



A close-up portrait of a young woman with long, straight, light brown hair. She has numerous freckles scattered across her face and neck. She is looking directly at the camera with a neutral expression. The background is dark and out of focus.

CHAP. 3

**MINIMUM
DECENT HOUSING
STANDARDS
IN EUROPE**

1.

INTERNATIONAL LEGAL FRAMEWORK

The concept of “habitability” is a cornerstone of “adequate housing” as defined by Article 11.1 of the International Covenant on Economic, Social and Cultural Rights. Residents shall be provided with “adequate space and protection from cold, damp, heat, rain, wind or other threats to health, structural defects, and disease vectors to protect their physical safety”. The right to adequate housing is therefore violated when public authorities fail to take the necessary measures to ensure that housing for rent is decent.

According to General Comment No. 4, adequate housing shall meet a number of criteria such as the availability of services, materials, facilities and infrastructure. According to the Committee, such housing shall comprise facilities essential for health, safety, comfort and nutrition¹. These include “permanent access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services”.

Article 31.1 of the European Social Charter states that in order to ensure the effective exercise of the right to housing, States “undertake to take measures designed to promote access to housing of an adequate standard”. The notion of “housing of an adequate standard”² is defined by European Committee of Social Rights (ECSR) case law as follows:

1. a dwelling which is safe from a sanitation and health perspective, i.e. that possesses all basic amenities, including water, heating, waste disposal, sanitation facilities and electricity, and where specific hazards such as the presence of lead or asbestos are under control;
2. a dwelling which is not overcrowded, i.e. that the size of the dwelling must be suitable given the number of persons and the composition of the household in residence; and
3. a dwelling with secure tenure protected in law (condition referred to in Article 31(2)).

As they require States to ensure "housing of an adequate standard" for families, Article 16 (economic and social rights of families) and Article 31 (right to housing) of the Charter partially overlap³.

The right to dignified housing was at the heart of the collective complaint brought against Ireland by the International Federation of Human Rights (FIDH) in 2014⁴. The complaint concerned the poor condition of Irish social housing, including problems of poor energy performance, heating,

damp, and mould. According to the complainants, heating installations and standards were "inferior in local authority housing compared to other types of housing", and several studies confirmed that the buildings were "unable to provide adequate thermal and ventilation performance in their current condition, resulting in mould and damp". According to the ECSR, the problems of persistent damp and mould "go to the heart of the right to adequate housing" and raise "serious concerns about habitability and access to services".

The Committee agreed with these findings, referring to ICESCR General Comment No. 4 on the right to housing referred to above. The Committee decided that the Irish government had "failed to take sufficient and timely measures" to address the existence of a significant number of sub-standard housing units, which led to the violation of the rights of a number of tenants. Specifically, the government failed to collect data on the current housing situation of tenants, find solutions to remedy the situation and implement them without unreasonable delay.

2. NATIONAL LEGAL FRAMEWORKS

It is challenging to identify the legislation offering the best protection in terms of minimum requirements for decent housing, as these vary greatly between countries and specific laws and regulations are very different. However, the EU countries with the most stringent housing laws are all Western and Northern European coun-

tries. Conversely, Eastern European countries, such as Hungary, Romania and Bulgaria, are considered to have less rigorous legislation. To better understand the minimum requirements for decent housing, we studied the laws of around ten European countries.

FRANCE

Percentage of the population living in inadequate housing in 2020 according to Eurostat: 18%.

Legal tools have been put in place in **France** to combat substandard housing, especially since the 1970s. In 1997 and 1998, several serious fires occurred in dilapidated Parisian buildings, causing the death of their occupants. In response to the public outcry, various measures were adopted, marking a turning point in the fight against substandard housing.

In French law, a distinction is made between the minimum comfort standards provided for in landlord and tenant rights and responsibilities, and the safety or hygiene rules that apply to everyone and are the responsibility of the public authorities.

Landlord and tenant relationships

Under French tenancy law⁵, landlords are obliged to provide tenants with decent accommodation where no obvious risks to the physical safety or health of the tenants exist. The right to decent housing has been enshrined in the constitution since 1995⁶.

France's decent homes Decree of 2002⁷ defines the criteria that a dwelling shall meet in order to be rented out: a minimum surface area, no pests or parasites, and a minimum energy performance. It also provides for at least the following: a standard heating installation; a drinking water supply; other domestic water and sewage disposal facilities preventing the release of odours and effluents; a kitchen or kitchenette equipped to accommodate a cooking appliance and a sink; an indoor toilet and washing facilities; and an electric power supply⁸. If a dwelling does not meet minimum decency standards, tenants may take

their case to a court of first instance, which can order the landlord to carry out works, and issue penalties, including, if necessary, a reduction in the rent by way of compensation.

Substandard housing in France

Inadequate housing, known as "unfit housing", is defined by the Law of 31 May 1990. A political concept that has evolved to become a legal one, it covers all situations that violate the right to adequate housing and affect the health or safety of individuals⁹.

In 2000, France's Law on Solidarity and Urban Renewal (SRU) and National Action Plan Against Substandard Housing were adopted¹⁰. The National Action Plan Against Substandard Housing means landlords can be held to account for housing that violates human dignity, and guarantees protection for the occupants. Regulations stipulate obligations on landlords, but also on local authorities, who are responsible for ensuring the safety and health of citizens. If there is a danger to the occupants, landlords should carry out remediation works and/or rehouse the occupants. The authorities must do this if the landlord fails to do so. This covers:

- Premises or facilities used for residential purposes and unfit for such use¹¹ (health risk);
- Premises affecting the health of occupants (health risk), dwellings and buildings using lead (risk of lead poisoning); and
- Buildings at risk of collapse (safety risk).

Tenants can contact a regional health agency or the city sanitation department (if one exists) about squalor. In case of danger (risk of collapse), the mayor has an obligation to prevent such a hazard.

BELGIUM

Percentage of the population living in inadequate housing in 2019 according to Eurostat: 15.7%.

