The cities' claims are based on the fact that the 2000 e-Commerce Directive does not take into account the impact of these platforms on local markets. As a result, they are calling for better data sharing, reporting of ads to the authorities and compliance with local regulations.[14] The Court of Justice of the EU has recognised that *'combating the long-term rental housing shortage constitutes an overriding reason in the public interest capable of justifying [regulation]'*.[15]

### HOW ARE RENTS CONTROLLED IN EUROPE?

At present, different methods of regulation coexist in most European countries, such as freedom of determination of rents, rent capping or actual rent controls, which impose a minimum and a maximum rent. The rent control systems in place, as well as the contexts and issues, vary from country to country. Some countries have a long tradition of rent regulation, such as the Nordic countries, which have consolidated systems. Others have taken positive steps, such as Germany and France since 2015. Others still, such as Spain, seek to encourage the private rental sector in the face of the near absence of social housing.

## 1. GERMANY A UNIQUE MODEL

Germany has the highest percentage of private sector tenants in the EU at 55% in a country where tenants' associations traditionally play a key role. Open-ended leases and strong protection of renters make the German model a unique one.

The German law on residential leases is contained in the German Civil Code *(BGB)*.[16] It provides for three mechanisms for rent adjustments (Section 557 BGB). These are the agreed rent adjustment *(Staffelmiete)*, the rent adjustment based on the consumer price index *(Indexmiete)* or the rent adjustment based on how comparable rents are increasing or decreasing on the market *(Vergleichsmiete)*. In the first two cases, clauses are provided for in the lease. The latter is a default mechanism where none of the previous mechanisms have been agreed.[17]

To determine the reference rent, cities have a specific mechanism called the *Mietspiegel* which has existed since the 1970s. This 'rent mirror' serves as a reference for **updating existing leases with new rental amounts** and publishes the average rental prices in the various districts of a city. For example, Berlin's rent index is published every two years by the Senate Department for Urban Development.[18]

As a rule, the courts consider the *'Mietspiegel'* the best reference for rents. Nevertheless, in 2019, the Berlin letting company Gehag[19] took one of its tenants to court to enforce a contentious rent increase by challenging the validity of the city's 2015 rent index.[20] The regional court ruled that this index was not an appropriate basis for defining the local comparative rent. According to the court-appointed expert, the index was not established according to accepted scientific principles. The tenants were consequently ordered to accept the rent increase requested by their landlord. As a result of this decision, the Senate Department for Urban Development changed its methodology for compiling Berlin's rent index in 2017, in order to avoid further challenges.[21]

## The 2015 Federal Law

Berlin's Rent Control Act *(Mietpreisbremse)*,[22] intended to curb rent increases, came into force on 1 June 2015. The act allows local entities to cap **rents for new tenancies.** The act, amending the provisions of tenancy law, in particular Section 556d of the German Civil Code, stipulates that in districts with a 'strained' housing market, the rent at the start of a tenancy may not exceed the local comparative rent by more than **10%**. The average local rent can be defined according to the rent index *(Mietspiegel)* referred to above. Where there is none, comparative rent databases from landlords' and tenants' associations and comparable statistical surveys of local rents may be used.

This law applies to leases in areas where the supply of affordable housing is particularly tight. These zones are defined by governments by ordinance for a period of five years. On 19 May 2020, a new ordinance extended the application of the act until 31 May 2025 inclusive.

In 2019, after the limited effectiveness of the scheme was noted, several new features were introduced, including an obligation for the landlord to provide information in all cases where a rent 10% higher than the local comparative rent is charged.[23] The landlord must inform the tenant in writing of the exceptional circumstances that are being claimed, i.e. the amount of the rent for the **previous tenancy**, **renovation** works carried out in the last three years, whether this is the first tenancy after **major renovation works** or if it is a **new apartment**. After this reform, only 8% of the renovation costs can be passed on to the tenant. Finally, the increase in rents is capped at EUR 3 per square metre of living space within six years.

If the landlord does not provide the required information in accordance with the legal provisions, the tenant may at any time contest the excessive rent and claim the difference between the legitimate rent and the rent actually paid when the next instalment is due, and may actively file a claim before the courts. These changes only apply to contracts concluded after 1 January 2019.

