



# **Pilot project - Promoting protection of the right to housing - Homelessness prevention in the context of evictions**

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**Full report - final version**

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FEANTSA**



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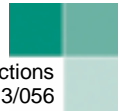
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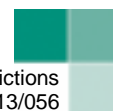


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**Final report edited by:  
Kenna, P., Benjaminsen, L., Busch-Geertsema, V. and Nasarre-Aznar, S. (2016)**

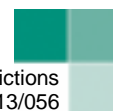


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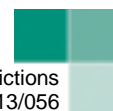


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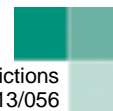


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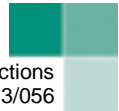
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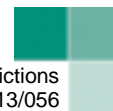
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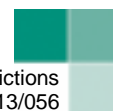


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## List of abbreviations

ACT	Assertive community treatment
ADR	Alternative dispute resolution
AJPI	<i>Archivo del Juzgado de Primera Instancia</i> (ES) (Court of First Instance Archive)
AoTR	Act on Tenants Rights and Municipal Housing Stock (PL)
AST	Assured shorthold tenancy (UK)
BCC	Boston Community Capital (USA)
CCAPEX	<i>Commission de coordination des actions de prévention des expulsions</i> (FR) (Eviction Prevention Coordination Committee)
CCMA	Code of Conduct for Mortgage Arrears (IE)
CEE	Central and Eastern European
CESCR	UN Committee on Economic, Social and Cultural Rights
Cendoj	<i>Centro de Documentación Judicial</i> (ES) (Judiciary Documentation Centre of the General Council of the Judiciary)
CIPE	<i>Comitato Interministeriale per la Programmazione Economica</i> (IT) (Interministerial Committee for Economic Planning)
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CRC	UN Convention on the Rights of the Child
CRPD	UN Convention on the Rights of Persons with Disabilities
CSO	Central Statistical Office (HU)
CTI	Critical time intervention
CWI	Community Wellness Initiative (Canada)
DAAP	<i>Dispositif d'accompagnement pour les accédants à la propriété</i> (FR) support for first-time home buyers
DALO	<i>Droit au logement opposable</i> (FR) (enforceable right to housing)
DESC	<i>Derechos económicos, sociales y culturales</i> (ES) (economic, social and cultural rights)
DGPJ	<i>Direção-Geral da Política de Justiça</i> (PT) (Directorate-General for Justice Policy)
DTI	debt-to-income (ratio)
EaSI	EU Programme for Employment and Social Innovation
EBA	European Banking Authority
EBF	European Banking Federation
ECB	European Central Bank
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECSR	European Committee of Social Rights
EEA	European Economic Area
EHRR	European Human Rights Reports
EKKA	<i>Εθνικό Κέντρο Κοινωνικής Αλληλεγγύης</i> (EL) (National Centre for Social Solidarity)
ERDF	European Regional Development Fund
ERRC	European Roma Rights Centre
ESC	European Social Charter
ESF	European Social Fund
ESIS	European Standardised Information Sheet



ETHOS	European typology of homelessness and housing exclusion
EU	European Union
EUCFR	EU Charter of Fundamental Rights
EU-SILC	EU Survey of Income and Living Conditions
FEK (ΦΕΚ)	<i>Φύλλο Εφημερίδος της Κυβερνήσεως</i> (EL) (Government Gazette Issue).
FAWOS	<i>Fachstelle für Wohnungssicherung</i> (AT) (Specialist Office for Housing Assurance)
FEAD	Fund for European Aid to the Most Deprived
FEANTSA	<i>Fédération Européenne des Associations Nationales Travaillant avec les Sans-Abri</i> (European Federation of National Organisations working with the Homeless)
FLAC	Free Legal Advice Centres (IE)
HF	Housing First
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICM	Intensive case management
IESC	Irish Supreme Court
IMF	International Monetary Fund
INE	<i>Instituto Nacional de Estadística</i> (ES) (National Statistics Institute)
ISI	Insolvency Service of Ireland
JPI	<i>Juzgado de Primera Instancia</i> (ES) (court of first instance)
LTV	Loan-to-value (ratio)
MABS	Money Advice and Budgeting Service (IE)
MCOB	<i>Mortgages and Home Finance: Conduct of Business sourcebook</i> (UK)
NAMC	National Asset Management Company (HU)
NGO	Non-governmental organisation
NHF	National Housing Federation (UK)
NHG	<i>Nationale Hypotheek Garantie</i> (NL) (National Mortgage Guarantee Scheme)
NRW	North Rhine-Westphalia (DE) ( <i>Nordrhein-Westfalen</i> )
NUTS	<i>Nomenclature des unites territoriales statistiques</i> (Nomenclature of Territorial Units for Statistics)
NVVK	<i>Nederlandse Vereniging voor Volkskrediet</i> (NL) (Dutch Association for Public Credit)
OECD	Organisation for Economic Co-operation and Development
OMC	Open method of coordination
PAH	<i>Plataforma de Afectados por la Hipoteca</i> (ES) (Platform for People Affected by Mortgages)
PCSW	Public Centre for Social Welfare (BE)
PERSI	<i>procedimento extrajudicial de regularização de situações de incumprimento</i> (PT) (out-of-court arrears settlement procedure)
PICUM	Platform for International Cooperation on Undocumented Migrants
PPP	Public-private partnership
PRTB	Private Residential Tenancies Board (IE)
RDL	Royal Decree-law (ES)
RESC	Revised European Social Charter
RRH	Rapid Rehousing (USA)
RSA	<i>Revenue de solidarité active</i> (FR) ('active solidarity income' or earned income supplement)



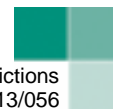
SABO	<i>Sveriges Allmännyttiga Bostadsföretag</i> (SE) (Swedish Association of Public Housing Companies)
SGB	<i>Sozialgesetzbuch</i> (DE) (Social Security Statute Book)
SGEI	Services of general economic interest
SPC	Social Protection Committee
SRA	Social rental agency
SUN	Stabilizing Urban Neighborhoods Initiative (USA)
SVR	<i>Sachverständigenrat deutscher Stiftungen für Integration und Migration</i> (Expert Council of German Foundations on Integration and Migration)
SWD	Staff Working Document (European Commission)
TFEU	Treaty on the Functioning of the European Union
UCITS	Undertakings for collective investment in transferable securities
UN	United Nations
UNCESCR	see CESCR
UNCRC	United Nations Convention on the Rights of the Child
ZERP	<i>Zentrum für Europäische Rechtspolitik</i> (Centre of European Law and Politics)

For the purposes of this report:

**Central and Eastern European (CEE) Member States** include Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.

**Northern and Western European Member States** include Austria, Belgium, Denmark, Germany, Finland, France, Ireland, Luxembourg, the Netherlands, Sweden and the United Kingdom.

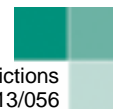
**Southern European Member States** in this report refer to Cyprus, Greece, Italy, Malta, Portugal and Spain.



## Index of EU Member States

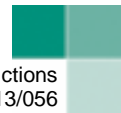
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Romania (RO)	4, 5, 7, 14, 29, 45, 48, 49, 51, 53, 54, 67, 68, 69, 71, 75,



	80, 82, 84, 85, 93, 97, 117, 120, 124, 160, 166, 173, 177, 193, 196.
Slovakia (SK)	7, 14, 29, 32, 33, 36, 45, 49, 53, 54, 67, 68, 69, 70, 75, 80, 82, 84, 85, 117, 120, 123, 124, 126, 129, 146, 150, 160, 164, 166, 174, 177, 178, 196.
Slovenia (SI)	5, 6, 7, 14, 29, 34, 45, 46, 49, 53, 54, 62, 64, 65, 69, 70, 71, 80, 82, 84, 85, 94, 106, 117, 124, 127, 130, 138, 153, 157, 163, 164, 166, 173, 174, 177, 178, 180, 182, 196.
Spain (ES)	3, 4, 5, 6, 7, 8, 10, 14, 19, 33, 37, 45, 46, 49, 53, 54, 55, 56, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 80, 82, 83, 84, 85, 95, 97, 107, 108, 109, 117, 120, 121, 122, 123, 124, 125, 126, 128, 129, 130, 131, 135, 138, 140, 143, 144, 145, 147, 150, 151, 152, 154, 155, 160, 163, 166, 167, 169, 170, 171, 172, 173, 174, 177, 178, 180, 182, 183, 193, 196, 199, 203
Sweden (SE)	5, 6, 7, 11, 13, 27, 34, 45, 46, 49, 51, 52, 53, 54, 58, 59, 60, 66, 67, 68, 70, 71, 72, 73, 74, 75, 76, 80, 82, 84, 85, 100, 101, 117, 124, 125, 127, 135, 139, 144, 145, 146, 150, 152, 153, 156, 160, 162, 170, 180, 183, 186, 188, 189, 196.
United Kingdom (UK)	3, 5, 6, 7, 8, 14, 19, 28, 29, 36, 45, 47, 49, 51, 52, 53, 54, 62, 64, 65, 66, 68, 69, 70, 71, 82, 84, 85, 90, 91, 92, 103, 104, 108, 117, 118, 123, 124, 125, 127, 129, 130, 131, 132, 133, 134, 135, 137, 138, 140, 146, 147, 150, 151, 156, 160, 162, 163, 165, 166, 170, 173, 178, 180, 182, 184, 185, 189, 190, 196, 199.





## Part I

### 1 Executive summary

This executive summary sets out the subject matter of the study, its main findings and conclusions, recommendations, a comparison of some EU (and non-EU) best practices, and the limitations of the research.

#### 1.1 Subject matter

Home is associated with safety, belonging, esteem and personal and child development. Housing and home are intertwined with health, poverty or wealth and opportunity in general. Eviction involves the involuntary removal of people from their homes, with many negative personal and social consequences, particularly for children. In EU Member States where evictions are widely concentrated among people with complex support needs (mostly in Northern European Member States), research shows that about one quarter of those evicted can become homeless.

This study was undertaken for the European Commission Directorate-General for Employment, Social Affairs & Inclusion as part of the 'Promoting protection of the right to housing - Homelessness prevention in the context of evictions' pilot project. The key objectives of the research were:

- to provide an overview and analysis of available data and trends regarding housing evictions between 2010 and 2013 across the 28 EU Member States;
- to establish the reasons for and impacts of eviction, in particular the relative importance of eviction as a pathway into homelessness;
- to analyse the legislative and regulatory framework and the availability, effectiveness and cost-efficiency of measures designed to prevent and tackle evictions and enable early interventions;
- to suggest ways to improve data collection and the monitoring of evictions in the Member States, identifying the most important data sources;
- to formulate recommendations based on best practices to better prevent and tackle evictions and homelessness resulting from evictions.

#### 1.2 Findings and main conclusions

##### *Promoting protection of the right to housing*

Evictions are legally justified on the basis of enforcing property, mortgage, contract or tenancy law as well as building or property condition regulations. All EU Member States have a unique blend of constitutional (see Annex 2), legislative, human rights, administrative and procedural norms, as well as distinct political/policy approaches to evictions. An array of complex legal, social and procedural anti-eviction and support measures are in place in many Member States. However, there are significant gaps in the protection of housing rights in the context of evictions.

In relation to judicially supervised evictions (although this does not apply to all evictions or in all Member States), three distinct phases have been identified. These are the pre-court phase, the court phase and the phase from the granting of the eviction order to its execution.

The right to housing is recognised in the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>1</sup> and in the European Social Charter of the Council of Europe,<sup>2</sup> which have been ratified by all EU Member States. Article 11(1) of the ICESCR obliges States Parties 'to recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.'<sup>3</sup> The housing rights established in the European Social Charter and Revised Charter<sup>4</sup> include: access to adequate and affordable housing; a reduction of homelessness; housing policy targeted at all disadvantaged categories; procedures to limit forced eviction; equal access for non-nationals to social housing and housing benefits; and housing construction and housing benefits related to family needs.<sup>5</sup>

Together, these human (social) rights instruments oblige Member States, which have adopted them to varying degrees, to ensure that evictions do not result in households being rendered homeless or vulnerable to the violation of other human rights. Where those evicted are unable to provide for themselves, Member States must take the maximum appropriate measures allowed by their available resources to ensure that adequate alternative housing or resettlement is available.<sup>6</sup> In cases of forced evictions,<sup>7</sup> UN human rights standards oblige States, *inter alia*, to ensure the presence of Government officials or their representatives during an eviction, and they ensure proper identification of the persons carrying out the eviction.<sup>8</sup> The UN Committee on Economic, Social and Cultural Rights (CESCR) has recently highlighted State obligations to ensure the accessibility of legal remedies for persons facing mortgage enforcement procedures for failure to repay loans. States must

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<sup>1</sup> UN Doc. A/6316 (1966) International Covenant on Economic, Social and Cultural Rights Art 11.

<sup>2</sup> Turin, 18.10.1961, Council of Europe, European Treaty Series - No 35; *European Social Charter. (Revised)* Council of Europe, Strasbourg 3/5/1996 Articles 16, 30 and 31.

<sup>3</sup> All EU Member States have adopted the ICESCR.