Article 23 of the Belgian Constitution guarantees “the right to live life in accordance with human dignity”, thus demonstrating the importance given to decent housing. Regional governments are responsible for housing and for implementing this fundamental right. To this end, a “Housing Code” defining the conditions for renting out property has been adopted¹².

For example, the Brussels Housing Code of 2003 imposes minimum safety, health and amenity requirements that all rental housing shall meet¹³. Requirements cover the following:

Safety	Sanitation	Basic facilities
Structural soundness of the building	Damp	Cold water
Electricity	Parasites	Hot water
Gas	Lighting	WC
Heating	Ventilation	Electric power supply
Sewers	Minimum surface area	Heating
	Height	Cooking equipment
	Access	Smoke detectors

Provisions around inspections

If a tenant feels that his or her dwelling does not comply with these standards and the landlord does not follow up on his or her requests that works be carried out, they can make a non-compliance claim via the country’s regional housing inspection directorate (DIRL). The procedure is

straightforward and can be done online¹⁴. The inspectors visit the dwelling and prepare a report describing the condition of the property and the measures to be taken to bring it in line with requirements. Generally, the report requires landlords to carry out certain works within a certain period of time, but it can also declare the property uninhabitable if necessary. The DIRL can also intervene of its own accord. For example, in buildings where a complaint has been lodged by a tenant, the service may decide to check whether similar problems exist in the rest of the building. When a property is suspected of not meeting standards of decency, landlords are not notified in advance of the inspection.

If a landlord fails to comply, the tenant can file a petition with the local justice of the peace. The justice of the peace can then demand that: works be carried out to bring the property in line with minimum health standards; the contract be rescinded; the rent be reduced until the work is carried out; or that compensation be paid. To assess the condition of the property, the justice of the peace relies on elements such as the inventory of fixtures and fittings, and may also organise a site visit or rely on other evidence, e.g. a health and safety inspection, although this is not mandatory and the judge may deviate from it.

Local authority powers

Local authorities have powers to intervene when it comes to dwellings or buildings that present a danger to the inhabitants. A mayor can issue a decree that the dwelling does not meet standards of decency on the basis of Article 135 of the new byelaw, if he or she believes that the problems concern hygiene, safety and public health. These issues fall within his or her discretionary powers. A local authority acts, for example, if the

building is in a very poor condition and constitutes a hazard to citizens. Depending on the circumstances, the local authority can order the landlord(s) to carry out works or else may carry out the works itself on behalf of the landlord(s), and order the occupants to leave the premises within a certain period of time, or even decide on immediate evacuation. If the condition of the building so requires, the municipality may also issue an order stating that it is uninhabitable. With this decision, the mayor prohibits access to the building, which is then closed off once the occupants are evacuated.

In addition, several Brussels district councils have chosen to introduce a tax on unfit housing. In Auderghem, for example, this tax is aimed at dwellings declared unfit for habitation by the mayor. An energy renovation bonus for housing is also available in some regions including Auderghem¹⁵. Some district councils, such as Ixelles, Saint-Josse or Evere, offer local subsidies in addition to the regional grant.

The Brussels-Capital Region's housing department recently announced that rent indexation is now conditional on the result of the building's Energy Performance Certificate¹⁶. It is therefore no longer possible to increase the rent of a dwelling with an EPC F or G for tenancy agreements expiring after 14 October 2022. This measure aims to encourage landlords to improve the energy performance of a dwelling by renovating it (putting in better insulation, replacing/changing the heating system, changing windows and frames, etc.).

NETHERLANDS

Percentage of the population living in inadequate housing in 2020 according to Eurostat: 14.8%.

In the **Netherlands**, the quality of housing is regulated by several pieces of legislation. These fall under both private and administrative law.

Landlord and tenant relationships

Dutch tenancy law requires landlords to take responsibility for the renovation and maintenance of rented properties. Unfit housing is housing that poses a risk to the health, safety or physical well-being of its occupants, neighbours and visitors.

Administrative provisions

The Housing Law¹⁷, which has been updated over the years, remains a key piece of administrative legislation on housing quality in terms of health, safety and habitability in the **Netherlands**. Its main objective is the eradication or at least the limitation of substandard housing. It therefore plays a major role in addressing the health and safety problems associated with substandard housing, and indirectly in combatting rogue landlords¹⁸. The criteria that landlords must meet are set out in two articles of the law¹⁹. Article 1a describes the notion of landlords' "duty of care" to ensure that the health or safety of others is not endangered. This article serves primarily as a "catch-all" for violations of the law²⁰. Article 1b explicitly prohibits landlords from violating the 2012 Building Decree (*Bouwbesluit 2012*). This government decree sets criteria and regulations regarding health, safety, usability, energy efficiency, waste disposal and the environment. Energy efficiency regulations to reduce the use of fossil fuels have been introduced with the key objective of limiting CO₂ emissions. These energy efficiency requirements only apply to new buildings.

The Dutch government passed new legislation in 2015 granting more powers to local authorities.

Through the Housing Law²¹, they can now use a wider range of instruments under administrative law.

These new instruments mainly include the imposition of “corrective sanctions”, ranging from escalating fines to more drastic measures such as the closure or seizure of buildings. When an escalating penalty is imposed, the landlord must pay until the violation has been remedied. Local authorities have the right to issue an administrative enforcement order meaning they themselves remedy the violation. The landlord must then reimburse the local authority for the cost of the repairs.

More severe sanctions can be issued, i.e. a closure order by which the local authority takes over the management of the property, or an seizure order by which the landlord is dispossessed of his property or premises. Since 2015, local authorities have also been able to issue fines. Research conducted in 2019²² indicates that none of the 35 municipalities surveyed had used seizure orders or management orders.

UNITED KINGDOM

Percentage of the population living in inadequate housing in 2019²³ according to Eurostat: 17.6%.

Since devolution in 1998, there has been significant divergence in housing legislation between the different nations of the **United Kingdom (England, Scotland and Wales)**. This section focuses on the situation in England and Scotland.