Berlin's regional court referred the question of whether Sections 556 d.1 and 2 of the German Civil Code were incompatible with the general guarantee of the right to equality and the requirements for the adoption of an ordinance according to Article 80.1 of the German Basic Law before the Federal Constitutional Court. In a decision issued on 18 July 2019, the court rejected the application and affirmed that rent regulations, as provided for in Section 556d.1 of the German Civil Code, do not violate the guarantee of private property, freedom of contract and the general guarantee of the right to equality. In particular, the court considered the action on the right of ownership to be proportionate. It is in the public interest to prevent the displacement of economically weaker sections of the population from zones with a high demand for residential housing. Therefore, rent capping is necessary – there are no other means available that are certain to be as effective in the short term.[24]

Furthermore, the legislature has struck a fair balance between the legitimate interests of the landlords and the public good. The legislature can change property provisions even if this has negative consequences for landlords. The promise of private property does not protect expectations of earning the highest possible rental income with the scheme ensuring that rent ceilings are not stricter than necessary. The federal legislature is entitled to assume that the federal state governments are better placed to assess whether the housing market is under pressure. The governments of Germany's federal states are legally obliged to

carry out thorough assessments, meaning that if they unlawfully issue an ordinance defining strained housing markets, landlords can challenge this in the administrative courts. Limiting rent capping to strained housing markets ensures that it is applied in zones where the interests of potential tenants require particular protection.[25]

## Coexistence of federal and regional rent regulation

While rent regulation is a national responsibility, housing is a regional one. For example, a complementary scheme on rent caps was introduced in Berlin on 11 February 2020 *(MietenWoG Bln)*.[26] Rents are required to be in line with regional and federal caps.

This new Berlin law, also known as the 'rent cap', establishes a general limit on rental prices for five years that freezes rents at their 18 June 2019 level. For leases concluded after this reference day, the maximum amount that can be charged is the previous rent for the same apartment or the official upper rent limit, if it is lower. Rent increases for existing leases are consequently prohibited until 31 December 2021 for all private housing. However, there is an exception in the case of renovation works,[27] which are limited to an energy upgrade to the building, removing obstacles and facilitating access to the apartment. The rent increase is then capped at a maximum of EUR 1/m² per month.

Introduced on 22 November 2020, this regulation offers tenants the possibility of applying for a rent reduction in cases of 'excessive rent'. A rent is considered 'excessive' if it exceeds the rent cap by more than 20%. Berlin landlords are formally obliged to notify tenants of a reduction of excessive rent.

Despite criticism and opposition from landlords and real estate agents, the results of the implementation of the measures in Germany are positive, especially in large cities which seen rents stabilise.

On April 15th, 2021, the Federal Constitutional Court[28] held that the Act Governing the Rent Cap for Residential Premises in Berlin is incompatible with the Basic Law and thus void.

Since the fall of the Berlin Wall, large private landlords have owned a large proportion of Berlin's rental properties, with three companies, Deutsche Wohnen, Vonovia and Akelius, owning more than 200,000 homes in the city.[29] Since the introduction of a rent cap system, the business model adopted by some large landlords that involves renovating apartments and renting them out at higher rents has become less attractive. In this regard, Akelius is reportedly preparing to sell thousands of apartments in Berlin and Hamburg.[30] Unfortunately, on April 15, 2021, the German Constitutional Court ruled that this measure was unconstitutional, ruling that the legislation in this area fell exclusively to the federal state.

The 'Expropriate Deutsche Wohnen & Co' initiative, launched in April 2020, aims to bring buildings owned by large landlords back under public control. It is an attempt to reverse the privatisation of public housing in Berlin over the last 20 years, which is said to be responsible for both the surge in large private developers and the increase in rents. The initiative and its campaign are led by Mietenvolksentscheid, Kotti & Co, various tenants' initiatives, Deutsche Wohnen tenants, the left-wing organisation Interventionistische Linke and members of various political parties, among others. Together, they have launched a petition for a referendum calling for the expropriation and return the housing stock of Deutsche Wohnen and other for-profit publicly traded companies to public management.[31]

# 2. RENT CONTROLS IN FRANCE[32]

In principle, landlords in France have the freedom to set rents when letting properties. However, in housing markets that are 'strained', there is a **rent control** mechanism, i.e. the increase is consequently restricted in the event of a change of tenant or renewal of the lease.