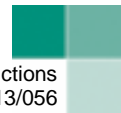
<sup>4</sup> Turin, 18.10.1961, Council of Europe, European Treaty Series - No 35; *European Social Charter. (Revised)* Council of Europe, Strasbourg 3/5/1996.

<sup>5</sup> See: [http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/AboutCharter\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/AboutCharter_en.asp).

<sup>6</sup> See UN Doc E/1991/23 General Comment No. 3: The Nature of States Parties' Obligations. Article 2(1) provides that 'Each State party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.'

<sup>7</sup> According to UN Doc. E/1998/22, Annex IV. UNCESCR, *General Comment 7, The Right to Adequate Housing – Forced Evictions* – the term 'forced evictions' as used throughout the general comment is defined as 'the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.'

<sup>8</sup> See UN Doc. E/1998/22, Annex IV. UNCESCR, *General Comment 7, The Right to Adequate Housing – Forced Evictions*, para 15.



adopt appropriate legislative measures to ensure that mortgage enforcement procedures and the rules leading to eviction contain appropriate human rights protection, in accordance with the ICESCR and taking into account General Comment 7.<sup>9</sup>

The European Committee on Social Rights of the Council of Europe has declared that evictions are subject to a range of human rights standards.<sup>10</sup> States must take action to prevent categories of vulnerable people from becoming homeless, in addition to having a housing policy for all disadvantaged groups of people to ensure access to social housing.<sup>11</sup> Although national authorities enjoy a wide margin of appreciation in measures to be taken concerning town planning, they must strike a balance between the general interest and people's fundamental rights, in particular the right to housing and its corollary of ensuring that individuals do not become homeless.<sup>12</sup>

The criteria for eviction arising from illegal occupancy must not be unduly wide. The eviction should be governed by rules of procedure that are sufficiently protective of the rights of the persons concerned and should be carried out according to these rules.<sup>13</sup>

Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the parties affected in order to find alternative solutions to eviction, and an obligation to fix a reasonable notice period before eviction. When evictions do take place, they must be carried out under conditions which respect the dignity of the persons concerned. The law must prohibit evictions carried out at night or during the winter period. When an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.<sup>14</sup> Domestic law must provide legal remedies and offer legal aid to those seeking redress from the courts. Compensation for illegal evictions must also be provided.<sup>15</sup>

The European Convention on Human Rights (ECHR), as ratified by all EU Member States, requires respect for the rights to 'home', under Article 8. There must be proper justification and a 'pressing social need' for an eviction, which must be proportionate to the legal aim pursued.<sup>16</sup> Member States must prevent evictions

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<sup>9</sup> See UN Doc E/C.12/55/D/2/2014. Views of the Committee on Economic, Social and Cultural Rights under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (fifty-fifth session) – Spain.

<sup>10</sup> See European Committee of Social Rights – *Digest of the case law of the European Committee of Social Rights*.

<sup>11</sup> European Committee of Social Rights - Conclusions 2005, Lithuania, p. 409.

<sup>12</sup> *European Roma Rights Centre (ERRC) v Bulgaria*, Complaint N° 31/2005, Decision on the merits of 18/10/2006, para 54.

<sup>13</sup> *European Roma Rights Centre (ERRC) v Greece*, Complaint N° 15/2003, Decision on the merits of 8/12/2004, para 51.

<sup>14</sup> *European Roma Rights Centre (ERRC) v Bulgaria*, Complaint N° 31/2005, Decision on the merits of 18/10/2006, para 52.

<sup>15</sup> European Committee of Social Rights – *Digest of the case law of the European Committee of Social Rights*, p. 172.

<sup>16</sup> *Connors v the United Kingdom*, paragraph 9.

which impact on people's dignity and cause inhuman and degrading treatment. In *Moldovan v Romania (No. 2)*,<sup>17</sup> the European Court of Human Rights held that the living conditions and racial discrimination to which a family was publicly subjected after eviction constituted an interference with their human dignity, amounting to 'degrading treatment'. The ECtHR declared that, where an eviction is justified in the public interest, authorities must adopt measures to rehouse or financially assist the persons concerned. In *Yordanova and Others v Bulgaria*,<sup>18</sup> the ECtHR identified a violation of the ECHR in the eviction of a Roma community, breaching the right to respect for home. The ECtHR emphasised that the interference with 'home' arising from an eviction must only be 'necessary in a democratic society ... if it answers a "pressing social need"' and that this 'raises a question of procedure as well of substance.'<sup>19</sup>

More recently, the European Court of Human Rights has requested that Spain make housing and social care arrangements for a household with children who are being evicted, so as to ensure compliance with international human rights standards.<sup>20</sup>

The EU Charter of Fundamental Rights obliges the Union and Member States, when acting within the scope of EU law, to recognise and respect the right to social and housing assistance, so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.<sup>21</sup> Today, there is a developing jurisprudence linking national, EU and international human rights law on evictions, which also encompasses EU consumer protection law.<sup>22</sup> This impacts in different ways, creating unique sets of circumstances for evictions in each EU Member State.

### *Information/data on evictions*

National experts in the 28 EU Member States researched all available data and information for this study. However, it emerged that very limited public data was available on legal evictions in about half of EU Member States (and almost none on illegal evictions). The limited data available confirmed a wide variation in the extent of recording within the three phases of the eviction process and among the tenures of private renting, social renting and owner-occupation.

Only a few EU Member States record any data in the pre-court phase, measuring the extent of, or noting household details in, notices to quit or mortgage enforcements.

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<sup>17</sup> Application No. 41138/98 and 64320/01 (2005).

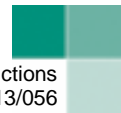
<sup>18</sup> Application No. 25446/06, (ECHR, 24 September 2012).

<sup>19</sup> The ECtHR stated that those at risk of evictions should be afforded the following procedural safeguards: 1. the decision-making process leading to measures of interference has to be fair and must afford due respect to the interests safeguarded to the individual by Article 8; 2. any person at risk of the loss of his/her home should in principle be able to have the proportionality and reasonableness of the measure determined by an independent tribunal, notwithstanding that, under domestic law, he/she has no right of occupation; 3. national authorities, in their decisions ordering and upholding the applicant's eviction, must give an explanation or put forward arguments demonstrating the necessity of eviction. See *Yordanova and Others v Bulgaria* paragraph 118.

<sup>20</sup> *Ceesay and Others v Spain*.

<sup>21</sup> Article 34(3) *Charter of Fundamental Rights of the European Union*, Art. 34(3) OJ 2010/C 83/02.

<sup>22</sup> Case C-34/13 *Monika Kušionová v SMART Capital*, a.s.



The only available sources are national bank data (ES and IE) and data on rented housing (AT, FR and PT from 2013). Pre-court data on social rentals was only available in Ireland.

National-level data on court eviction orders was more often available for owner-occupied housing, covering both repossession orders and completed auctions (DK, ES, HU, IE, LV and SE) and forced sales involving public guaranteed mortgages (NL). Four EU Member States (CY, IE, IT and SI) recorded eviction orders from private rented housing at national level, while five (AT, DK, ES, FI and FR) recorded private and social rented housing together. National-level data on eviction from social housing was only available in Ireland and the Netherlands.

Less than half the EU Member States could provide national-level data on evictions carried out (or 'executed evictions') across all the three tenures. National-level data on executed evictions (undifferentiated between private and social rented housing) was available in Denmark, France and Latvia; for owner-occupied housing in Spain, Hungary, Ireland and Latvia; for social rented housing in Ireland and the Netherlands; and for private rented housing in Italy. Undifferentiated national data was available from Austria, the Czech Republic and Sweden.

In most EU Member States (except DK, ES, FI, NL and UK) homelessness data does not reliably indicate causative factors, such as the share of homelessness due to evictions. This situation does not permit a comprehensive, reliable transnational comparison of numbers within the various stages of the evictions process.

Profile data was sought on household composition, numbers of persons per household, sex and age, country of birth and citizenship and usual activity status/labour status. In half of all EU Member States (AT, CY, CZ, EE, HU, IE, IT, LT, LV, MT, PL, RO, SI and UK) no data was available on the characteristics of the households involved in the process of evictions. In one quarter of Member States (BE, BG, EL, HR, PT and SI), there was some information available from interviews or reports, while in six Member States (DK, ES, FI, FR, NL, SE and the largest region of DE) more profile information was available, although this data varied greatly according to tenure, the phase of the eviction process and the region covered.

National experts carried out interviews with key stakeholders in all Member States. Based on these and on the other available information, some national trends are discernible over the four-year period, as well as some broader tendencies for specific cohorts of Member States. Other data sources, such as EU-SILC (2012) on changes of housing and reasons for those changes, which was based on a survey of 270 000 interviewees, were also included in our analysis.

### *Comparative trends*

Comparative trends in evictions over the tender reference period 2010 to 2013, based on national (or regional/local) data provided by national experts, were categorised into four different groups of EU Member States. While consistently low levels of change in eviction trends (+/- 10 %) were revealed in four Member States (AT, BE, EE and FI), more substantial decreases (>-10 %) were reported from seven



Member States (CZ, DK, FR, HR, LT, PT and SE), and more substantial increases (>+10 %) from five (BG, CY, IE, LV and NL). Eight Member States exhibited contrasting trends between tenures and even within different stages of the eviction process within the same tenure (DE, EL, ES, HU, IT, PL, SI and UK). There were a few Member States where no trends at all were evident, and data of any minimum quality was unavailable. Overall, our detailed analysis of the trends does not reveal any clear geographical pattern across Europe, nor is there a clear overall tendency regarding the different tenures. While the number of initiated eviction cases for renters was seven times the number actually evicted in Austria, five times the number in Denmark and four times that in Finland, it was not realistic to extrapolate EU-wide trends from this limited data. Our research shows that the number of evictions from rented housing is considerably higher than the number of evictions from owner-occupied housing during a repossession procedure, even in Member States with a large owner-occupied sector.

EU-SILC (2012) data shows that evictions as a reason for a change of dwelling during the five years to 2012 were less frequent in most Central and Eastern European (CEE) Member States but relatively frequent in Belgium, Estonia, France, Latvia, Luxembourg, Poland and the United Kingdom. While the EU-SILC data demonstrated a major underrepresentation of the extent of evictions compared with our findings, it did indicate that at least 700 000 households in the EU had moved dwelling because of an eviction over the five-year period to 2012.

The average length of the eviction process varies widely between Member States and tenures, depending on national laws and procedures. The time taken ranges from 84 days for cases initiated due to mortgage arrears in Denmark (this average case length includes all initiated cases, including those that do not end with a forced auction) to over 7 years in Italy. For rented housing, the process can vary from 39 days in Denmark (again including cases which do not lead to eviction) to 10 years in Italy. Usually, the process takes between six months and two years for mortgaged property, and one to two years for rented property.

Our data comparison, which is mainly based on the EU-SILC data but has been confirmed by national eviction data in a number of Member States, shows that some of the Member States that were particularly badly hit by the economic crisis (EL, ES, IE and PL) did not reveal extraordinarily high levels of evictions relative to other Member States. National political and institutional responses play a key role here. Of course, relying on figures for executed evictions can overlook large numbers of households who leave before or during the formal eviction process.

### *Risk factors for eviction*

The risk of eviction is shaped by economic and social mechanisms, which operate on structural, systemic, interpersonal and individual levels. Structural factors such as poverty, unemployment and the lack of affordable housing interact with individual vulnerabilities, such as low educational skills, psychosocial difficulties, weak family ties and a lack of social support networks in shaping the risk of eviction for individuals or households. These risks are mediated by systemic and institutional factors, such as the functioning of social welfare and protection systems, and the legal standards

and procedures regulating repossessions and evictions. The most comprehensive analysis of eviction risk factors is found in Denmark, where studies of the risk of eviction have been carried out on 1 million households in private and public rented housing based on administrative data.

Across the EU, unemployment, financial instability and household over-indebtedness are highlighted as major risk factors. In most households threatened with eviction, the adults are unemployed and rely on transfer incomes, particularly subsistence benefits. The economic crisis has reinforced this pattern, especially in Member States in Southern Europe and parts of Central and Eastern Europe (CEE). There is a significantly higher level of mortgage and rent-related arrears in the Member States that have been gravely affected by the crisis (CY, EL, ES, HU, IE and PT). In 2013, the highest housing cost overburden among poor households occurred in Greece (91 %). Some 50 % or more of poor households had utility arrears in Bulgaria and Croatia, with over 60 % in Greece and Hungary, following increases of more than 30 % in Cyprus, Croatia, Greece, Ireland and Portugal between 2010 and 2013. In many EU Member States, limited availability of rented housing and high rent levels, especially in larger cities, are imposing financial strains on low-income households, who increasingly rely on private rented housing. In Spain, Ireland and the United Kingdom, evictions from this sector are the highest among all tenures.