England

As regards legislation on rented accommodation, the Homes (Fitness for Human Habitation) Act 2018²⁴ introduced an implied legal guarantee that all rented accommodation in **England and Wales** shall be fit for human habitation at the start of a

tenancy and thereafter. In most cases, landlords have a legal duty to maintain the structure and exterior of their properties, and to repair water, heating and sanitation facilities.

The Housing, Health and Safety Rating System (HHSRS)²⁵ is used by local authorities to assess a range of risks in rented properties, such as damp, excess cold and electrical faults, as well as fires and falls risks. This assessment system is currently under review and is due for reform in the near future.

Landlord-tenant relationships

The Landlord and Tenant Act 1985 has been amended to require all landlords (private and social) to ensure that their properties, including the common areas of buildings, are fit for human habitation at the start of the tenancy and throughout the tenancy. The Act states that there is an implicit agreement between tenant and landlord at the start of the tenancy that the property will be fit for human habitation.

Under English law, landlords are responsible for most repairs. Repairs must be carried out within a reasonable period of time, i.e. as soon as the problems become known²⁶.

Landlords’ responsibilities include repairs to electrical wiring, pipes and boilers, heating and hot water, chimneys and ventilation, sinks, baths, plumbing, communal areas such as lobbies and staircases, the structure and exterior of the building, including walls, steps and bannisters, roofs, external doors, and windows. Landlords shall also redecorate if necessary when a problem is resolved. They are always responsible for these repairs, even if the tenancy agreement states otherwise.

Instruments to combat inadequate housing

The Homes (Fitness for Human Habitation) Act 2018 aimed to strengthen tenants' recourse against landlords who fail to meet their legal obligations around maintaining the integrity of the property²⁷. If landlords refuse to carry out repairs or do not respond to phone calls, messages, emails or letters, tenants can report a sub-standard property to their local council.

Tenants can also ask their local council to inspect their dwelling if unsanitary conditions are affecting their health or safety. Local councils have an "environmental health" service that monitors housing conditions, especially in private rented accommodation. This service will only investigate serious problems that could affect the health or safety of tenants. It has the power to order landlords to carry out necessary works or to improve housing conditions.

A local council will only inspect a dwelling if the problems appear to be serious and the landlords are not taking steps to address them. The council may make an informal visit to the dwelling before deciding whether to carry out an inspection under the Housing Health and Safety Rating System (HHSRS). The council will usually inform landlords if it intends to inspect the dwelling.

Legislation has introduced protections for tenants against "retaliatory evictions" where they have a legitimate complaint about the condition of their home. The type of complaint to which these rules apply are serious problems that could result in the risk of harm to the health or safety of the tenants or a member of their family. Examples of repairs covered by these rules include a leak in the property or a heating problem (especially in cold weather). The vast majority of landlords address such serious pro-

blems quickly. This legislation is aimed at those who not only fail to carry out these repairs, but then attempt to evict tenants in response to a complaint²⁸.

Scotland

In **Scotland**, there are a number of housing quality standards that apply to different tenures: owner-occupied, social housing (rented by a council or housing association) and private rented housing. These different standards may influence in part the condition of housing in the different tenures²⁹.

- A "Tolerable Standard"³⁰ is a basic standard defined by legislation that applies to dwellings of all categories. Municipalities have the power to enforce this standard. It is estimated that only a small proportion of Scottish dwellings, around 2%, are below the tolerable standard.
- Private landlords have a duty to ensure that the accommodation they rent meets the "Repairing standard"³¹ (which includes the tolerable standard), as set out in legislation.

The social rented sector is the most regulated tenure and currently has the most stringent standards. Social landlords have to ensure that rented accommodation meets the tolerable standard, in addition to other aspects of the Scottish Housing Quality Standard and the Energy Efficiency Standard for Social Housing.

The Scottish government plans to introduce legislation for a common housing standard for all tenures.

IRELAND

Percentage of the population living in inadequate housing in 2020 according to Eurostat: 16.6%.

Landlord-tenant relationships

The Irish Housing Act 1992 sets out the minimum standards that private landlords have to meet when renting out accommodation³². If a dwelling does not meet these standards, it is considered unfit for habitation. In this regard, the landlord of a dwelling carries out to:

“the structure of the dwelling, all such repairs as are, from time to time, necessary and ensure that the structure complies with any standards for houses for the time being prescribed under section 18 of the Housing (Miscellaneous Provisions) Act 1992.”³³

“the interior of the dwelling, all such repairs and replacement of fittings as are, from time to time, necessary so that that interior and those fittings are maintained in, at least, the condition in which they were at the commencement of the tenancy and in compliance with any such standards for the time being prescribed.”³⁴

Legal instruments to combat inadequate housing

The Housing Act 2009 introduces an enhanced sanction regime for landlords by inserting sections 18A and 18B into the Housing (Miscellaneous Provisions) Act 1992. These introduce an improvement notice and a prohibition notice³⁵. Section 18A states that where a landlord breaches a requirement in the Housing Regulations, the housing authority can issue an

“improvement notice” informing the landlord of the breach, the remediation works required, the time limit within which the works need to be carried out and information about the appeals procedure. The landlord informs the tenants and the local authority when the remedial works have been carried out. Landlords can oppose an improvement notice – and if this opposition is not accepted by the local authority, they can appeal the authority’s decision in the district court. Landlords’ right to oppose is problematic as it makes the process particularly time consuming, cumbersome and expensive for the local authority, which will only apply this procedure as a last resort. The housing authority can withdraw an improvement notice, but in doing so is not prevented from issuing another improvement notice in respect of the property.