Introduced in 2012, a decree issued each year prohibited rent increases above the rent reference index (IRL) in 28 zones with a strained housing market when re-letting a property or renewing a lease, except in cases of major renovation works or manifestly undervalued rents.

In 2014, however, the ALUR Law introduced another rent control system, based on values recorded locally. In urban districts with strained housing markets and approved observatories, the Prefect had to set reference rents per square metre each year for each housing category and geographical area. Dwellings put up for rent could not exceed the median rent known as the upper reference rent by more than 20%, unless a 'rent supplement' could be justified by characteristics specific to the home. In the event of a dispute, the tenant or landlord could refer the matter to the local conciliation commission, and subsequently to a judge if no agreement was reached.

Several studies showed signs of rents evening out following the introduction of these two schemes. According to the Greater Paris Rental Observatory (OLAP), the stabilising of rents observed in 2016 was due to the almost zero variation in the IRL in 2016 and the regulation of rents for re-lets in the Paris area. It was also evidence of the effect of the rent regulation orders resulting from the ALUR Law since 1 August 2015.[33] According to the OLAP, the share of rents above the Parisian rent caps decreased from 26% in 2015 to 23% in 2016 and 21% in 2017. Rent supplements dropped from EUR 186 in 2015 to EUR 165 in 2016 and EUR 134 in 2017.

Nevertheless, the courts overturned the rent control decrees in Lille in October 2017 and in Paris the following month. In both cases, the administrative courts grounded their decisions in the fact that rent control was not supposed to affect just one municipality and had to be applied to all Lille and Paris regions. This end to rent controls caused all indicators to rise again, with rent payments exceeding the agreed level increasing in 2018 according to OLAP estimates.

Faced with these legal uncertainties, the ELAN Law of 23 November 2018 repeals the articles of the ALUR law relating to rent controls and provides for the implementation of a similar system, but on an experimental basis for five years in strained housing zones, on the basis of proposals from willing municipalities. These include competent public establishments for inter-communal cooperation (EPCIs), the City of Paris, and local and regional government agencies of Greater Paris as well as the Lyon and Aix-Marseille metropolitan zones (EPTs) on all or part of the areas in their remit. In case of non-compliance with the rent caps, the law provides for an obligation for landlords to ensure the lease complies and to reimburse any overpayments to tenants, as well as an administrative fine.

This new scheme came into force in Paris on 1 July 2019, while eight EPCIs asked the French Ministry of Housing if they could experiment with rent control, on all or part of their territory, within the timeframe set out in the ELAN law. These are three Parisian EPTs including Plaine Commune, Grand Orly Seine Bièvre for 11 of its 24 communes, and Est Ensemble, as well as Grigny (not selected),

Bordeaux, Grenoble and Montpellier. Lyon and Villeurbanne also submitted a joint application.

In Paris, 95 referrals have been recorded since the system was reintroduced on 1 July 2019. Out of 85 requests deemed admissible, 32 resulted in a favourable outcome for the tenant, two led to fines and 16 led to conciliation between tenant and landlord. The remaining 35 referrals are still under investigation. The ELAN law also introduced the possibility of imposing administrative fines of up to EUR 5,000 on reluctant landlords who refuse to lower the rent and reimburse the tenant. Since August 2020, five fines ranging from EUR 300 to EUR 1,090 have been issued in Paris.

In order to analyse the trends in private sector rents, local observatories are gradually being set up throughout the country. In total, 33 observatories currently cover some fifty urban zones, a third of the French population and half of private rents. The data are collected according to identical methods, validated by the network's scientific committee and processed by France's national agency for housing information (ANIL) and the OLAP in order to streamline them nationally.

The CLCV (French association on consumption, housing and living environment) researched 1,000 Parisian property ads from ten websites for different sized accommodation (ranging from one to four rooms and more), furnished (29%) or unfurnished (71%), listed by both private individuals and professionals. They found 40% of ads to be non-compliant.[34] Private sector rents barely rose above inflation in 2019 in the Paris metropolitan area[35] while rent controls in Paris in the second half of 2019 had a real but limited mitigating effect.[36]

## 3. THE COLLECTIVE BARGAINING SYSTEM IN SWEDEN

Sweden is one of the Nordic countries where tenancies are open-ended, with the 1970 Tenancy Act, contained in the country's Land Code (Chapter 12) stating that a tenancy under ordinary law is open-ended 'until further notice'.