There is limited evidence on risk factors for evictions in most EU Member States, while strong quantitative evidence is available only in a few. This evidence, which includes qualitative information recorded for this study, indicates that unemployment and household breakdown including divorce appear to be the two factors most strongly associated with the risk of eviction in the Southern Member States (CY, EL, ES, IT, MT and PT). However, household breakdown and divorce feature universally as an adjunct to eviction. For the CEE Member States (BG, CZ, EE, HR, HU, LT, LV, PL, RO, SI and SK), poverty, unemployment, over-indebtedness and financial instability in households were found to be the main reasons for evictions. In Northern and Western Member States (BE, DE, DK, FI, FR, IE, LU, NL, SE and UK), unemployment, financial instability and household breakdown play a significant role as risk factors for eviction. Indeed, in these Member States, evictions are often part of a wider pattern of multidimensional social exclusion. There is evidence of significant levels of evictions among individuals with complex support needs, including mental ill-health and substance abuse and, in Northern Member States, evictions from rented housing is widely concentrated among people with complex support and other unmet needs.

Almost all available eviction data sources relate to rented housing in Northern and Western Member States. Here, one-person male households featured predominantly in evictions (50-70 % in DE, DK, FI, FR, NL and SE). Lone parents, mostly mothers with children,<sup>23</sup> were the second most numerous household type, while the proportion of couples with children varied between 4 % and 19 %. Where information was available, couples without children living in their household constituted a rather small proportion of evicted households. Few people aged over 60 faced eviction in rented

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<sup>23</sup> It was not possible to relate this to numbers of children.

housing. Generally, those most at risk were aged under 45 years (including young people/young adults).

There is little information available on the citizenship, country of birth and migration background of evicted people across EU Member States. Those with a migrant background, a criterion that is measured differently in almost every Member State, accounted for between 13 % of those evicted in Finland (foreign born, all tenures) and 42 % in the Netherlands (foreign-born household members threatened with eviction from social housing). In the few Member States with available data, just under one quarter of those evicted were non-nationals or households with a non-European background. Qualitative interviews have highlighted some vulnerable people as having a higher rate of evictions, especially Roma people and people with mental disabilities (particularly those with more insecure tenancies), although there is a general absence of statistical evidence on the risk of eviction of any particular sector of the population.

### *Links between evictions and homelessness*

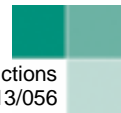
The link between evictions and homelessness is clearly related to the availability of personal, social and financial support and resources, as well as rapid rehousing options. Research indicates that evicted households initially seek help and support from family or friends. While some find a housing solution during this period, for others, staying with family or friends (legally defined as homeless in some Member States) gradually strains support relationships. Eventually, many will rely on homeless shelters and services.

Information about evicted households, mainly in Denmark, Finland and the Netherlands, shows that about one in four evicted households become homeless at some point after the eviction. However, in these Member States, evictions were more widely concentrated among people with complex support needs who may be subject to a higher risk of homelessness after eviction. In the UK, the expiry of assured shorthold tenancies has become a major pathway into homelessness, rising from 6 150 statutory homeless acceptances (14 %) in 2010 to 13 230 (25 %) in 2013.

In contrast to some Northern European Member States, there is no data on the link between evictions and homelessness in Member States where evictions arise more generally from unemployment and poverty. In Southern European Member States, homelessness following eviction is often more directly related to economic and structural issues and housing costs, with almost 50 % of homelessness in Greece and Spain caused by unemployment. There are some legal obligations in Spain for extended families to play a more extensive role in providing financial, housing and personal support in the aftermath of an eviction.

In general, it is evident that eviction is part of a chain of events that can ultimately lead to homelessness. For vulnerable people, and for those with weak or no functional family ties, poorer welfare protection systems can exacerbate this link between eviction and homelessness.





### *Prevention and anti-eviction measures*

Measures to prevent evictions can be classified into three groups: primary, secondary and tertiary. Primary prevention measures reduce the risk of homelessness among the general population or large parts of the population. This can include general or macro-level housing policy relating to supply, access and affordability, responsible lending and overall welfare systems, which include income benefits, housing benefits and employment protection.

Secondary prevention measures focus on people who have a greater potential risk of eviction and homelessness, or those in crisis situations, particularly those who are likely to become homeless in the immediate future (for example due to eviction or relationship breakdown). These measures include support from family and friends, public and third sector housing aid, housing advice and counselling, as well as debt settlement and write-off, legal aid and representation. Tertiary prevention measures are targeted at people who have already been evicted, and include a minimum protected income, rapid rehousing and access to homelessness services.

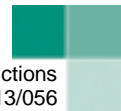
This study sought to examine the effectiveness and cost-efficiency of these measures. After exhaustive research, it emerged that few relevant studies exist, but those that were available have been incorporated into this report. One issue is the difficulty in analysing the cost-efficiency of prevention without clarity on the 'contra factual'. For instance, the full costs of evictions and homelessness, including the costs of health services, the criminal justice system and other costs, are rarely collated. Financial arguments generally relate to loss of income and the costs of evictions for lenders and landlords, or to the stability of the financial, housing and mortgage markets.

The direct and indirect costs of evictions can be high, both for the homeless person and for society overall. These costs arise across administrative, financial, health, organisational, political, social and socio-psychological domains. A European Commission staff working document (2013a) pointed out that the costs in real terms of failing to address homelessness can be very high. Few homeless people enjoy permanent employment, and their main source of income often comes from social support, charity or begging. 'Roofless' people often require complex, expensive and intensive forms of support, such as emergency hospital care. A recent OECD report pointed out that the public service cost of caring for a chronically homeless person can be up to seven times greater than for the average person.<sup>24</sup> However, it is only three times greater when supported housing with care services is provided. This OECD report also suggests that treating a homeless person with complex mental health needs costs 18 times the cost of providing preventative at-home service support. Overall, this report accepted that it was almost impossible to disentangle the costs of homelessness across OECD States, and that more research in this area is required.

Primary prevention can encompass three broad areas of state action. Firstly, housing-related welfare measures encompass key interventions on income support

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<sup>24</sup> OECD (2015), p. 112.



and housing benefits and subsidies. There is clear evidence that social transfers have an enormous impact on access to and the retention of housing throughout EU Member States. Secondly, housing system-related measures to prevent evictions involve large-scale structural and policy responses, which ensure adequate availability of housing and a pool of subsidised or social housing. This is often justified on the basis of safeguarding housing rights for all. The third element involves market-related measures, which are aimed at ensuring well-functioning mortgage markets, the development of intermediate tenures (suitable alternatives to home ownership and tenancies), and the promotion of the private rented housing sector.

Governments in all EU Member States seek to ensure the availability of housing through a range of measures, including housing policies, regulation, subsidies and supports.<sup>25</sup> For many Member States, a key part of housing policy relates to the promotion and development of the private rented sector, while in others, increasing home ownership is promoted. In some cases, there are moves to 'liberalise' the private rented market, including abolishing rent controls and reducing tenancy protection, as in Spain, Malta and Portugal, although not in other Member States such as France.<sup>26</sup> However, the need for stability and affordability in established regulated rental systems, as in Austria and Germany, can justify rent control, open-ended contracts, regulation of the sector and the empowerment of tenants.<sup>27</sup> Indeed, there is already an elaborate compendium of subsidies, guarantees and support agencies in place across EU Member States, which buttress, support and underpin the private rented sector.

Developing a mix of tenures can avoid over-indebtedness and risks of eviction. Some innovative approaches in developing intermediate tenures have the potential to engage the benefits of both mortgaged and social rented housing.<sup>28</sup> A major challenge is to ensure that all options are equally attractive, secure and cost effective, ensuring real choice for housing consumers.<sup>29</sup> Currently, owner-occupation and associated mortgage lending is given a high priority in most Member States. However, negative externalities have also been linked to the predominant promotion of home ownership, based on mortgage lending in situations of high house prices.<sup>30</sup>

This research study has identified a consistent shortage of locally available affordable/social housing in many EU Member States, even among those with a large social housing stock. Unaffordable private sector rents, rising social rents and the absence or inadequate regulation of private rented housing, combined with increased urban migration and the arrival of refugees, will inevitably increase demand for low-rent housing in many European cities. This increases the risk of homelessness for those who are evicted, as there may be no alternative accommodation available. In some cases, this increases the likelihood of eviction for those on low incomes or who are otherwise disadvantaged in the market. It particularly affects those living in precarious or insecure housing, including those in some ethnic minorities, people

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<sup>25</sup> For an analysis of the elements of modern housing systems, see Angel (2000).

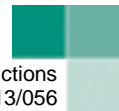
<sup>26</sup> Nasarre-Aznar, Garcia and Xerri (2014), pp. 188-217.

<sup>27</sup> See Nasarre-Aznar (2014a), pp. 815-846.

<sup>28</sup> Nasarre-Aznar and Simón Moreno (2013), pp. 3063-3122.

<sup>29</sup> Haffner, M. and Winters, S. (2015).

<sup>30</sup> Nasarre-Aznar (2014b), pp. 37-72.



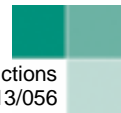
with disabilities, vulnerable people and others. Indeed, there is a major contemporary challenge across EU Member States in aligning welfare and housing benefit levels with housing costs, in both the private and social rented sectors, so as to enable low-income and vulnerable people to access secure and affordable housing. This is particularly relevant in relation to preventing evictions for rent arrears.

Secondary prevention measures include the provision of support through social services, counselling and advice. Of course, this can be offered at all stages of the process. Key issues include support from family and friends and public assistance with housing costs and rent arrears. Even after mortgage or rent default, secondary prevention measures can avoid the occurrence of eviction. These measures can include loan rescheduling, debt reduction and write-off, mortgage-to-rent or equity schemes, and alternative dispute resolution (ADR) mechanisms such as mediation. A recent German study (2014) shows that home visits by social support agencies are very effective in preventing homelessness even in 'difficult' cases. In the court phase, measures such as informing housing/social services of the imminent eviction, the provision of legal aid and advice, adequate defence and appeal systems, legal limitations for enforcement of the claim, and debt adjustment in court, can be effective. A key observation from national experts in some Member States (AT, CZ, DE, DK, FI, NL, PL and SE) was the absolute importance of timely referrals for assistance and support agencies.

After the eviction order has been granted, secondary prevention measures include a moratorium on evictions (although this is rarely applied and its effectiveness is unknown), winter bans, suspension of the eviction on humanitarian grounds, advocacy and social work support. A general suspension of evictions (moratorium) may significantly impact on levels of mortgage lending, and on the availability of properties for rent to low-income and vulnerable households. However, the Polish courts' enforcement of the statutory ban on 'evictions to nowhere' (*eksmisja na bruk*) for households with children or vulnerable people until alternative accommodation is arranged resonates with developing ECHR jurisprudence. Indeed, such suspensions in the execution of eviction orders are legally permitted in most EU Member States.

Secondary prevention measures include a focus on targeted preventive interventions embedded in the social welfare system. Practical measures, such as direct payments from social welfare benefits of mortgage, rent or utility costs and arrears, and active support with money management, can be very cost-effective. Establishing a legally defined period, during which an agreement to pay off arrears would suspend a notice to quit, has been suggested as a useful measure. A legal obligation for preventative services to promptly intervene in crisis situations would be a further such measure, and both these approaches exist in some Member States.

Tertiary prevention measures, which apply after eviction has taken place, can be effective in preventing or ending homelessness arising from evictions as quickly as possible. Many evicted households are able to secure accommodation with family and friends. This temporary solution may be regarded as a form of homelessness in some Member States, but not in others. However, some of those evicted become homeless immediately. In this context, putting into place rapid rehousing schemes is critical. Tertiary prevention measures can also include protecting a minimum income



for evicted households, enabling them to pay rent on a new dwelling, as well as enjoying a basic standard of living. Allocation policies for access to social housing can have a critical impact on rehousing options. Assistance by social rental agencies or advice agencies can be pivotal in securing private rented housing, and some good models of this are in place. However, for those who become homeless, the availability of adequate supported housing can make the difference between repeated evictions and sustainable independent living. Research shows that vulnerable people with complex support needs can be successfully housed where affordable permanent housing is combined with intensive social support.

### 1.3 Recommendations

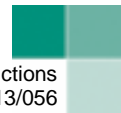
On the basis of this research and analysis, a number of recommendations are suggested to promote protection of the right to housing and homelessness prevention in the context of evictions. More details on these recommendations are provided in chapter 10.

#### *Promotion of housing rights*

- Promoting protection of the right to housing through defining eviction-related standards from the internationally accepted housing rights instruments and integrating these into national and EU social protection and human rights policies;
- Creating a legal obligation on courts and other agencies involved in evictions to promptly inform housing and social care agencies;
- Ensuring respect of the right to legal aid, advocacy and representation in cases of evictions;
- Better integrating housing consumers into national and EU consumer protection policy;
- Promoting and disseminating information on eviction-related housing rights and putting into place enforcement procedures.

#### *Housing and housing policy*

- Developing effective secondary eviction prevention measures, including making available accessible eviction prevention services, mediation and information on households at risk;
- Ensuring rapid rehousing, with intensive social support for evicted and homeless people with complex support needs, promoting the Housing First approach;
- Ensuring that low-income and vulnerable households have an adequate income or social benefit to access adequate housing, even after an eviction;
- Ensuring a sufficient stock of affordable/social housing and a *continuum* of housing tenures, with access for those on low incomes and those who are vulnerable;
- Restricting the use of short-term tenancies to special circumstances, such as housing for students and highly mobile workers;



- Assessing the impact of anti-eviction measures on the efficiency of the mortgage and housing markets.