Section 18B states that where a landlord fails to comply with an improvement notice, the housing authority may issue a “prohibition notice” to inform the landlord of his or her failure to comply with the improvement notice. The prohibition notice takes effect once the existing tenancy is vacated, i.e. the landlord may not re-let the property until the breach of regulations has been remedied. The landlord may appeal such a notice in the district court. Where the landlord has remedied the violation, they are required to notify the housing authority and the tenants. The housing authority issues a written notice of compliance with the prohibition notice to landlords, with a copy forwarded to the tenants. The authority may also withdraw a prohibition notice, but in doing so is entitled to issue another notice in respect of the property. The local authority may, in the interests of public health and safety, make such arrangements as it considers necessary and appropriate to bring the contents of the prohibition notice to the attention of the public.

Concerning Ireland’s Residential Tenancies Act 2004, although housing authorities are responsible for enforcing the Minimum Standards

Regulations, claims relating to the standards and maintenance of private rented accommodation may be brought before the Residential Tenancies Board by tenants against their landlords. Compliance with minimum standards is a legal obligation on landlords, but enforcement of the Residential Tenancies Act often requires a dispute to be filed with the Residential Tenancies Board.

FINLAND

Percentage of the population living in inadequate housing in 2020 according to Eurostat: 4.5%.

In **Finland**, the housing system is governed by a multi-level system of laws and regulations. The regulations for building construction are described in the National Building Code, which only applies to new buildings. The Land Use and Building Act (132/1999) sets out the general conditions for construction, including technical requirements for structures such as strength and stability, fire safety, health and safety of users, accessibility, noise reduction, acoustic conditions and energy efficiency. These technical requirements are specified in the National Building Code and in other decrees and regulations such as the Ministry of the Environment's Decree on Building Plans and Reports (2015)³⁶.

When erecting a building, contractors must ensure the strength and stability, fire safety, health, user safety, accessibility and noise management of structures, and that a user and maintenance manual is available. The building and its grounds must be suitable for the intended use and accessible to children, older and disabled people. The energy efficiency of the building must be proven by calculations and improved as far as possible. In addition, local authority officials supervise building projects to ensure that the provisions of the Land Use and Building Act are met, taking into account environmental factors and natural conditions.

The Finnish Building Code has imposed minimum standards for thermal insulation and ventilation in new buildings since 1976, with subsequent amendments to improve energy efficiency. The new code that came into force on 1 January 2018, established requirements for the total energy consumption of new buildings, with the aim of setting a benchmark for Near Zero Energy Buildings (NZEB) in Finland. Energy certificates have been used in most new buildings since 2008, and an additional requirement was introduced in 2009 to make their use mandatory when selling or renting large buildings as well as new small residential buildings³⁷.

Landlord-tenant relationships

For rented accommodation, there are certain standards set by legislation, including the law on residential tenancy agreements (1995), as well as local regulations and building codes. These standards aim to ensure the safety and health of tenants and include requirements for heating, ventilation, lighting and electrical safety. Buildings shall must be kept in good condition and meet fire safety standards.

Landlords shall provide tenants with detailed information about the unit and its features, such as the location of fire extinguishers and emergency exits, and shall ensure that the unit complies with local regulations and building codes. There may also be specific requirements for disabled access and energy efficient appliances. The specific health and safety standards are as follows³⁸:

- Structural safety: the rented property shall be in a safe and habitable condition and meet all necessary safety standards. Landlords shall maintain the property so that it is safe during the tenancy.

- Sanitation: the rented property shall comprise adequate plumbing, heating and ventilation systems, and shall be clean and free of health hazards such as pests. Landlords shall ensure that the property remains in a decent condition throughout the tenancy.
- Fire safety: the rented property shall comprise smoke detectors, fire alarms and fire extinguishers, and be free from fire hazards. Landlords shall ensure that the fire safety equipment is in good working order.
- Electrical safety: the electrical wiring and appliances in the rented property shall be in good condition and meet all safety standards. Landlords shall ensure that the electrics are in good condition and functional.
- Accessibility: the rented property shall be easily accessible, with stairs, handrails and appropriate lighting. Landlords shall ensure that the property remains accessible during the tenancy.

Tenants also have a responsibility to make sure a rented property is healthy and safe, for example by reporting any safety hazards to landlords. The law provides a mechanism for resolving disputes between landlords and tenants on health and safety issues via mediation or other forms of dispute resolution, or through court action if the dispute cannot be resolved by other means. In all cases, the law provides a clear and structured process for resolving disputes and ensuring that landlords and tenants are held accountable for ensuring rented properties are healthy and safe.

SWEDEN

Percentage of the population living in inadequate housing in 2020 according to Eurostat: 7.1%.

In **Sweden**, when constructing a building, builders must take account of various legal requirements to ensure that it is safe, environmentally friendly and complies with local regulations. Building codes are an essential part of the construction process, defining technical requirements such as load-bearing capacity, fire safety, insulation and ventilation. These codes aim to ensure that the building is structurally sound and safe for occupants³⁹. Environmental protection, safety and spatial planning are key concerns when building housing in Sweden. The Environmental Code⁴⁰ (1998) sets out rules to minimise environmental impact and preserve natural resources.

Minimum decent housing standards in **Sweden** are governed by the Swedish Housing Act (*Bostadsbalken*) and its associated regulations. The Act states that everyone has the right to housing suitable for human habitation, with access to running water, heating, ventilation and a safe indoor environment. The Swedish National Board of Housing, Building and Planning (*Boverket*) is responsible for implementing and enforcing the Act, providing guidelines and recommendations on minimum housing standards.

While the Swedish Housing Act sets minimum standards for dignified housing, these standards may be exceeded by individual housing providers, local authorities or other organisations providing housing. The act also sets out procedures for resolving disputes between tenants and landlords and for enforcing the minimum standards.

The Land Code (1970/994) and the Environmental Code (1998/808) contain provisions that apply to rental properties, ensuring that they have continuous heating, access to hot and cold water, sewage disposal, personal hygiene facilities,

electricity, cooking appliances, storage and laundry facilities. The dwelling must also meet structural soundness, fire safety and sanitation requirements.