The existence of various rent control schemes has been a feature of the Swedish rental market since 1942 when the first rent regulation law was passed. As the 1942 law was gradually repealed, a paradigm shift occurred. The 1968 reform saw change in several respects, notably by implementing a system of 'utility value', and secondly, by ensuring security of tenure for tenants.

In Sweden, all residential leases are subject to regulations aimed at establishing 'fair rents'. Rents are to be determined by a 'utility value' *(bruksvärde)*. In 1974, a link was established between the system of 'utility value' and general rent levels. In order to *'guarantee fair rent levels'*, the courts had to compare the rents of comparable public housing with a rent considered 'fair' if it was comparable to those charged

by social housing providers. This created a 'rent cap', protecting tenants while limiting rent increases in the private sector. The rent control role of municipality housing corporations lasted from 1974 to 2011.[37]

The changes in 2011 resulted in the abolition of the role of the municipal companies. This reform was preceded by a joint claim brought before the European Commission in 2005 by the Swedish Property Federation and the European Property Federation asserting that Swedish housing policy was in breach of EU legislation regarding state subsidies and competition. Following the 2011 legislative reforms, the Swedish Property Federation withdrew its complaint.

From 2011 onwards, when determining equity under systems of utility value, reference is made to rents negotiated collectively.[38] The current Swedish tenancy legislation is the result of the interplay between collective bargaining and mandatory regulations.[39]

As far as collective bargaining is concerned, the legislation recognises several tenants' unions, but in reality, there is only one main union – the Swedish Union of Tenants – which negotiates 90% of rents. The union also provides legal services to its members and provides representation in legal forums such as rent tribunals, district courts and appeal courts. Tenants' unions collectively negotiate rents with full discretion.

Negotiations on lease conditions take place between a tenants' union on the one hand and different categories of landlords on the other. Landlords can be broken down into two key groups – municipal housing companies, organised mainly by Public Housing Sweden and private landlords, organised by the Swedish Property Federation.

Collective bargaining on rental conditions between the tenants' unions and landlords is district-based. A district is generally defined as a municipality with larger municipalities sometimes comprising several districts. Almost all buildings with more than two residential units are included in the collective bargaining system, whose impact on the rental housing market is therefore significant.

The landlord and the tenants' union conclude **a formal agreement** *(förhandlingsordning)* while **an ordinary tenancy agreement** is concluded between the landlord and tenant. However, the rental agreement includes a negotiation clause which obliges the tenant to pay the rent agreed by the landlord and the tenants' union. This means that when a negotiation is concluded, the different rent levels can easily be adjusted for tenants who have a clause in their tenancy agreement.[40]

If a landlord has concluded a negotiation agreement with the Swedish Union of Tenants, he or she must negotiate the rent review, terms and conditions of accommodation with the union. The landlord must send the union written notice of the requested changes. Then the landlord and the trade union negotiate the conditions that should apply. If no agreement is reached, an application must be made to the court responsible for regulating rents. A tenant is bound by the new rent or negotiated term if there is a negotiation clause in the lease. Tenants are not entitled to enter into an agreement on this matter, but they can apply to the rent tribunal for an amendment to the lease. A landlord without an agreement with the union must negotiate the rent with each tenant individually. First, the landlord informs the other party of the proposed new conditions, but if agreement cannot be reached, he or she has the right to appeal to the regional rent tribunal.

Both tenants and landlords are entitled to judicial review of the rent by the competent courts. This legal procedure is a last resort and used in less than 5% of tenancies. The freedom of the court

to determine rents discourages landlords from setting exorbitant rents. Rent tribunals are not ordinary courts but rather hybrid bodies charged with monitoring whether or not rents are fair.

A rent tribunal can rule on whether an apartment is fairly priced in relation to other apartments. In this case, a comparison is made with apartments where the rent has been determined following negotiation between the landlord and the local tenants' association. However, the rent tribunal cannot decide whether rents are generally reasonable in a particular district or not. The courts therefore play an important role in protecting tenants' rights with tenants in Sweden having the benefit of an extensive rental safety net.