#### *Responsible lending and fresh start*

- Securing a second opportunity or 'fresh start' for over-indebted borrowers;
- Promoting responsible mortgage lending;
- Increasing general information/education about the risks of over-indebtedness and defaulting on housing-related payments.

#### *Research*

- Improving the monitoring of evictions;
- Promoting research into the personal factors leading to evictions;
- Researching the weaknesses in legal protection and countering illegal eviction;
- Improving the basis for the EU-SILC question on housing evictions (as a reason for 'change of dwelling').

### **1.4 Comparison of some EU (and non-EU) best practices**

This research study uncovered many best practices in preventing and tackling evictions, with potential for their replication across EU Member States. While there are many local initiatives and projects that focus on the prevention of evictions, few have been documented or examined for their effectiveness. However, recent research has identified debt advice and legal assistance as the most effective measures in preventing tenant evictions.<sup>31</sup>

Early notification of a risk of eviction enables state and support agencies to intervene in a timely way, often preventing evictions and avoiding costs for the occupier and landlord/lender. The German Social Code stipulates that courts have to inform the municipal services responsible for the prevention of homelessness about rent arrears eviction cases. Almost all German prevention services receive this information, although the national expert suggests that this best practice could be enhanced by agreements to inform agencies at the time when a notice to quit is issued by landlords. Similar obligations apply in Austria (partly), Belgium, Denmark (which requires municipalities to assess and address social and personal needs), Estonia and Finland (in relation to bailiffs in cases where children are at risk), France (where a landlord issues a notice for rent arrears), Scotland (lenders only), the Netherlands and Sweden (where there is an obligation to confirm notification and notify the tenant who is responsible for services).

Avoiding homelessness following eviction is a key public policy and human rights objective. The law in most EU Member States enables a court to suspend, postpone or restrict the execution of eviction orders for specified purposes. Winter bans on evictions exist in some Member States and regions, such as Austria, the Brussels and Wallonia Regions of Belgium, Bulgaria (discretionary), France, Hungary, Poland

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<sup>31</sup> Holl, van den Dries and Wolf (2015).



and Romania. Where the tenancy is in a care dwelling, it can only be terminated if the resident is referred to another appropriate dwelling (DK and LV). There has been/is a moratorium (either legal or *de facto*, with broader or narrower scope) for several years on actual evictions in Cyprus, Greece and Spain (for vulnerable households until 2017). A Homeowners Mortgage Support scheme provides support to lenders to encourage forbearance for up to two years in the UK. In Italy, a state fund operates to permit the temporary suspension of mortgage repayments where the debtor fulfils certain requirements. The suspension of 'evictions to nowhere' (PL and SK) relates to those with children, pregnant women, larger families, people with disabilities, old people and other vulnerable people. In some cases, such as Spain, Lithuania and Poland, courts have linked evictions to the right to respect for home and family life under Article 8 ECHR, EU law and the human rights of children.

Lack of information about their rights and the high costs of litigation constitute significant barriers for tenants at risk of eviction. An example of good practice can be found with the Irish Private Residential Tenancies Board (PRTB) – a quasi-judicial agency – which resolves disputes cheaply and speedily between private rented sector landlords and tenants, including those related to legal and illegal evictions. It can award compensation for breaches of tenancy law, including illegal eviction. The PRTB website provides information in eight languages for tenants and landlords on obligations, legal procedures and standard/sample forms relating to evictions, as well as on its own complaint procedures.

State and public bodies can, in the public interest, prevent evictions related to unsustainable mortgage debt and arrears by purchasing foreclosed homes and renting these out to the over-indebted occupants – which is similar to the arrangements for unsustainable commercial mortgages adopted by the National Asset Management Agency in Ireland. The Hungarian National Asset Management Company (NAMC) has purchased homes being foreclosed at a discount, allowing financially distressed mortgagors to remain in these homes as public tenants. A similar arrangement has been in place in Catalonia (ES) since 2015, and in the UK and Ireland (to a small extent) as a mortgage-to-equity scheme. This gives the indebted households a fresh start, free from these debts. It is also attractive for lenders, who may not be able to sell/auction the foreclosed properties at a reasonable price. Assuring a sufficient or guaranteed minimum income for those evicted, which cannot be appropriated for debt repayment, would also help households to rehouse themselves after eviction (see Annex 3).

Court-directed and compulsory (inter)mediation as a best practice measure to prevent evictions has been recorded in some Member States (BE, BG, CY, ES (some autonomous regions), IE and SI). This requires lenders or landlords to avail themselves of (inter)mediation services and to seek agreement with those at risk of eviction in mortgage or tenancy disputes and arrears cases.

### *Non-EU best practices*

Some non-EU best practice approaches may be transferable and could contribute to EU policy development.

While generally in the USA, short-term, targeted assistance towards people at risk of eviction or homelessness is the primary response, rather than providing long-term subsidised social housing, the Housing First approach was pioneered in New York. This approach requires permanent housing and intensive support to be provided in the first instance (and unconditional of 'housing readiness'), rather than homeless shelters. Research shows that an early stabilisation of the housing situation with support enhances the chances of successful rehousing, whereas an unstable housing situation is in itself a major barrier to social and psychological recovery for people with complex needs.<sup>32</sup> Housing First is aimed at people with complex support needs. This method combines permanent housing with mobile/floating support following evidence-based methods such as assertive community treatment or intensive case management, and it has now been adopted by some EU Member States with successful results. In Denmark and Finland, Housing First has been incorporated into large national homelessness programmes, and in France a large experimental Housing First programme has been undertaken. In other EU Member States, smaller pilot projects based on Housing First have been undertaken,<sup>33</sup> but the lack of affordable housing is often a barrier to up-scaling such Housing First programmes in Ireland.

Australian approaches have broadened the concept of eviction and security of tenure beyond simply property or legal issues. These regard security of tenure as comprising *de facto* security (long-term social/affordable housing) and 'perpetual security' (where occupiers feel secure even if they do not have legal rights). An Australian review of support programmes for tenants at risk of evictions highlighted key elements of good practice, including: responsiveness – suited to the needs to those targeted; specialised skills; respect for clients' goals – involving the full participation of those being assisted; cultural competency – sensitive to the culture, race, gender and other characteristics of those assisted; continuity of support; information sharing between partner agencies; seamless referrals to service providers; and on-going follow-up.<sup>34</sup> Canadian approaches view risks of eviction within a 'cycle of housing instability' model, indicating a personal crisis and triggering key state intervention.<sup>35</sup>

In the US, the National Mortgage Settlement between 49 States and the country's five largest mortgage lenders provided USD 50 billion of relief in 2012 to distressed borrowers, with state funds to assist those evicted and at risk of eviction.<sup>36</sup> The agreement settled state and federal investigators' findings that lenders had routinely engaged in unlawful foreclosures, many resulting from the 'robo-signing' of mortgage and securitisation documents. This case held mortgage servicers accountable for abusive practices.<sup>37</sup>

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<sup>32</sup> Tsemberis (2010).

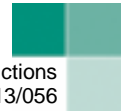
<sup>33</sup> Busch-Geertsema (2014a and b).

<sup>34</sup> Hulse, Milligan and Easthope (2011).

<sup>35</sup> Acacia Consulting and Research (2006), p. 9.

<sup>36</sup> See <http://www.nationalmortgagesettlement.com/about>.

<sup>37</sup> See further at Nasarre-Aznar (2014b), pp. 47-48.



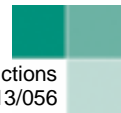
## 1.5 Limitations of the research

This EU research project relied on national data, reports and other evidence of the reasons for, impacts of and effective responses to evictions. Very little research on the prevention of evictions and homelessness has taken place in the past 25 years. National expert researchers, proficient in local languages and eviction processes, found relatively limited, although varying, previous research and comparable data. Relatively few Member States monitor and record evictions in a systematic or holistic way. Even where data is collated, for instance, by courts, the limited nature of the information available, including the absence of data at the various stages of the eviction process, prevents effective comparisons. Indeed, no national-level data was available for half of EU Member States on the characteristics of evicted households, and almost none on illegal evictions. However, the national experts utilised other national and international reports, conducted interviews with key actors and undertook or reported on small-scale surveys to complete the picture as far as possible for each Member State.

It is recognised that unknown levels of eviction take place outside the judicially supervised process, affecting many people with deficits in the local language and those without adequate support networks or resources, particularly those in the informal or 'black' rental market. The absence of research, data or reports on illegal evictions from this informal or 'black' market in private rented housing – particularly in relation to documented and undocumented migrants, asylum-seekers, Roma, some people with disabilities and others – limited our findings in that respect, and we recommend further research in that area.

Our analysis is focused on evictions from principal private homes, and does not include repossessions or evictions from business properties and second homes. There were some limitations in comparing the various legal eviction processes between Member States with civil and common law legal systems, those where bailiffs have taken a lead role, and others. Finally, since the research concluded in 2013, some changes have become imminent, such as increased evictions in some Member States and the evolving regulation of home-loan lending institutions.





## 2 Background

### 2.1 Introduction

This background chapter sets out the aims and objectives of this research study on evictions, with a brief description of the methods used. It sets out the structure of the report and the significance of this research across Europe. The conceptual and methodological approach is described, illustrating the model used, which incorporates judicial and non-judicial evictions, the stages of the process and the potential links with homelessness – a term requiring definition. The relevant background EU policies are outlined. There is then a more detailed examination of the elements involved in Member State and EU obligations to promote the protection of the right to housing and the developing links between international, EU and national law relating to evictions. Finally, there is a review of international (non-EU) best practices in relation to evictions.

### 2.2 Aims and objectives of the study

This study was undertaken for the European Commission Directorate-General for Employment, Social Affairs & Inclusion as part of the 'Promoting protection of the right to housing - Homelessness prevention in the context of evictions' pilot project.<sup>38</sup> It focuses on the protection of the right to housing as seen in a broad context, encompassing the prevention of evictions, early intervention, providing support for the rapid rehousing of those evicted and measuring the impacts of eviction, in particular on homelessness. The project supports the EU poverty reduction and social inclusion strategy through combating homelessness, reducing housing vulnerability and promoting access to high-quality and efficient social services as underpinned by the Europe 2020 Strategy and the Social Investment Package.

The Commission set out a number of objectives to form the core of this study, covering evictions from principal primary residences in the 28 EU Member States:

- provide an overview and analysis of available data and trends regarding housing evictions between 2010 and 2013, and establish the reasons for and impacts of eviction, in particular the relative importance of eviction as a pathway into homelessness;
- illustrate the legislative and regulatory framework, availability, effectiveness and cost-efficiency of measures designed to prevent evictions and enable early interventions;
- suggest ways to improve data collection and monitoring of evictions in the Member States, identifying the most important data sources;
- formulate recommendations based on best practices to better prevent and tackle evictions and homelessness as a result of evictions.

The study began in January 2014 with the engagement of national experts for all 28 EU Member States. These national experts collated statistical and other information, and reported on the situation in each EU Member State, according to sets of

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<sup>38</sup> See <http://ec.europa.eu/social/main.jsp?catId=624&langId=en&callId=387&furtherCalls=yes>.

established guidelines that were prepared and evaluated by a core research team. These were agreed with representatives of the European Commission, and formed the basis of the research and reports. For the strategic direction of the study and its scientific quality, a scientific advisory board was created, which met twice (as well as attending the European seminar) and reviewed draft guidelines and deliverables.

The analytic framework for the study was based on desk research, a review of literature, laws and court decisions, as well as on the reports and consultations of the national experts in each EU Member State. The research was reliant on existing sources of data and the information and reports available, although some national experts carried out interviews with key actors and stakeholders. While in several Member States it was possible to construct an indicative account of the situation, in others significant limitations in the data became evident after thorough investigation. This impacted somewhat on the development of more robust EU-wide conclusions. The legal and policy information was sourced from legal texts (constitutional codes, statute and jurisprudence), Government policy documents and reports, regulations, codes of conduct and the regulatory and reporting documents of housing agencies and associations of rental organisations, as well as in legal research relating to the topics of this project.

Data sources included official national, regional and local statistics, data on evictions from housing agencies and providers, bailiffs, courts and social services offices. Researchers sought access to any existing studies on evicted households and individuals, risk factors and pathways into evictions, the consequences of evictions in the short and long term, and pathways through the eviction process, including the extent to which evictions lead to homelessness. Researchers also sought studies on homeless populations, assessing the extent to which homeless people had experienced evictions, together with studies examining the possible link between evictions and homelessness.

### **2.3 Structure of the report**

This report represents the output of the project, together with a number of recommendations.