The building regulations require all new buildings to meet specific energy standards in insulation, ventilation, heating, cooling and lighting systems. In addition, Sweden has adopted voluntary standards including the "passivhaus" standard and environmental building certification schemes such as *Miljöbyggnad* and BREEAM to assess the environmental performance of a building. All buildings in Sweden shall have an energy performance certificate, which provides information on the energy performance of the building and its potential to be improved. These standards and regulations aim to reduce greenhouse gas emissions and promote sustainability in the construction sector.

SPAIN

Percentage of the population living in inadequate housing in 2020 according to Eurostat: 19.7%.

In **Spain**, housing authorities are regional, meaning that national standards do not contain very detailed descriptions. The Basque Country's Housing Law provides a definition of decent housing and adequate housing, as well as a set of parameters that must be met for housing to be adequate. Other autonomous regions' legislation that contain a definition, albeit brief, of adequate housing are the laws of Andalusia and of the Balearic Islands, and Galicia's Housing Law.

The Spanish legal system requires a series of documents to be produced for each dwelling built. These must certify that it was built with full permissions, prove that it is habitable and guarantee that it complies with the necessary conditions. Possessing an up-to-date certificate of occupancy implies that the dwelling is fit for habitation.

The *cédula de habitabilidad* (habitability certificate) is an administrative document that certifies that a dwelling meets the basic requirements for habitation. These conditions depend on the autonomous community (region) in which it is located and the year of its construction. Not all autonomous communities have regulations on the conditions for obtaining this certificate, and many have not made it compulsory. This is particularly the case in the autonomous communities of Andalusia, Aragon, Castilla-La Mancha, Castilla y León, Galicia, Madrid and the Basque Country⁴¹.

In the community of Madrid, prior verification of compliance with the habitability requirements laid down in the basic State planning regulations is required before a local authority can grant planning permission or an authorisation for works, use, construction and installation or occupation. Such regulations cover: health, noise management, energy saving and thermal insulation; the technical building code; and the local authority planning regulations for the granting of licences, which include plans and local authority regulations concerning compliance with planning, environmental and safety rules.

Landlord-tenant relationships

Nationally, the obligations to preserve and maintain property are governed by Spain's Urban Lease Act (LAU)⁴² and the Commonhold Property Act (LPH). Article 21 of the Urban Lease Act provides that landlords are obliged to carry out all the necessary repairs to keep the dwelling in a habitable condition for the use agreed in the contract, and are not allowed to increase the rent to cover these works. This is a legal (not contractual) obligation, which continues as long as the deterioration of the dwelling is not attributable

to the tenants and it is not forfeited or destroyed for reasons beyond the control of the landlord, in which case the tenancy agreement may be terminated.

The same Article 21 of the Urban Lease Act establishes that, if the works necessary to maintain the dwelling in a habitable state are urgent and it is not reasonably possible to postpone them until the end of the tenancy, the tenants are obliged to inform the landlord(s) as soon as possible of the need for the repairs. This is to facilitate verification of the state of the dwelling and to allow repairs be carried out, even if this may entail inconveniences or even lack of access to part of the property.

Nonetheless, if the works last more than 20 days, the tenants have the right to a rent reduction proportional to the section of the property that is out of service. This is without prejudice to the tenants' right, after notifying the landlord, to carry out urgent repairs in order to avoid imminent damage or serious inconvenience, and to demand immediate reimbursement of the amount paid for such repairs.

According to Article 27.1 of the Urban Lease Act, if one party fails to fulfil the obligations in the tenancy agreement, the party who has fulfilled his obligations can demand the obligation be fulfilled or ask for the agreement to be terminated. This is in accordance with Article 1.124 of the Spanish Civil Code. Article 27.3 of the Urban Lease Act also expressly states that tenants can terminate a contract for "(a) failure of the lessor to carry out the repairs referred to in Article 21".

Finally, the law does not describe the works required to maintain the dwelling in habitable condition, so it is necessary to rely on case law and interpretations by the civil courts, that rely on different criteria. In practice, this obligation to maintain the premises in a habitable condition is difficult to enforce, as the enforcement mecha-

nisms involve legal action with all the costs that this entails to be borne by the tenants. In the absence of a specific procedure for preventative measures, their application can be delayed for a long time. If a landlord refuses to comply with a decision, the tenants have to ask for its enforcement before the Court of Justice.

If landlords fail to carry out the necessary maintenance works, there are several remedies:

- Introduction of a civil suit to demand maintenance works on the basis of Article 21 of the Urban Lease Act via an ordinary declaratory procedure. This will also include an enforcement procedure if the judgement favours the tenants and is not implemented by the landlords voluntarily;
- Bringing a claim for compensation when tenants, after having requested works be undertaken by the landlord, carry out the works themselves; and
- Out-of-court negotiations with landlords to carry out maintenance works, which is the quickest solution but depends on the goodwill of the landlord.

If tenants are obliged to take legal action to have maintenance works carried out, they may claim compensation for damages caused until the work is undertaken.

Local authority powers

In Madrid, for example, local authority departments have to assess the habitability conditions of dwellings using the powers that the legislation confers to local authorities around inspection and sanitary control of property and the urban environment. This is only on request and in justified cases.

A dwelling must meet certain regulatory requirements, including safety, accessibility, living space, prevention of damp, waste collection and disposal, indoor air quality, water supply, sewage disposal, etc.

In this respect, substandard housing is considered to be a dwelling that does not meet the minimum conditions of habitability due to structural problems, overcrowding, lack of lighting and ventilation, lack of basic facilities, degraded or inadequate environment, etc.⁴³.

Any citizen registered in the Madrid local authority area may request an assessment of the hygiene, sanitation and habitability conditions of the dwelling in which he or she lives when one or more risks to health exist. The local authority inspects the dwelling, after informing the applicant. The inspector assesses the conditions of habitability and decency of the dwelling, and informs the parties involved of the measures to be taken to resolve the problem.

PORTUGAL

Percentage of the population living in inadequate housing in 2020 according to Eurostat: 25.2%.