## 4. DENMARK A COMPLEX SYSTEM OF RENT CONTROLS

In Denmark, a country where 20% of housing is publicly managed, the rental market is also subject to controls to ensure a fair cost of living for all.

In the case of a private lease, the rent is determined in accordance with the provisions of both Denmark's **Rent Act**[41] and the **Housing Regulation Act**.[42]

The rules according to which the rent is set depend primarily on the year the property was built. For private dwellings built after 1991, the landlord and tenant can freely agree on the rent. For dwellings built before 1991, however, a number of rules apply, and the determination of the rent depends on whether or not the housing regulations of the municipality in which the property is located apply. There are regulated and unregulated municipalities.[43]

In municipalities that are not regulated and where the country's Housing Regulation Act does not apply, the rent is determined according to the rules of Denmark's Rent Act concerning *'the value of the rented property'*. This means that the rent must be set in relation to the rents of similar rental residences in the region.[44]

That said, the vast majority of municipalities in Denmark are regulated. In regulated municipalities, which are subject to both Denmark's Housing Regulation Act and the Rent Act, rents are generally set according to *'cost-specified rent'*. This type of rent is generally the lowest of the rent categories. The rent is based on the running costs of the property and a specified yield on the value of the property as well as any improvements. The rules are set out in Articles 5 to 9 of the country's Housing Regulation Act.

Once the ownership and tenancy category has been established, the specific rent level can be determined.

There are five main types of rent increases, including increases to cover the property's operating costs, increases to meet the value of the rented property if the current rent is significantly lower,

increases to comply with the net price index, increases to carry out refurbishments, and lastly, if the landlord and tenant agree on an increase. In the case of refurbishments, a number of conditions must be met before a landlord can make improvements to the property and increase the rent. These are set out below.

- The increase in rent must not exceed the increase in value of the leased property (the detailed calculation varies according to the rules governing the property).
- The representative body of tenants for the tenancy must be consulted before the refurbishment works can commence.
- The tenant must be given written notice, setting out the reason for the rent rise, the calculation of the increased amount and information on how to object.
- Notice of a rent increase resulting from improvements must be given at least three months in advance, but not prior to the date of the works being carried out.

The rent control board *(Huslejenævnet)* is a body for settling disputes between a landlord and a tenant. The board is a panel of three experts made up of the chair (a lawyer) and two others who have expertise in rental matters. The aim of the board is to resolve disputes and differences between landlords and tenants regarding the rent for private accommodation. A board exists for each municipality.

The board usually addresses complaints from tenants, but landlords also have the right to lodge a complaint. However, many tenants do not make complaints due to fear of termination even if the tenancy does not comply with the law or the lease. These fears are common but misplaced – as tenancy law protects the tenant from arbitrary termination of the lease. Accordingly, the landlord cannot dismiss the tenant on the grounds that he or she has referred the matter to the board.

If the board cannot help or if the decision is not satisfactory, the tenant or landlord can appeal to the district court.

# 5. INDICATIVE OR CONTROLLED RENTS IN THE BRUSSELS REGION

In Brussels, less than 10% of the housing stock is social and there is enormous pressure on the rental market. It is increasingly difficult for low- and modest-income households to secure appropriate and affordable housing.

In 2017, the Brussels government introduced **an indicative rent** reference grid with the reform of the region's existing tenancy law. Officially, the purpose of these reference rents is twofold - they serve as a guide for landlords and tenants, but they also define the mandatory rent cap for tenants claiming rent allowance. The rent allowance for applicants on social housing lists is a regional financial aid which aims to cover part of such tenants' rental payments.

The content of the indicative rent grid is defined by Art. 225 of the Brussels-Capital Region Ordinance of 27 July 2017 on the regionalisation of residential leases[45] and the Implementing Order of 19 October 2017.[46]

Since 1 January 2018, Brussels residents can visit the website www.loyers.brussels to find out the **rent** range for their home. These reference rents are provided as a guide only and are not binding on landlords.