The report is structured in 10 chapters and annexes. Each chapter begins with a framing introduction and ends with a short conclusion and, where relevant, a set of recommendations. Following the executive summary and background, chapter 3 examines the data availability and comparability issues, setting out the trends and profiles of evictions in the period from 2010 to 2013 based on tenure type, where possible with an examination of the data available on the profile of evicted households according to tenure type. Chapter 4 considers the risk factors for evictions, framing this in the context of the varying levels of social protection and access to affordable secure housing. It examines the individual triggers for evictions and the risk groups involved. The links between evictions and homelessness are traced in chapter 5, which also considers such risks for vulnerable people. A more detailed examination of primary, secondary and tertiary eviction prevention measures – such as legal, financial and welfare measures – is contained within chapters 6, 7, 8 and 9. The advantages, disadvantages and cost effectiveness of each are

considered, drawing on existing research and reports across diverse fields of policy, where available. Specific recommendations are set out in chapter 10.

## 2.4 Significance of the research

Housing addresses the basic human need for a home. In contemporary societies, home is associated with safety, belonging, esteem and self-actualisation. Housing and home are intertwined with health, child development, poverty/wealth and opportunity in general. 'Home' can be seen as a physical structure; as a territory implying security, control and rootedness; as identity; as a social and cultural phenomenon; and as a base for relationships. International human rights law regards 'home' as involving 'rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others, and a settled and secure place in the community'.<sup>39</sup> Home also acts as a geographical space from which a person or household can access other services and amenities.<sup>40</sup>

There are many personal and social consequences linked to an eviction. Research shows that, although the experience varies, victims of home loss frequently experience feelings of painful loss, continued longing, a general depressive mood, frequent symptoms of psychological, social or somatic distress, a sense of helplessness and occasional expressions of both direct and displaced anger.<sup>41</sup> Some households may be exposed to a great psycho-social burden, especially when children and/or adult dependents are involved.<sup>42</sup> There are particularly negative consequences for children in the loss of home and the experience of homelessness.<sup>43</sup>

The financial crisis which began in 2008 has had a severe impact on housing systems across Europe. There were increases in mortgage arrears, debt, rental costs and utility arrears. EU Member States responded in different ways to the financial crisis, within both their financial and housing systems.<sup>44</sup> Some Member States and the European Central Bank (ECB) have recapitalised home-loan lenders, and in some Member States, banking debt has become public debt, with consequences for social expenditure and investment in housing. Rapid recessionary increases in unemployment in some Member States led to growing mortgage arrears. A reported wave of evictions took place in some Member States, such as Spain, as lenders sought to realise the security of their mortgages. In the rental sector, many private

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<sup>39</sup> *Connors v the United Kingdom*, paragraph 82.

<sup>40</sup> According to the ECtHR, whether accommodation is classified as a 'home' is a question of fact and does not depend on the lawfulness of the occupation under domestic law - *Buckley v the United Kingdom*, *McCann and Others v the United Kingdom*.

<sup>41</sup> Fox (2007), p. 110. Fox points out that the personal consequences of evictions, such as attachment, grief or loss, are seen as intangible, immeasurable and difficult to articulate, which means that they are easily ignored in cost-benefit and legal approaches to evictions.

<sup>42</sup> In this research we discovered instances in Ireland and Spain where women being evicted committed suicide on the day of eviction.

<sup>43</sup> Fox (2007), pp. 440-441.

<sup>44</sup> Van der Heijden, Dol and Oxley (2011), pp. 295-313.

and social housing tenants faced eviction, arising from rent arrears, unsustainable debts, rising rents (in the private sector) and high utility costs.

In the context of evictions a complex system of legal and procedural protections has been developed across the EU Member States, drawing on national and international law, social policies and other approaches. A range of anti-eviction and preventative measures that forestall, delay or mitigate the consequences of evictions have been developed, which can involve policy measures to support households with rent and mortgage arrears.

Clearly, most evictions arise from loss of income, poverty, over-indebtedness and other economic issues. Effective interventions to prevent/restrain evictions are often closely linked with anti-poverty, social inclusion and social policy measures. Of course, individual cases also reveal a complexity of human, financial, social, relational and health factors.

## **2.5 Conceptual and methodological approach**

It is accepted that the recorded numbers of evictions do not reflect the full extent of evictions, as those at risk or issued with notices to leave may leave their home or indeed move at any stage of the process.<sup>45</sup> Indeed, defining the actual point at which the process of eviction begins required considerable analysis, taking into account the diverse practices and legal approaches across the 28 EU Member States and different housing tenures.

The core research team identified the process of eviction as beginning at the moment when an occupier is formally instructed to leave the home. This excludes situations where an occupier willingly moves out, including leaving at the natural end of a tenancy. A significant exception is the assured shorthold tenancy arrangement used for the private rented sector in England. These tenancies provide legal protections during an agreed period (usually 6 or 12 months) but do not provide any legal protection once the agreed period of the tenancy has expired.

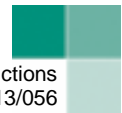
The definition of eviction applies to those who leave their accommodation after an instruction to leave, but before the completion of the full formal repossession/eviction process. Indeed, this situation is very common, as few people have the resources to legally challenge an eviction. Many seek to avoid the ordeal of having to endure a physical removal from their home and leave (albeit involuntarily). However, the point in the process at which they leave can have consequences in terms of eligibility for re-housing.

The formal instruction to leave the occupancy may involve a letter from the owner/mortgagee requiring the occupant to vacate the property, the service of a notice to quit on a tenant, the service of proceedings for repossession, the service of a barring order, divorce, or some other such instruction.<sup>46</sup> In this context, there are both

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<sup>45</sup> Hartman (2003).

<sup>46</sup> The issue of those fleeing domestic violence is one that does not easily fit into these descriptions of eviction, but nevertheless it involves dispossession from the home.



judicially approved and non-judicially supervised evictions. The latter occur in two ways – legal and illegal, as illustrated in Chart 2.5.1 below.

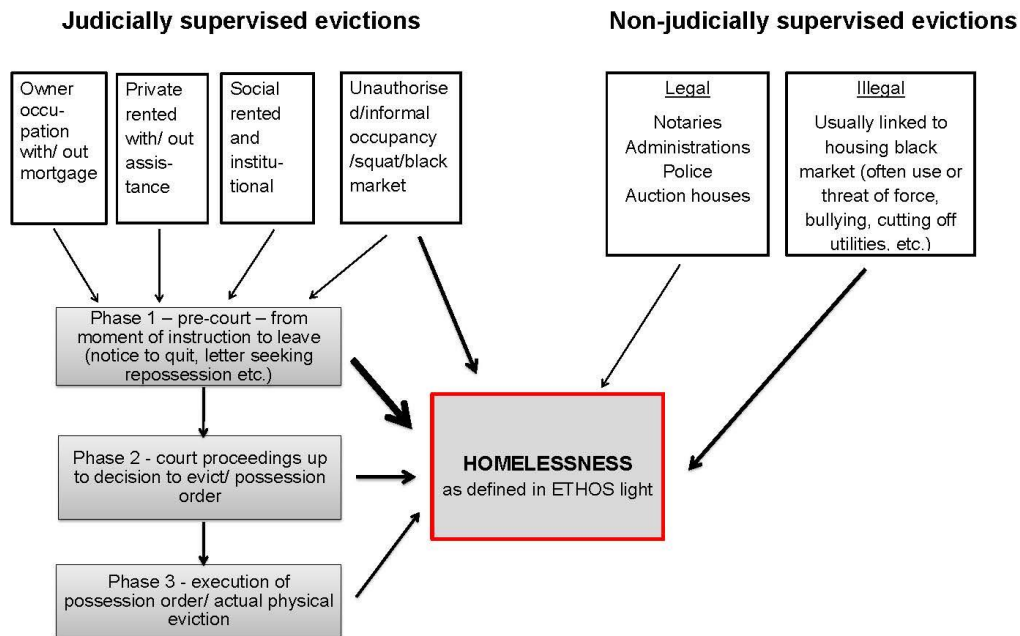
It is important to state that, in promoting protection of the right to housing, the priority is to counteract homelessness arising from evictions, rather than evictions *per se*. Indeed, it is regularly pointed out that, without the possibility of repossessing rented or mortgaged housing, any investment in a functioning mortgaged and rented housing market might cease to exist.

Many evictions also take place from social housing. Evictions for rent arrears are justified in the context of the income requirements for management costs. Whilst social housing organisations have particular responsibilities towards poor and vulnerable households, unpaid arrears may (depending on the organisation of social housing) result in increasing costs and rents for other tenants. This is a particular concern in Member States with a large public housing sector, and where social housing is not aimed solely at poor and vulnerable people.

### **2.5.1 Eviction processes: decision to evict and phases**

In developing a deeper analysis, the judicially supervised eviction process was refined into three phases: pre-court; court; and the phase from court decision to actual eviction (see chart below).

**Chart 2.5.1 Phases of eviction process and links with homelessness, for judicially supervised and non-judicially supervised evictions**

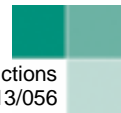


This model (created by the core research team) illustrates the processes of eviction and the link with homelessness potentially arising at any stage of that process, but also from non-judicially supervised evictions (both legal and illegal). The different forms of occupancy or tenure were classified as owner occupation (with or without mortgage), private rented housing, social rented housing (which, in some cases, included institutional types of accommodation) and unauthorised informal occupancies.

The first phase is the pre-court phase and begins from the moment of issuance of the formal instruction to leave.<sup>47</sup> The second phase involves the court process itself. The third phase encompasses the period between the court order for possession and the actual physical eviction (if it indeed takes place). There is a possible link with homelessness at every stage of this process, and people may become homeless even at the first stage, as they may leave on receiving a notice to quit.

<sup>47</sup> Prior to the instruction to the occupant to leave, there may be exchanges of letters etc., but we have only examined materials and data from the moment that the formal eviction process has begun (in many cases these informal exchanges may not lead to any eviction being instigated, and they are impossible to access).





## 2.5.2 Defining homelessness

Homelessness definitions vary significantly across EU Member States. Sometimes narrow definitions such as rough sleeping or sleeping in special shelters are adopted, which limit homelessness definitions to the most visible forms. The 'hidden' homeless, those involuntarily living with friends or relatives or in precarious and unsuitable accommodation, also need to be included. The overarching definition of homelessness used in this research is the European typology of homelessness and housing exclusion, known as ETHOS, developed by the European Federation of National Organisations working with the Homeless (FEANTSA) in 2005 – here using a light version known as 'ETHOS LIGHT'.<sup>48</sup>

It is widely recognised that homelessness is triggered by a complex interplay of structural, institutional, relationship and personal factors.<sup>49</sup> Often, there is an accumulation of vulnerability factors, rather than a single trigger or cause. For example, unemployment, financial hardship and substance abuse are all primary triggers of homelessness themselves, and these factors may also put pressure on personal relationships, increasing the risk of household breakdown, which is another important trigger of homelessness.<sup>50</sup>

The consequence of evictions for many people without adequate resources, support or access to alternative housing can be homelessness. Indeed, some homelessness studies provide valuable insight into the intricacy of the link between evictions and homelessness, and the types of households who become homeless following eviction. However, the concept, nature and extent of homelessness itself is changing, reflecting transformations in European society.

The profile and perception of homelessness is changing. The 'traditional core' of middle-aged single men with long-standing social, psychiatric or addiction problems has broadened to include multi-person households, migrants, young people, the newly unemployed, victims of unsustainable debt and those who generally have a low income. Women, single parents, large families, older people, disadvantaged Roma and other minorities are also seen as being more exposed to homelessness.<sup>51</sup> Only a few people in these groups may have health or personal problems, but they often rely on informal solutions to avoid becoming homeless.

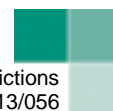
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<sup>48</sup> Edgar, Harrison, Watson and Busch-Geertsema (2007), p. 66.

<sup>49</sup> Busch-Geertsema et al. (2010).

<sup>50</sup> Fondeville and Ward (2011).

<sup>51</sup> European Commission (2013a), p. 7.



**Table 2.5.2 FEANTSA ETHOS-LIGHT – Harmonised definition of homelessness<sup>52</sup>**

Operational category		Living situation		Definition
1	People living rough	1	Public space / external space	Living in the streets or public spaces without a shelter that can be defined as living quarters
2	People in emergency accommodation	2	Overnight shelters	People with no place of usual residence who move frequently between various types of accommodation
3	People living in accommodation for the homeless	3 4 5 6	Homeless hostels Temporary accommodation Transitional supported accommodation Women's shelter or refuge accommodation	Where the period of stay is time limited and no long-term housing is provided
4	People living in institutions	7 8	Health care institutions Penal institutions	Stay longer than needed due to lack of housing No housing available prior to release
5	People living in non-conventional dwellings due to lack of housing	9 10 11	Mobile homes Non-conventional building Temporary structure	Where the accommodation is used due to a lack of housing and is not the person's usual place of residence
6	Homeless people living temporarily in conventional housing with family and friends (due to lack of housing)	12	Conventional housing, but not the person's usual place of residence	Where the accommodation is used due to a lack of housing and is not the person's usual place of residence

ETHOS provides a 'common language' on homelessness in order to facilitate EU-level exchange, mutual learning, debate and comparison. The model is based around a conceptualisation of the notion of home, which incorporates physical, social and legal domains of adequate, safe and secure housing. Homelessness and housing exclusion are conceptualised in terms of a deficiency within the physical, legal or social domains. There are four main living situations which can constitute homelessness: rooflessness, houselessness, insecure accommodation and inadequate housing.