Article 65 of Portugal's Constitution provides for the right to adequate housing by stating that "everyone shall have the right, for himself and his family, to a dwelling of adequate size satisfying standards of hygiene and comfort and preserving personal and family privacy"⁴⁴. The Portuguese Basic Housing Law came into force on 1 October 2019 and provides a general framework for the right to housing in the country, including protection against discrimination in terms of housing on a wide range of grounds⁴⁵.

In **Portugal**, according to legislative decree 160/2006, inadequate housing cannot be rented out. This legislative decree establishes that tenancy agreements must display the build-

ing's use permit (issued by local authorities). Recent legislation also defines the criteria for inadequate housing. This includes the Legal Framework on Housing (Law 83/2019, Article 9) and legislative decree 37/2018 (Primary Right – Housing Support Programme), which defines "the conditions of unfit housing" and establishes different types of financial assistance when these conditions are found (Article 5).

Legislative decree 89/2021 expands on the norms of the Legal Framework on Housing, establishing the guarantee of alternative housing, preferential rights as law and housing inspection conditions⁴⁶.

Landlord-tenant relationships

Landlords must carry out maintenance works on the dwellings they own every eight years⁴⁷. Moreover, "the landlord shall, regardless of this period, carry out all the work necessary to maintain the safety, health and visual appearance"⁴⁸. Other obligations are foreseen for landlords around maintenance and repairs, under Article 1074 of the Portuguese Civil Code.

The law regulating the relationship between landlords and tenants (Portuguese Civil Code) only contains one article (Article 1036) on repairs. This article stipulates that if a landlord does not carry out repairs, tenants can carry them out and demand reimbursement of the costs. Tenants may, for example, pay discounted rent for a certain period of time in order to compensate for the money spent, according to Article 1074 of the Portuguese Civil Code⁴⁹.

In practice, due to the imbalance of power, vulnerable tenants with one-year tenancy agreements rarely access their rights. However, the vast majority of tenancy agreements are not

one-year contracts, but rather four- or five-year contracts, in accordance with articles 1094, 1095, 1096 of the Portuguese Civil Code, amended by Law no.13/2019.

Local authority powers

Tenants have the right to request an inspection of their dwelling by the local authority. However, the local authority can only intervene if the dwelling is in a particularly dire state and if there is a risk of collapse. In such cases, the local authority notifies the landlords that they should carry out works. The local authority is also involved when landlords want to contribute to the aesthetic improvement of certain areas.

If there is a risk of collapse (dilapidated or abandoned housing), or if the housing actually collapses, people are rehoused in emergency accommodation. Resettlement is managed by the local social services.

HUNGARY

Percentage of the population living in inadequate housing in 2020 according to Eurostat: 20.4%.

In **Hungary**, the legal framework for housing encompasses the following four pieces of legislation: the Fundamental Law of Hungary⁵⁰, Act CLXXXIX of 2011 on Local Governments⁵¹, Act V of 2013 bringing the Hungarian Civil Code⁵² into effect and Act LXXVIII of 1993 on the Leasing of Apartments and Premises⁵³.

Hungarian law lacks an explicit definition of inadequate housing. According to the Fundamental Law of Hungary, the Hungarian State, represented by the Hungarian government, guarantees housing or accommodation for all. However, this formulation is difficult to interpret

in legal terms and does not establish an enforceable right.

The Fundamental Law of Hungary also states that local governments should do everything in their power to ensure decent housing. Based on this provision, the Local Government Act refers to housing management as a task that can be taken over by local governments as part of local public duties. However, the legislation does not provide any regulatory or administrative tools for local governments in relation to private renting.

Landlord-tenant relationships

Under the Leasing Act, landlords are generally obliged to pay the costs of necessary repairs to the dwelling, but tenants are responsible for the costs of ordinary maintenance of a rented flat, unless otherwise agreed.

In practice, tenants are not in a position to amend the rental conditions set by landlords. Furthermore, landlords often rent out their accommodation without a written contract.

The Hungarian Civil Code allows tenants to terminate their tenancy if the accommodation they occupy poses a risk to their health. In practice, as there are few affordable housing solutions in **Hungary**, tenants are sometimes forced to accept inadequate conditions or even violations of tenancy agreements. Therefore, the right of termination is not an effective solution to enforce landlords' obligations.

Generally, tenants cannot protect themselves against abusive practices by landlords. They can claim compensation from landlords, but apart from that there is no specific rule or authority to protect them and ensure that the works are carried out. There are no provisions in the Leasing Act to protect tenants.

Although there is a framework for categorising flats according to a number of factors (minimum room size, existence of a room for cooking, a bathroom and indoor flushing toilet, electricity, water supply, access to hot water, sewage disposal, central heating, individual heating), this is only a simple categorisation, from which no obligation arises⁵⁴. There are other *ad hoc* provisions favourable to people in poverty, but these measures are not sufficient to establish the conditions necessary to guarantee decent housing.

POLAND

Percentage of the population living in inadequate housing in 2020 according to Eurostat: 6.0%.

Article 75 of the Polish Constitution states that “the public authorities shall pursue a policy conducive to satisfying the housing needs of citizens and, in particular, combatting homelessness, supporting the development of social housing and promoting citizens’ efforts to obtain housing. The law defines the protection of tenants’ rights⁵⁵.”

According to Article 76 of the Constitution, “the public authorities shall protect consumers, users and licensees against actions that endanger their health, privacy, or threaten their safety and against unfair practices in the market. The scope of this protection is defined by law⁵⁶.”

However, the provisions of the Constitution do not provide a sufficient legal basis for legal claims.

Landlord-tenant relationships

The Tenant Protection Act 2001⁵⁷ only sets out habitability criteria for social housing in terms of furnishings and technical standards⁵⁸.

On the Polish private rental market the government only intervenes in the regulation of the housing market in one type of tenancy agreement (the “Occasional Tenancy Agreement”), which has to be registered with the tax authorities.

The general rules laid down in the Polish Building Act of 7 July 1994 governing the construction and letting of buildings are binding on landlords and managers who are not bound by tenancy agreements. Generally, any such landlord or manager is obliged to ensure the safety of the building and to carry out periodic inspections.