The calculation of the reference rent is based on **the median rents** compiled in surveys conducted by the Brussels rent observatory, a total sample of 8,400 dwellings intended to be representative of all rents on the Brussels market. The grid is expected to be revised annually on the basis of more recent surveys. The reference rents are calculated according to seven criteria that have a decisive influence on the level of rents, including the type of dwelling, the number of rooms, the surface area, the year of construction, the district in which it is located,[47] the presence or absence of certain elements of the dwelling and the energy performance rating of the building (PEB). The Brussels government has chosen not to publish the median rent, but rather an 'indicative range', i.e. a minimum reference rent (median rent -10%) and a maximum reference rent (median rent +10%).

According to an analysis in 2019 by the Rassemblement Bruxellois pour le Droit à l'Habitat (RBDH), a federation of non-profit organisations, almost 70% of actual rents are above the threshold of the maximum reference rent. Some 17.73% of actual rents are in fact within the indicative range and 12.37% are below the minimum indicative rent. In city centre districts, the proportion of dwellings above the maximum target rent is even higher at 78%. The RBDH considers that 'the reference grid is based on current, very high rents, meaning it is unserviceable'. It is therefore calling for a grid with lower ceilings than the current rents.[48]

In February 2021, the Brussels parliamentary majority reached an agreement on an ordinance to combat abusive rents (above the reference grid or abnormally high) and to create a joint rental commission. The joint landlord-tenant commission will be able to assess whether the rent is unfair or not and will act as a mediator. If no agreement is reached, a court has to rule.[49]

# 6. CATALONIA'S NEW RENT CONTROL SYSTEM

Since the 2008 crisis, Spain's private rental market has been key to facilitating access to housing for low-income households facing a lack of social housing and the inability to access mortgage loans. Private tenants have seen the burden of housing costs rise sharply in cities, especially in major hubs like Madrid and Barcelona.

Spanish tenancy law does not recognise open-ended tenancies. Spanish rental law was amended in 2019 to extend the maximum lease period from three to five years.[50]

For leases signed after 19 March 2019, annual rent reviews must follow the consumer price index (CPI). The law provides for the creation of a 'system of rental price reference indices for dwellings' which aims to furnish information that helps landlords and tenants to agree a balanced rent that is proportionate to the market reality. However, the system does not set limits on the rental price.[51]

Catalonia was the first region in Spain to introduce a rent control law for residential leases in September 2020,[52] inspired by rent control regulations in Germany and France.[53] Law 11/2020 introduces a regime that aims to contain rents by establishing a reference price for tenancies.[54]

The preamble states that rent control is compatible with the right to property as enshrined in Article 33 of the Spanish Constitution and that it constitutes an adequate measure to ensure the right to housing – protected by Article 47 of the Constitution – is guaranteed in accordance with constitutional case law.[55]

When a dwelling is intended as the tenant's permanent residence and the property is located in a zone defined as having a strained housing market, the law prohibits setting a rent that exceeds the average range of the Catalan reference index[56] (Art. 7 of Law 11/2020) for **residential leases concluded on or after 22 September 2020**.

The reference price for residential leases is calculated by multiplying the rental price reference index by the square metres comprising the dwelling's living space and must be expressed in the contract in euros per square metre. An increase of up to 5% can be applied when the dwelling features particular characteristics and when specific refurbishment works have been carried out in the year before the lease was formalised (Art. 7 of Law 11/2020)[57].

The rent control scheme is relaxed in rental contracts for new dwellings and following major renovation works. In this case, a rent increase may be agreed between the parties on the basis of the reference index of rents for dwellings with similar characteristics. This rule applies for the first five years since the construction of the building was finished.[58]

If the rent is too high, it has to be reduced and include statutory interest of three percentage points (Art. 12). There are also severe penalties for non-compliance of up to EUR 90,000 (Art. 14 and 15).

Zones with a strained housing market are towns or districts that are particularly threatened by a shortage of affordable rental housing. It is up to the Catalan government – which is responsible for housing – to determine where these zones are. This competence can also be exercised by Barcelona City Council and Barcelona Metropolitan Council for the districts they oversee. However, the duration of the scheme

may not exceed five years from its publication in the Official Gazette of the Generalitat of Catalonia. By way of exception, in response to the need for an urgent solution to the housing market situation, municipalities in which the reference indices have increased by more than 20% between 2014 and 2019 are automatically considered to be under pressure, as is the case for the Barcelona metropolitan area. But this is only a temporary measure lasting up to one year.