## 2.6 EU policy and evictions

While the primary responsibility for tackling homelessness and its prevention lies with EU Member States, a range of policy initiatives have been developed at EU level that support and complement Member State actions.<sup>53</sup> EU funds are also available for

<sup>52</sup> Edgar, Harrison, Watson and Busch-Geertsema (2007), p. 66.

<sup>53</sup> For a non-exhaustive list of relevant EU policy actions, see European Commission 2013a. Relevant EU measures on property, human rights, housing citizenship, migration, non-discrimination, consumer protection and mortgages are set out in this section.



Member States to reduce homelessness and improve housing outcomes. The Social Investment Package<sup>54</sup> and the Commission staff working document linked to it – Confronting Homelessness in the European Union<sup>55</sup> – sets out guidance for EU Member States on implementing integrated, housing-led, preventative homelessness policies. The Europe 2020 Strategy and the Social Open Method of Coordination (Social OMC) contribute to implementing efficient policies to combat poverty and social exclusion in Europe including homelessness, fostering a better monitoring of homeless policies and the promotion of better governance and good practices.

Article 153 of the Treaty on the Functioning of the European Union (TFEU) states that the EU shall support and complement the activities of the Member States in combating social exclusion. EU funds, such as the European Social Fund (ESF), the EU Programme for Employment and Social Innovation (EaSI), the European Regional Development Fund (ERDF) and the Fund for European Aid to the Most Deprived (FEAD) can finance targeted actions for the benefit of homeless people in the Member States.<sup>56</sup> The ESF provided some EUR 11 billion between 2007 and 2013 for the inclusion in the labour market of a wide variety of vulnerable groups. This included employment projects for homeless people,<sup>57</sup> and at least 20 % of the ESF support should be spent on social inclusion purposes in the period from 2014 to 2020. The EaSI programme provides funding for innovative approaches. Significant multi-annual support has been provided from these programmes to a number of EU-level networks active in the field of homelessness, such as the European Federation of National Organisations working with the Homeless (FEANTSA). The ERDF<sup>58</sup> regulations were reviewed in 2010, with expenditure to make social housing more energy efficient and to house marginalised communities such as the Roma, although the actual take-up remained rather low. Under the new ERDF (2014-2020), energy efficiency work on social housing and investment in social and health infrastructure as part of a deinstitutionalisation process are eligible for funding.

In the Social Protection Committee (SPC), the EU Member States, together with the European Commission, work towards improving social inclusion and protection in the EU through the Social OMC, a soft policy instrument that allows the EU to discuss important social policy themes. The SPC continues to examine and report on trends in homelessness across Europe.<sup>59</sup> National social reports submitted by the Member States also cover policies on homelessness and housing exclusion.<sup>60</sup> Homelessness has been the subject of many declarations, opinions, reports and resolutions in the European Parliament and other EU institutions and bodies such as the Committee of the Regions and the European Economic and Social Committee.<sup>61</sup> These regularly

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<sup>54</sup> European Commission (2013c).

<sup>55</sup> European Commission (2013a).

<sup>56</sup> European Commission (2013c), p. 12.

<sup>57</sup> European Commission (2013a), p. 33. More than 30 ESF-funded projects directly targeted homeless people in the period 2007-2013.

<sup>58</sup> Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006.

<sup>59</sup> European Union – Social Protection Committee (2013).

<sup>60</sup> FEANTSA (2012).

<sup>61</sup> See Declaration of the European Parliament on ending street homelessness, April 2008; Declaration of the European Parliament on an EU homelessness strategy, December 2010;

call on the European Commission and Member States to step up efforts on homelessness and develop more strategic means of intervention.

The EU Framework for National Roma Integration Strategies up to 2020<sup>62</sup> establishes goals in key areas such as access to housing for Roma,<sup>63</sup> which is reiterated in 2013 Council Recommendation on effective Roma integration measures in the Member States.<sup>64</sup> The European Commission Report Discrimination in Housing<sup>65</sup> points out that Travellers are particularly vulnerable to eviction, as there are not enough caravan sites, and they are often left with no choice but to stay on land without authorisation.

## 2.7 Promoting protection of the right to housing

Fundamental human and housing rights are rooted in the social and political order of society, social justice, the development of children, securing a stable home life, security of tenure, a corrective to markets and advancing the public interest. The term 'right to housing' often refers to wider rights of housing access, quality and other factors, as well as protection from evictions and homelessness prevention.

The right to housing is primarily framed, defined, implemented and enforced through national constitutional, legislative, regulatory and institutional provisions. This right is often framed within other constitutional, legislative or social provisions, referring to standards of living, workers' rights, property rights, children's rights, human dignity, social inclusion or obligations of the state towards homeless or vulnerable people.<sup>66</sup> Compliance can involve a range of macro, meso and micro-level actions by EU Member States, comprising interventions at various levels within housing systems, as well as direct provision of housing and re-housing.<sup>67</sup> Illegal or unauthorised evictions are generally regarded as a violation of these rights, and there are growing obligations on EU Member States, for particular classes of people, to rehouse those evicted before authorising actual evictions. The term 'right to housing' has also been promoted more generally and within UN international instruments. Across EU Member States there is a complex interplay between national law, EU law and various international human rights instruments in relation to evictions.<sup>68</sup> Significantly,

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Resolution of the European Parliament on an EU Homelessness Strategy B7-0475/2011; Opinion of the European Economic and Social Committee on homelessness, CESE 1592/2011; Opinion of the Committee of the Regions on Combating homelessness, 2011/C 15/08; European Economic and Social Committee Opinion 2012/C 24/07; Committee of the Regions Opinion 2014/C 271/07; European Parliament Resolution on an EU homelessness strategy, [P7\\_TA\(2014\)0043](#).

<sup>62</sup> European Commission (2011a) 173 final. See also European Union Agency for Fundamental Rights (2009), Housing conditions of Roma and Travellers in the Europe Union, Comparative Report.

<sup>63</sup> European Commission (2012).

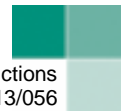
<sup>64</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/lisa/139979.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/139979.pdf), last accessed 12 July 2015.

<sup>65</sup> Ringelheim and Bernard (2013).

<sup>66</sup> Oren, Alterman and Zilbershats (2014).

<sup>67</sup> Kenna (2010).

<sup>68</sup> See Case C-34/13 *Monika Kušionová v SMART Capital, a.s.*



the Tenants Charter of the International Union of Tenants suggests that '[E]victions on social causes cannot be accepted without the tenant obtaining another dwelling'.<sup>69</sup>

### 2.7.1 Protection at Member State level

Evictions, which involve interference with the home or authorisation of such interference by state or non-state institutions, have been the subject of many constitutional and legal provisions establishing strict legal limitations.

Today, housing-related constitution rights are often interpreted as requiring the state to take responsibility for housing conditions, by providing market correctives and adopting legislative, administrative, budgetary, judicial, promotional and other measures towards this. Indeed, practically all of the constitutions of the EU Member States refer to 'dignity' and 'inviolability of home' as a fundamental right. In Poland, there is also a constitutional commitment to protecting the rights of tenants.<sup>70</sup>

#### *Constitutional rights to housing*

Among the 28 EU Member States, 11, all with civil law systems, make specific reference to housing in their constitutions. The 'inviolability' of the home is specifically protected in the constitutions of almost all 28 EU Member States (see Annex 2).<sup>71</sup> This is often juxtaposed with the universally recognised right to property, enabling expropriation for public purposes, with compensation required in some cases.

While many of the constitutional or legislative provisions do not give an individually enforceable right to housing, they can be invoked by courts in considering whether an eviction is appropriate, especially where no alternative housing is being made available. For example, Article 30 of the Polish Constitution states that public authorities shall respect and protect the inherent and inalienable dignity of the person. On this basis, the Polish Constitutional Court decided in 2001 that 'evictions to nowhere' (in the absence of alternative temporary housing) were unconstitutional.<sup>72</sup> Nevertheless, express terms on housing rights in constitutions or laws are not always an indicator of stronger protection from eviction.

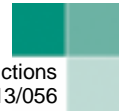
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<sup>69</sup> See International Union of Tenants – Tenants Charter (2004) Article IX (b) available at: [http://www.iut.nu/aboutiut.htm#Tenants\\_Charter](http://www.iut.nu/aboutiut.htm#Tenants_Charter).

<sup>70</sup> Article 75 of the 1997 Constitution of Poland states '1) Public authorities shall pursue policies conducive to satisfying the housing needs of citizens, in particular combating homelessness, promoting the development of low-income housing and supporting activities aimed at acquisition of a home by each citizen, (2) Protection of the rights of tenants shall be established by statute.'

<sup>71</sup> While the Constitution of the Czech Republic, the Constitution of the Fifth Republic of France (1958) and the Constitution of Sweden do not specifically refer to this, the protections in Articles 6 and 8 ECHR apply in these Member States, providing similar protection. The Human Rights Act 1998 incorporates these ECHR provisions into UK law, adding to the principles of fair procedures, due process and the rule of law as factors to be taken into account in evictions, as well as court rules, since there is no single written constitutional document.

<sup>72</sup> Polish Constitutional Court Decision of 4 April 2001, K 11/00, OTK-ZU [Official Journal of the Constitutional Court; Polish: *Orzecznictwo Trybunału Konstytucyjnego. Zbiór Urzędowy*] 2001, No 3, item 54.



### *Programmatic right to housing*

Primary prevention of evictions and homelessness often involves macro-level measures to ensure the sufficiency and adequacy of available housing – see Chapter 7 below. Some constitutional housing rights can be regarded as ‘enabling’ rights, which allow Member States and their agencies to undertake policies and programmes for the organisation of housing systems. These programmatic rights can be described as a set of legal and political goals and objectives, with implementation through legislative or executive action, within budgetary constraints, although not always with legally enforceable obligations. In Denmark, for example, access to housing has been promoted by the creation of a large public housing sector, comprising 21 % of the total housing stock. The building of public housing is subsidised through public funding, and in return the public housing sector has an obligation to provide housing and rehousing for social purposes.<sup>73</sup>

In terms of housing, such a programmatic approach, based on constitutional or legislative fundamental rights, can lend itself to more universal entitlements. It enables governments, when necessary, to intervene in the market, to raise taxes, to appropriate or regulate property and to create the option of making housing available and affordable for all.<sup>74</sup> Many systems incorporate both programmatic rights and individually enforceable rights.<sup>75</sup> It is suggested that ‘a justiciable right to housing can compel governments to bring financial and policy resources into line with needs’,<sup>76</sup> which may lead to prioritisation of these rights among the competing demands for public resources.

### *National laws and court decisions*

In all EU Member States, legislation and court rules provide the framework for the legal process of evictions, while complying with constitutional and human rights standards. The right to housing is also developed in legislation in Member States such as Cyprus, the Czech Republic,<sup>77</sup> France, Denmark, the Netherlands, Poland and the United Kingdom. In France, a right to rehousing for homeless people who meet prescribed criteria has been established through the *Droit au logement opposable* (DALO) Act 2007.<sup>78</sup> This provides for a two-tier remedial mechanism with local mediation committees, and an administrative court can declare the application

<sup>73</sup> Skifter Andersen et al. (2012), pp. 20-44.

<sup>74</sup> Bengtsson, Fitzpatrick and Watts (2014), pp. 447-463.

<sup>75</sup> King (2012). King shows that individual rights-based litigation has very limited effect in the absence of established welfare systems and national legislative entitlements.

<sup>76</sup> Kenna (2011), p. 210.

<sup>77</sup> *The Charter of Fundamental Rights and Basic Freedoms (Listina základních práv a svobod)* in Art. 30, paragraph 2 states that ‘everyone who suffers from material need has the right to such assistance as is necessary to ensure her a basic living standard’.

<sup>78</sup> Enforceable Right to Housing Act. Art. 1 states: ‘the right to decent and independent housing is ensured by the State to any person residing on French territory who cannot access it by his own means or keep it.’ However, see also *Tchokontio Hapi v France*, ECtHR (Application no. 65829/21) judgment of 9 April 2015, where the court identified a violation under Art. 6 ECHR for failure to enforce a final judgment granting the applicant accommodation under the Act for over three and a half years.

as a priority case, requiring urgent housing.<sup>79</sup> The Prefect must secure housing or pay a penalty, as determined by a court, for as long as the person has not been rehoused.<sup>80</sup> There has been a statutory duty on local authorities to provide accommodation to homeless people since 1977 in England and Wales, although different legal frameworks exist for this duty in England, Northern Ireland, Wales and Scotland.<sup>81</sup> These provide for a general duty on local authorities to ensure that advice and information on homelessness services and preventing homelessness is available, and that assistance is available for certain groups who are in priority need, who have a 'local connection' and who are not intentionally homeless. The Housing (Scotland) Act 1987 (as amended) provides a right of access to long-term accommodation for homeless persons, enforceable in the civil courts.<sup>82</sup>

### *Illegal evictions*

Protection of the right to housing can include protection from unlawful or unauthorised evictions. Human rights protections are most commonly associated with due process rights rather than any substantial rights. However, the rights of those being evicted can include access to criminal law remedies for illegal or unauthorised evictions. Yet, there were few enforced criminal sanctions in relation to illegal/unauthorised evictions identified across EU Member States in this research. National experts from Member States with a relatively high level of renting in the 'black market' reported significant levels of illegal evictions (BG, FR, HU, RO, SI and SK).