There are civil law provisions that oblige landlords to keep rental flats in a decent condition. Landlords’ obligations regarding the maintenance of rented premises are mainly laid down in articles 682 and 662 of the Polish Civil Code⁵⁹; and the Polish Tenant Protection Act⁶⁰ (UOPL) (Articles 6a and 6b of the Maintenance and Renovation Act).

These provisions are applicable as soon as the tenancy agreement is signed. It should be noted that the regulations in the UOPL prevent the application of some of the provisions of the Polish Civil Code⁶¹. This concerns in particular the distribution of maintenance and renovation works between the parties to the tenancy agreement. However, both regulations are often ignored by agreement between the parties⁶², and they design their legal relationship as they see fit.

The Polish Civil Code contains two provisions favourable to tenants, regarding the conditions of the dwelling and the obligations on the landlord in this respect (less efficient than the UOPL).

1. The possibility of terminating the tenancy agreement without notice if the apartment has defects that pose a health risk to the tenants or their families⁶³. The parties to the lease cannot change this regulation. It applies even when (i) the tenants were aware of these defects at the

time of signing the tenancy agreement and (ii) the problem has been solved. Tenants do not have to ask landlords to remedy a problem or to wait for it to be resolved before terminating the lease. According to case law, such defects endangering the health or life of the tenants are, for example: damp and mould⁶⁴, emission of toxic substances from materials used in the construction of a building⁶⁵, and low temperatures⁶⁶.

2. Tenants have the option of carrying out necessary renovation or repairs at the expense of the landlord(s)⁶⁷. Certain conditions need to be met:
 - It is the legal responsibility of landlords to carry out the repairs;
 - Works are necessary for the normal use of the flat or as provided for in the contract; and
 - Tenants should ask landlords to carry out the necessary works and set a deadline.

If these formal requirements are not met, tenants are not entitled to benefits from this provision. Only after the deadline has expired can tenants carry out the necessary works at the expense of landlords.

In practice, this is an easier remedy to ensure that the works are carried out as it does not require a court judgement. In addition, tenants are entitled to it if the conditions are met. However, tenants must pay for the works. Tenants can deduct the costs incurred from the rent. If the rent is insufficient to cover the costs, the tenants can ask the landlords to reimburse the remaining costs. If they refuse to reimburse the costs, legal proceedings may be necessary.

The Polish Tenant Protection Act (UOPL) provides for more detailed regulations, thus prevailing over the Polish Civil Code. It concerns the sharing of maintenance and renovation works, and the obligations on the parties in the tenancy agreement. Landlords are obliged to guarantee the proper functioning of all equipment, thus allowing tenants to use water, gas or other fuel, heating, electricity, lifts and other equipment in the building. Landlords are obliged to carry out all repair works on the building as well as necessary renovation in the event of possible damage to the flat, equipment or electrics.

Tenants are obliged to keep premises in a sanitary condition and to respect the house rules. In addition, they must take care of the accommodation and the common areas so that they remain in good condition.

On the private market, these provisions are subject to contractual changes. However, the tenant has some leeway to get renovation or repairs done, and this tends to be quite wide. Case law shows that this leeway does not always correspond to the regulations of the Polish Civil Code, which is less restrictive for tenants.

Tenants are obliged to maintain and repair floors, windows and doors, furniture, kitchen appliances, radiators, boilers, heaters, baths, showers, sinks, parts of the electrics, and ovens/stoves/central heating. These repairs can therefore be considerable and expensive to carry out. According to the UOPL, which prevails over the Polish Civil Code, tenants are responsible for the majority of the most common repairs in rental flats.

3. CONCLUSIONS

- The private rental sector relies heavily on the regulation of the relationship between landlords and tenants, determined by individual tenancy agreements.
- Rental regulations give tenants the opportunity to report problems that are the responsibility of landlords, but this does not take into account the power imbalance between tenants and landlords, which does not allow tenants to access the rights to which they are entitled.
- There is still a need to develop new regulations that can help address the shortcomings of this contractual approach by introducing measures whereby public authorities can intervene.

4. GOOD PRACTICE AND RECOMMENDATIONS

- When confronted with problems arising from inadequate housing, lengthy and costly legal action should not be the only means of defence for tenants.
- Providing legal aid to tenants to help them understand and access their rights, particularly against a backdrop of a strained housing market and budget cuts.
- Introducing extra-judicial procedures such as corrective sanctions (the **Netherlands**), or the possibility for tenants to carry out necessary renovation or repairs at the expense of the landlord (**Poland**).
- Ensuring that there are effective local bodies responsible for the supervision of housing conditions. Providing local authorities and local authorities with the means to assess the compliance of rental housing, such as unfit for habitation orders (**Belgium**); rental permits (**France**); local sanitation control (**France**).
- Granting tenants the right to request a health or safety inspection. This can be reinforced, as in **Belgium** by the right to no longer notify the landlord in advance of the inspectors' visit; or as in the UK, through links with the Housing, Health and Safety Rating System (HHSRS), whereby tenants can lodge a complaint with the Local Government and Social Care Ombudsman if they are not satisfied with the local council's response to their complaint.
- Giving tenants the option of terminating a tenancy agreement without notice if the flat has defects that endanger their health or safety (**Poland**).
- Establishing legislation to bolster the tenancy agreement of tenants requesting improvement works, i.e. prohibition of eviction of households from the dwelling in case of request for renovation to ensure the dignity of the dwelling, no rent increase in the event of necessary works, suspension of the tenancy agreement if the accommodation is unfit or hazardous.

5. EUROPEAN RECOMMENDATIONS

Although housing is not a competence of the European Union, European law covers housing in a wide range of areas. Given the increased importance of tenancy and housing law in Europe and the important collateral effects of EU law and policy in other areas, the TENLAW project promotes a greater role for EU coordination in this area. Legal harmonisation was considered unrealistic, but the project demonstrated that the Open Method of Coordination (OMC), which has been implemented in other areas of social policy, is the best institutional tool currently available⁶⁸.