The adoption of this law provoked a debate on its potential unconstitutionality[59]. At the request of the opposition parliamentary groups, the Catalan Council of Statutory Guarantees published a report in which it judged the proposed law unconstitutional, considering that certain issues fell within the competence of the central government, which has the right to challenge the law in Spain's constitutional court[60].

The functioning of the mechanism in Catalonia cannot be assessed at this stage as rent controls have only applied there from October 2020. In any case, the law has aroused much interest in other regions.

Spain's coalition government had put forward various proposals to regulate abusive rent increases nationally. Firstly, in the governmental agreement on the 2019 budget and secondly, in the progressive alliance agreement to form a government signed on 30 December 2019[61]. These proposals have not materialised, and the socialist government has shown its preference for tax incentives to reduce rents[62]. Members of the coalition government accept that public authorities have a core responsibility for rent control, but there is little agreement on the measures to be taken.

In Spain, Blackstone has become the largest landlord on the private housing market with more than 50,000 units since the 2008 financial crisis.[63] In July 2020, the Madrid Tenants' Association filed its first class action against 'unfair clauses' in rental contracts. Blackstone was trying to circumvent limitations on rent increases, forcing tenants to pay extras such as communal charges, property tax or compulsory home insurance.

# CONCLU-SIONS

The rationale for rent control systems across the EU is anchored in the law and in the need to impose conditions and restrictions on the right to property in order to fulfil the social function of housing. Accordingly, rent controls are becoming a key short-term measure, in conjunction with other public policy instruments. International and European human rights law has established that the full guarantee of the right to housing is not compatible with a deregulated system in which the state delegates its responsibility to private markets without the necessary safeguards.

Despite critics of rent controls and regulation, some countries are taking measures into their own hands in the wake of the pandemic. The **Netherlands** has introduced rent controls on the private market for the first time. The new bill establishes that rents may not increase by more than 1% plus inflation over the next three years. It concerns rents above EUR 750 per month and will be used to relieve households of additional expenses during the pandemic. The measure affects 560,000 households.

In **France**, the success of the first scheme adopted in 2014 by the ALUR Law and applied in Paris between 2015 and 2017 was evident. According to the OLAP, the measure had achieved the objective sought by the public authorities insofar as it had stabilised prices, which had risen by 50% from 2005 to 2015.[64]

In **Germany**, rent increases have slowed down since 2019, after years of hikes. This decline became more pronounced from the second half of 2020. Last year, rents for rentals and renewed tenancies rose by an average of 3.1% net in Germany, i.e. one percentage point less than in 2019.[65]

The application of rent control measures appears encouraging in countries where renting has traditionally been better protected, e.g. Germany and France. The adoption of new regulations

in other countries, such as Spain, e.g. Catalonia, is too recent and it will take several more years to see the results of this third generation of rent control systems.

Nevertheless, market intervention continues to be constrained by ideological considerations. Although the pandemic has legitimised public action on a large scale, measures are still modest. More decisive action is required to ensure an adequate supply of housing and allowances for low-income households.

Against the backdrop of the pandemic, measures such as the extension of the moratorium on evictions across the EU have been indispensable, but only structural reforms on the prevention of evictions as well as on access to the private rental market through a universal rent guarantee will make it possible to avoid a major housing market crisis. Good practices exist, such as the freeing up of private stock for social housing to help regulate rents and accommodate some low-income households.

In addition, numerous measures need to be taken to raise awareness and support tenants with regard to existing measures, as rent control legislation is sometimes underused in many countries. The role of tenants' associations is crucial here, especially in countries with a strong tradition of renting. Such associations have become key to informing, organising and defending tenants, and are also active in proposing new rent control measures while also tackling evictions from rental properties. It is still vital to bolster the role of tenants' unions in countries with newer tenants' associations.

It is important to note that home ownership remains a key objective of housing policies in many countries. However, several EU States have embraced ‘tenure neutrality’ as a key principle of housing policy, meaning that renting should not be treated less favourably in national policies and regulations than home ownership – the traditional ‘tenure of choice’.[66]

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**5**
*Ius utendi/usus* is the right to use and enjoy the property; *ius fruendi/fructus* is the right to acquire the proceeds of the property; *ius abutendi/abusus* is the right to dispose of the property in whole or in part.

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