In Bulgaria, the Criminal Code sanctions any behaviour that is contrary to the legal provisions on the execution of evictions.<sup>83</sup> Illegal eviction is punishable in Poland under criminal procedure, specifically under Article 191 of the Criminal Code. Anyone who uses violence or an illegal threat to force another person to conduct him or herself in a specified manner (for example to enforce a claim or to force the person to leave the accommodation) is liable to imprisonment for three months to five years. In the United Kingdom, legislation from the 1970s provides for criminal sanctions for illegal eviction or harassment.<sup>84</sup>

In Estonia, eviction is regarded as a serious limitation of the constitutional guarantee of inviolability of the home. Unlawful eviction is a criminal offence as defined in Article 314 of the Penal Code, punishable by a pecuniary penalty,<sup>85</sup> and a compensation claim for unlawful damage can be instigated under Article 1043 of the Law of

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<sup>79</sup> Olds (2010), pp.170-199.

<sup>80</sup> Brouant (2011), p. 279.

<sup>81</sup> In England and Wales, the Housing (Homeless Persons) Act 1977, Housing Act 1996 and Homelessness Act 2002, and in Wales the Homeless Persons (Priority Need) (Wales) Order 2001 and the Homelessness (Suitability of Accommodation) (Wales) Order 2006. In Scotland, the Housing (Scotland) Act 2001 and the Homelessness etc. (Scotland) Act 2003, and in Northern Ireland the Northern Ireland Housing Order 1988 and the Housing (NI) Order 2003.

<sup>82</sup> Mullen (2010), However, there is an 'intentionality' test.

<sup>83</sup> BG, Criminal Code (1968) Article 323.

<sup>84</sup> The Protection from Evictions Act 1977 aimed to protect tenants from being ejected from their homes by landlords. Section 3 states that nobody can be forcibly evicted without a court order.

<sup>85</sup> *Karistusseedustik*, RT I 2001, 61, 364. Nowadays pecuniary punishment varies between EUR 96 and EUR 1 600. Art. 44 of the Penal Code.





Obligations Act. In 2013, seven criminal procedures were commenced.<sup>86</sup> However, in Ireland, while more than 200 illegal evictions were recorded in 2013 in relation to private rented housing (these are the only reported cases), no criminal sanction has been applied.

## 2.7.2 European Union law

A number of EU policies and EU laws e.g. on property, human rights, citizenship, migration, non-discrimination, consumer protection and social inclusion, can impact on evictions and subsequent homelessness. EU policies on social inclusion and protection, funding and resource allocation, research, policy and legislation on mortgages all impact on eviction law and policy. Some eviction-related cases have been considered by the Court of Justice of the European Union (CJEU) where national courts have referred cases for interpretation of EU law obligations.

The EU Charter of Fundamental Rights (EUCFR), which is now part of Treaty law,<sup>87</sup> integrates most of the international housing rights instruments into binding EU law, and is applicable to EU institutions and Member States when implementing EU law. Article 34(3) EUCFR also introduces an obligation to recognise and respect the right to social and housing assistance.

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

The jurisprudence of the ECSR and the ECtHR is now integrated into EU law through the EUCFR.<sup>88</sup> The Explanations<sup>89</sup> to the EUCFR state that paragraph 34(3) of the EUCFR 'draws on Article 13 of the European Social Charter, Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect this in the context of policies based on Article 153 of the Treaty on the Functioning of the European Union'. This places the protection of housing rights within EU policy, and in particular social inclusion policies.

The Europe 2020 Strategy,<sup>90</sup> through its European Platform against Poverty and Social Exclusion flagship initiative and the accompanying communication,<sup>91</sup> has identified homelessness as one of the most severe forms of poverty and deprivation, thus linking eviction-related homelessness with EU law and the obligations within Article 34(3) EUCFR. In relation to evictions, EU Member States must respect the fundamental freedoms and other objectives of the Union, including EU provisions on migration, freedom of movement, citizenship, non-discrimination and other prescribed

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<sup>86</sup> Data provided by Estonian Ministry of Justice (2013). Some of the procedures were related to illegal search, not eviction.

<sup>87</sup> Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union *Charter of Fundamental Rights of the European Union*.

<sup>88</sup> *Charter of Fundamental Rights of the European Union*, Art. 34(3) OJ 2010/C 83/02.

<sup>89</sup> *Explanations relating to the Charter of Fundamental Rights* OJ 2007/C 303/02.

<sup>90</sup> European Commission (2010b).

<sup>91</sup> European Commission (2010c).

issues.<sup>92</sup> European Union laws on tackling discrimination on grounds of racial and ethnic origin, religion or belief, age and sexual orientation have been implemented by all EU Member States.<sup>93</sup> Alongside the non-discrimination provisions of the Treaties and the EUCFR, Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin 'shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to: ... (h) access to and supply of goods and services which are available to the public, including housing.'<sup>94</sup> Member States are obliged to take the necessary measures to ensure that 'any laws, regulations, and administrative provisions contrary to the principle of equal treatment are abolished'.<sup>95</sup> Similar provisions are included in Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services. The Convention on the Rights of Persons with Disabilities (CRPD) (2006)<sup>96</sup> has been ratified by almost all EU Member States and the EU itself, creating a range of non-discrimination obligations and promoting independent living for persons with disabilities. Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States prohibits discrimination on access to housing against EU citizens and their families moving between EU Member States.<sup>97</sup>

Article 169 TFEU gives competence to the Union to promote consumer interests.<sup>98</sup> Similarly, Article 4(f) TFEU provides that, in relation to consumer protection, shared competencies apply between the Union and the Member States. The EU Consumer Policy strategy 2007-2013<sup>99</sup> had three main objectives: to empower EU consumers, i.e. to give them real choices, accurate information, market transparency and the

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<sup>92</sup> See Art. 19 TFEU, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin Art. 3(1) and Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, which promote measures prohibiting discrimination.

<sup>93</sup> For a summary of EU non-discrimination actions in treaties, measures, reports, directives, staff working documents, decisions, Council recommendations, resolutions and conclusions and communications see [http://ec.europa.eu/justice/discrimination/law/index\\_en.htm](http://ec.europa.eu/justice/discrimination/law/index_en.htm).

<sup>94</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Art. 3(1).

<sup>95</sup> Art. 14. See COM(2014)2; See also 'Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive')', [http://ec.europa.eu/justice/discrimination/files/com\\_2014\\_2\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf).

<sup>96</sup> UN Doc. A/61/611. *UN Convention on the Rights of Persons with Disabilities and the Optional Protocol*.

<sup>97</sup> Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

<sup>98</sup> Art. 169(1) states: 'In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.'

<sup>99</sup> [COM/2007/99](http://ec.europa.eu/commission/press-room/detail/2007/99).



confidence that comes from effective protection and solid rights; to enhance EU consumers' welfare in terms of price, choice, quality, diversity, affordability and safety; and to protect consumers effectively from the serious risks and threats that they cannot tackle as individuals. Thus, protection for consumers in relation to housing-related services, for borrowers of housing finance, for tenants in private or social rented housing, and for home buyers may be regarded as matters within EU consumer policy.

Directive 93/13/EEC on unfair terms in consumer contracts<sup>100</sup> has had a significant impact in this area and requires a national court to examine contracts for compliance with directive obligations of their own motion.<sup>101</sup> This led to the key CJEU decision in *Aziz v Caixa d'Estalvis de Catalunya*,<sup>102</sup> which established that Spanish mortgage procedural law was incompatible with EU law obligations, since a borrower had limited defences in a lawsuit for mortgage default which would lead to eviction, despite there being a valid claim under the directive. Similarly, in the *Sánchez Morcillo* case,<sup>103</sup> the CJEU held that the Spanish mortgage regime was not compatible with EU law since the debtor against whom mortgage enforcement proceedings were brought could not appeal against a decision dismissing his objection to that enforcement. However, a creditor seeking enforcement could bring an appeal against a decision terminating the proceedings or ordering an unfair term to be 'disapplied'. The CJEU, having accepted that this involved an EU law issue, applied the EUCFR, and found a violation of Article 47 on the right to fair procedures.<sup>104</sup>

In *Kušionová*, the CJEU went further by stating, that, 'Under EU law, the right to accommodation is a fundamental right guaranteed under Article 7 of the Charter [EUCFR] that the referring court must take into consideration when implementing Directive 93/13.'<sup>105</sup> This case effectively links the ECHR housing rights with property/mortgage law through the prism of the EUCFR, given the relevance of the Unfair Terms in Consumer Contracts Directive.

### 2.7.3 United Nations and Council of Europe instruments

The human right to adequate housing, which is derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.<sup>106</sup> While there is a general acceptance of human and housing

<sup>100</sup> Council Directive [93/13/EEC](#) of 5 April 1993 on unfair terms in consumer contracts.

<sup>101</sup> Case C-243/08 *GSM Zrt v Erzsébet Sustikné Győrfi* established that national courts must examine disputed contracts for compliance with Directive 93/13/EC.

<sup>102</sup> Case C-415/11.

<sup>103</sup> Case C-169/14. The ruling was incorporated into domestic legislation in September 2014 through Royal Decree-law 11/2014.

<sup>104</sup> See also Joined Cases C-482/13, C-484/13, C-485/13 and C-487/13.

<sup>105</sup> Case C-34/13 *Monika Kušionová v SMART Capital, a.s.* Mrs Monika Kušionová took out a loan of EUR 10 000 from Smart Capital, secured on her home in Slovakia. The charge allowed for enforcement without any review by a court. This provision derived from Civil Code §151, and she made a reference to the CJEU to examine the compatibility of this national law with EU law, particularly the Unfair Contract Terms Directive (Directive 93/13/EC).

<sup>106</sup> See UN Doc. E/C.12/1771/4. *The right to adequate housing 12/13/1991. General comment 4. Paragraph 1.*

rights principles across EU Member States, their acknowledged integration into national law and processes of evictions has been fragmentary. The European Commission has recognised in its Communication 'Towards Social Investment for Growth and Cohesion – including implementing the European Social Fund 2014-2020', that there are social rights of EU citizens to live a life in dignity, and that some of these rights are set out in the EUCFR.<sup>107</sup> Alongside national constitutional and legislative provisions, all Member States have accepted relevant obligations on human and housing rights under international law, emanating from the United Nations (UN) and Council of Europe (CoE). Some 18 Member States have ratified the Revised European Social Charter (RESC),<sup>108</sup> and all ratified have the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>109</sup> Significantly, in countries with 'monist' legal systems, such international agreements automatically become part of national law once ratified, whereas in 'dualist' systems, these require national legal adoption to become enforceable.<sup>110</sup>

All EU Member States have ratified Article 11 of the ICESCR, which obliges them to recognise the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.<sup>111</sup> In General Comment 4 - The Human Right to Adequate Housing,<sup>112</sup> the elements of adequate housing are set out within the classifications of legal security of tenure, availability of services, materials and infrastructure, affordability, habitability, accessibility, housing in a suitable location and culturally appropriate housing. General Comment 7 (1997) on 'forced' or illegal evictions,<sup>113</sup> states that evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State Party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing or resettlement is available.<sup>114</sup>

<sup>107</sup> European Commission (2013c), p. 7.

<sup>108</sup> Turin, 18.10.1961, Council of Europe, European Treaty Series - No 35; *European Social Charter (Revised)* Council of Europe, Strasbourg 3/5/1996. EU Member States which have not ratified the RESC are AT, CZ, DE, DK, EL, ES, HR, HU, LU, LV, PL, SK and UK.

<sup>109</sup> UN Doc. A/6316 (1966) *International Covenant on Economic, Social and Cultural Rights*. UNGA Resolution 2200A (XXI). Entered into force 3 January 1976.

<sup>110</sup> In 'dualist' systems, international law agreements must first be translated into national legislation before they can be applied by the national courts. Examples are the Netherlands, Ireland and the UK. However, the EUCFR overcomes this dissonance, and its catalogue of human rights provisions can be applied in situations where EU Member States are acting within the scope of EU law.

<sup>111</sup> UN Doc. A/6316 (1966) *International Covenant on Economic, Social and Cultural Rights*. UNGA Resolution 2200A (XXI) entered into force 3 January 1976. See also Art. 25 of the Universal Declaration of Human Rights (1948), accepted by all EU Member States. The UN Doc. A/63/435 – Optional Protocol to the International Covenant on Economic, Social and Cultural Rights – allows individuals and groups to make complaints regarding violations of their economic, social and cultural rights to the UN Committee on Economic, Social and Cultural Rights. See <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCESCR.aspx>.

<sup>112</sup> UN Doc. E/C.12/1771/4.

<sup>113</sup> UN Doc. E/1998/22 Annex IV. UNCESCR, See also UN-Habitat (2009).

<sup>114</sup> UN Doc. E/1998/22 Annex IV paragraphs 15-16. *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (A/RES/63/117)* has now been ratified by many EU Member States, allowing complaints to be made to the UNCESCR.