Consumer law could also be referred to. An effective protection policy would ensure consumer/tenant rights against abusive practices

by landlords and provide better protection for vulnerable tenants. Empowering consumers and protecting their safety and economic interests effectively have become key tenets of EU policy. It is therefore vital to protect the rights of tenants as consumers: tenants should not receive weaker protection than consumers of other goods and services. Tenants should also be able to demand that leases are drafted in a transparent, simple and intelligible way, like any other consumer contract. Tenants should also be able to demand that contract terms are brought to their attention in such a way that the average consumer can understand them and use them to defend their rights⁶⁹.

1

General Comment No. 4, interpretation of Article 11.1 in relation to adequate housing, by the Committee on Economic, Social and Cultural Rights: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT/CESCR/GEC/4759&Lang=en

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Digest of the case law of the European Committee of Social Rights which presents an interpretation of the articles of the European Social Charter by the European Committee of Social Rights (version 2018), accessed 27 February 2023.

3

Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint no. 58/2009, decision on the merits of 25 June 2010, Section 158.

4

FIDH v. Ireland, Complaint no. 110/2014, decision on the merits of 12 May 2017, Section 40-53, 105-106.

5

Law no. 89-462 of 6 July 1989 on relationships between landlord and tenant (Article 6): https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000037670751/

6

Constitutional Council, Decision 94-359 DC of 19 January 1995.

7

Decree no. 2002-120 of 30 January 2002 on decent housing features implementing Article 187 of Law no. 2000-1208 of 13 December 2000 on solidarity and urban renewal.

8

Law no. 89-462 of 6 July 1989 aimed at improving landlord-tenant relationships and amending Law no. 86-1290 of 23 December 1986 (Article 6): https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000037670751/; Decree no. 2002-120 of 30 January 2002 on characteristics of decent housing, implementing Article 187 of Law no. 2000-1208 of 13 December 2000 relating to urban solidarity and renewal: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT00000021471/>.

9

Article 84 of Law no. 2009-323 of 25 March 2009 on making housing available and anti- eviction measures and Law no. 90-449 of 31 May 1990 aimed at implementing a right to housing: https://www.legifrance.gouv.fr/afichTexte.do;jsessionid=3522D94B28511C991069AC445E4D85B5.tplgfr24s_3?cidTexte=JORFTEXT000000159413&dateTexte=20100710.

10

Law no. 2000-1208 of 13 December 2000 on urban solidarity and renewal: <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000005630252/2020-10-23/>

11

Premises unfit for habitation may be an attic, a cellar, a garden shed, a garage, a windowless room, etc.

12

Insalubrité. En finir avec l'impunité des bailleurs. RBDH: <http://rbdh.brow.be/insalubrite-en-finir-impunite-bailleurs/>

13

See above.

14

Logement en mauvais état et problème de non-conformité: <https://logement.brussels/louer/logement-en-mauvais-etat/>

15

Renovation assistance is known as the "rénovation" bonus: <https://renolution.brussels/fr>

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<https://environnement.brussels/citoyen/news/indexation-des-loyers-et-certificat-peb>

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Law of 22 June 1901 containing legal provisions concerning social housing, *Bulletin des actes* no. 266.

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Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, 2012.

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Vols M. and Belloir A. (2019) – "Tackling Rogue Landlords and Substandard Housing: Local Authorities' Legal Instruments and their Effectiveness".

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Improvement of the Housing Act's Enforcement Instruments Act: https://www.eerstekamer.nl/wetsvoorstel/33798_versterking

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Vols M. and Belloir A. (2019) – "Tackling Rogue Landlords and Substandard Housing: Local Authorities' Legal Instruments and their Effectiveness".

23

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Homes (Fitness for Human Habitation) Act 2018: <https://www.legislation.gov.uk/ukpga/2018/34/enacted>.

25

The Housing, Health and Safety Rating System (HHSRS) was introduced by the Housing Act 2004.

26

This section has been written using information from the Shelter website: https://england.shelter.org.uk/housing_advice/repairs/complain_to_environmental_health_about_rented_housing

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Retaliatory Eviction and the Deregulation Act 2015, guidance note: <https://www.gov.uk/government/publications/retaliatory- eviction-and-the-deregulation-act-2015-guidance-note>; Revenge eviction if you ask for repairs: https://england.shelter.org.uk/housing_advice/repairs/revenge_eviction_if_you_ask_for_repairs

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<https://digitalpublications.parliament.scot/ResearchBriefings/Report/2021/10/13/43a5d8fb-e099-401f-aff6-38f34be2b8ed>

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Housing conditions and standards (updated), Berry K. https://digitalpublications.parliament.scot/ResearchBriefings/Report/2021/10/13/43a5d8fb-e099-401f-aff6-38f34be2b8ed#e68f065c-3d66-11e8-8e2d-000d3a23af40_dita

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<http://www.irishstatutebook.ie/eli/2019/si/137/made/en/print>

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Housing (Miscellaneous Provisions) Act, 1992, Standards for rented houses.

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Housing (Miscellaneous Provisions) Act, 1992, Standards for rented houses.

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Housing (Miscellaneous Provisions) Act 2009, schedule 1 part 4. *Offenses* <http://www.irishstatutebook.ie/eli/2009/act/22/enacted/en/html>

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https://www.ymparisto.fi/enus/Building/Ecoefficiency_and_energy_consumption_in_buildings/Energy_certificate_for_buildings

38

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<https://www.madrid.es/portales/mumimadrid/es/Inicio/Servicios-sociales-y-salud/Salud/Salubridad-y-Habitabilidad-de-la-Vivienda/?vgnextfmt=default&vgnextoid=a79f1e971705c410VgnVCM1000000b205a0aRCRD&vgnextchannel=0815c3eb248fe410VgnVCM1000000b205a0aRCRD>

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<http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20010710733/U/D20010733.lj.pdf>

61

These are therefore not addressed in this study.

62

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63

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