UN safeguards require States Parties to ensure that evictions are carried out in a lawful, reasonable and proportional manner, and in accordance with international law. Effective legal recourses and remedies should be available to those who are evicted, including adequate compensation for any real or personal property adversely affected by the eviction. When evictions are carried out as a last resort, those affected require effective procedural guarantees, including an opportunity for genuine consultation, adequate and reasonable notice, availability of information on the proposed eviction in reasonable time, the presence of Government officials or their representatives during an eviction, the proper identification of persons carrying out the eviction, a prohibition on evictions in bad weather or at night, the availability of legal remedies and the availability of legal aid to enable access to judicial redress.<sup>115</sup>

The UN Human Rights Committee, in the case of *Liliana Naidenova et al. v Bulgaria*, held that the forced eviction of the Dobri Jeliakov community, which had existed in Sofia for 70 years, without the provision of alternative accommodation would violate Article 17 of the International Covenant on Civil and Political Rights. The community faced imminent forced eviction in July 2011.<sup>116</sup> The UN Committee ordered the authorities not to evict the community until they had agreed upon alternative housing.

The Convention on the Rights of Persons with Disabilities (CRPD) (2006)<sup>117</sup> and its Optional Protocol set out a range of rights for persons with disabilities and a method of complaint for violations.<sup>118</sup> The Convention on the Rights of the Child,<sup>119</sup> which has been accepted by almost all EU Member States, points out in Article 27(1) that States Parties shall recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.<sup>120</sup>

The Council of Europe's European Social Charter (ESC) and the European Convention on Human Rights (ECHR) have been ratified by EU Member States. Housing rights relating to eviction are set out within Articles 16 and 31 of the ESC.<sup>121</sup> Article 16 on the right of the family to social, legal and economic protection states:

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social

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<sup>115</sup> UN-Habitat (2009), pp. 5-6.

<sup>116</sup> UN Doc. CCCPR/C/106/D/2073/2011. UN Human Rights Committee Communication No 2073/2011.

<sup>117</sup> UN Doc. A/61/611. *UN Convention on the Rights of Persons with Disabilities and the Optional Protocol*.

<sup>118</sup> See Optional Protocol at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx>.

<sup>119</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989; entered into force 2 September 1990. See [www.unhcr.ch/html/menu3/b/k2crc.htm](http://www.unhcr.ch/html/menu3/b/k2crc.htm).

<sup>120</sup> The CRC was interpreted by the European Committee of Social Rights (ECSR) in *Defence for Children International (DCI) v Belgium* - Complaint N° 69/2011 - as requiring that all children, regardless of their immigrant or citizenship status, must have accommodation.

<sup>121</sup> All EU Member States (except Cyprus) have ratified Article 16 ESC, and nine Member States have ratified Article 31(1) – FI, FR, IT, LT (part 1), LV (part 1), NL, PT, SE and SI.

and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Article 31 on the right to housing states:

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources.

In *FEANTSA v France*<sup>122</sup> the European Committee on Social Rights (ECSR) emphasised that legal protection for persons threatened by eviction must be prescribed by law, include an obligation to consult the affected parties in order to find alternative solutions to eviction, fix a reasonable notice period, prohibit carrying out evictions at night or during winter and provide access to legal remedies and legal aid to those who are in need so that they may seek redress from the courts. Even when an eviction is justified, authorities must adopt measures to re-house or financially assist the persons concerned.<sup>123</sup> The ECSR has held that the eviction from shelter of those unlawfully residing in a Member State should be prohibited if this would place the persons concerned in a situation of extreme helplessness, which is contrary to the respect for their human dignity.<sup>124</sup>

#### 2.7.4 Linking national and international protection

There are significantly different approaches to housing rights and the right to housing across EU Member States in relation to evictions. Many have effective constitutional law provisions on respect for home and dignity, which create a set of protections from arbitrary or illegal evictions. Constitutional principles on housing rights can directly affect private property law, on which almost all evictions are based.<sup>125</sup> The balance between private property and housing rights lies at the centre of the issue of evictions. At a societal level, private property rights are managed through regulation, taxation and other state controls for the purposes of social policy or welfare/housing rights advancement.<sup>126</sup> Indeed, private property ownership and control is subjected to a number of public and private limitations in all Member States, and is increasingly calibrated with ECHR human rights law.<sup>127</sup> However, the application of protections

<sup>122</sup> Complaint 39/2006, *FEANTSA v France*.

<sup>123</sup> Complaint 39/2006, Decision on the merits of 4 February 2008, §§. 85-86. See also ECSR Conclusions, France (2003) Art. 31(2).

<sup>124</sup> *Defence for Children International (DCI) v the Netherlands*, Complaint N° 47/2008, Decision on the merits of 20 October 2009, § 63.

<sup>125</sup> For detailed consideration of the differences in property law systems across EU Member States, see Schmid, Hertel, and Wicke (2005); Sparkes (2007).

<sup>126</sup> For more on this aspect of housing rights within social policies in Northern European post-war welfare states, based on Marshall's concept of social citizenship, see Bengtsson (2001), pp. 255-275 and Bengtsson, Fitzpatrick and Watts (2014), pp. 447-463.

<sup>127</sup> Art. 1 of the First Protocol ECHR states, 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public

arising from the right to housing can be applied in a fragmentary and often inconsistent manner.

The European Court of Human Rights (ECtHR) has developed complex jurisprudence on balancing the rights of property owners with respect for the home of those being evicted.<sup>128</sup> The protection of Article 8 ECHR, on respect for home, can also be invoked when the public authorities become involved in the enforcement of repossessions or evictions, or indeed adjudication on illegal evictions.<sup>129</sup> Legitimate eviction requires justified grounds which are in accordance with the law and are necessary in a democratic society.<sup>130</sup> Article 6 ECHR prescribes that fair procedures and an opportunity to defend the decisions be facilitated.<sup>131</sup> Together, Articles 6 and 8 have established the obligation for procedural safeguards to establish that the eviction is justified by a 'pressing social need' or is proportionate to the legitimate aim being pursued.<sup>132</sup> In *Yordanova and Others v Bulgaria*,<sup>133</sup> the ECtHR emphasised that Article 8 on respect for home, raises both procedural and substantive issues, such as the underprivileged status of those being evicted, the necessity and timing of removal and arrangements for alternative shelter.

The Polish Constitutional Court has interpreted Article 30 of the Polish Constitution in connection with Article 8 of the ECHR as requiring that people in special personal or family circumstances should be granted at least the minimum safeguards aimed to satisfy their housing needs. In order to achieve this aim, Polish law provides a procedure to relocate people in specific categories to other accommodation.<sup>134</sup> In Slovakia, the Civil Code, which regulates tenancy relations, stipulates an obligation on the landlord to provide the evicted tenant with 'substitute housing,' particularly if they are in material need or if they are caring for a minor child or other dependent person. In the case of tenants in arrears, the provision is narrowed down to the provision of 'shelter'. In practice, this means that the landlord may offer housing in

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interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.' The case of *James and Others v the United Kingdom* sets out the main arguments in the balancing of property rights and the public or general interest.

<sup>128</sup> See Nield (2011), pp.101–129, for analysis of the meaning of 'home' and claims that Art. 8 provides 'a new form of proprietary entitlement'.

<sup>129</sup> See *Buckley v the United Kingdom*, § 54. The ECtHR stated in *McCann v the United Kingdom*: 385: 'The loss of one's home is a most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his right of occupation has come to an end'.

<sup>130</sup> *Čosić v Croatia*, *Stankova v Slovakia*; *Connors v the United Kingdom*; *Chapman v the United Kingdom*.

<sup>131</sup> *Connors v the United Kingdom*.

<sup>132</sup> *Connors v the United Kingdom*, paragraph 9; *Yordanova and Others v Bulgaria*.

<sup>133</sup> *Yordanova and Others v Bulgaria*.

<sup>134</sup> Polish Constitutional Court Decision of 4 November 2010, K 19/06, OTK-ZU [Official Journal of the Constitutional Court; Polish: *Orzecznictwo Trybunału Konstytucyjnego. Zbiór Urzędowy*] 2010, No 9, item 96.



facilities intended for the homeless.<sup>135</sup> In Spain,<sup>136</sup> the courts postponed the eviction of a tenant with three minor children on the basis of both the UN Convention on the Rights of the Child and the right to housing in Article 47 of the Spanish Constitution, considering also Spanish constitutional provisions on freedom of residence,<sup>137</sup> the right to education<sup>138</sup> and the right to health.<sup>139</sup>

The ECHR influences national jurisprudence on evictions. For instance, an Estonian court accepted that an inappropriately documented eviction would violate Article 8 ECHR rights and Article 33 of the Constitution (inviolability of home).<sup>140</sup> In Lithuania, the national courts have accepted considerations similar to ECHR obligations, such as the scope of regulations on eviction, whether evictions are executed for the lawful purposes of the state, whether they are necessary for the interests of a democratic society, and whether they are proportionate to their lawful purposes.<sup>141</sup> In France, Article 8 ECHR rights have been invoked in relation to eviction from illegal encampments and squatting in buildings.<sup>142</sup> In recent Spanish cases, evictions were suspended on the grounds of Article 8 ECHR, until welfare services were provided by the state to a mother and two children being evicted,<sup>143</sup> and housing and social care was provided for at least two years for squatters with children being evicted.<sup>144</sup> Furthermore, the ECtHR issued an interim measure<sup>145</sup> ordering the postponement of an eviction of a family with an eight-year-old girl for illegally building on undeveloped land until the public authorities provided precise and accurate information about the measures being taken to ensure both adequate housing and social services.

There may be a nascent EU-wide corpus of law and procedural rules on evictions from 'home', which could integrate the housing rights protections in UN and Council of Europe provisions with national law and policy on evictions.

## 2.8 International - non-EU best practices

Prevention of evictions can take place through primary, secondary and tertiary interventions, as shown in chapters 6 to 9. Various best practice measures in relation to evictions are in place across the world, although many involve small-scale or charitable projects developed to respond to local conditions and circumstances. Transferability may be limited and conditional. The range and extent of actors and interventions dealing with evictions and homelessness across EU Member States is highly complex. Indeed, the unique social intervention approach within EU Member States, as supported by EU social policy, has no direct comparison in terms of

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<sup>135</sup> ERRC (2012), p. 21.

<sup>136</sup> Spanish Order of the Court of First Instance No 39 of Madrid 6-3-2013.

<sup>137</sup> Article 19 of the Spanish Constitution.

<sup>138</sup> Article 27 of the Spanish Constitution.

<sup>139</sup> Article 45 of the Spanish Constitution.

<sup>140</sup> Order of the Tallinn Circuit Court in civil case n° 2-13-38211 of 13.01.2014.

<sup>141</sup> The Supreme Court of Lithuania order of 17.10.2006 in civil case N°. 3K-3-524/2006.

<sup>142</sup> *Winterstein v France*.

<sup>143</sup> *AMB v Spain*.

<sup>144</sup> *Ceesay and Others v Spain*.

<sup>145</sup> *Raji and Others v Spain*.

welfare state provision of social and housing supports. Some non-EU models of good practice may also contribute to EU policy development.

In terms of primary prevention of evictions, Australian research has established some key conceptual approaches to secure occupancy in rented housing.<sup>146</sup> These involve recognising that such secure occupancy involves not just legal security of tenure, but *de facto* security (often through long-term social/affordable housing), and perceptual security of tenure (where occupiers may feel secure even if they do not have legal rights that are enforceable).<sup>147</sup>

Canadian approaches to secondary prevention of eviction have led to complex and effective interventions to prevent homelessness arising from evictions. One study identified the 'cycle of housing instability' model, deconstructing the various stages in the eviction/homelessness process. This reveals key focal points for action. That study suggests that the 'threat of eviction is an important and useful indicator of crisis,' which indicates that if intervention with support services occurred at an earlier point there would be a reduced likelihood of eviction. This proposed key point of intervention offers distinct opportunities for effective preventative action in the eviction process.

**Figure 2.8 Cycle of Housing Instability**<sup>148</sup>



In the US, short-term, targeted assistance towards people at risk of eviction or becoming homeless is the primary response, rather than providing subsidised social housing with a sustained financial commitment. Homelessness prevention assistance involves the provision of one-time funds to address a temporary crisis, such as rent

<sup>146</sup> Hulse, Milligan and Easthope (2011).

<sup>147</sup> Hulse & Milligan (2014).

<sup>148</sup> Acacia Consulting and Research (2006), p. 9.



or utility arrears.<sup>149</sup> The New Jersey Homelessness Prevention Program provides limited financial assistance to low and moderate-income tenants and homeowners in imminent danger of eviction or foreclosure due to temporary financial problems. Funds are used to disburse payments in the forms of loans and grants to landlords and mortgage companies on behalf of eligible households in danger of homelessness.<sup>150</sup> The funding is allocated to non-profit agencies across the state, with each agency receiving an award of up to USD 120 000, of which USD 100 000 must go towards assistance. In 2012, 500 households were assisted through the programme,<sup>151</sup> although clearly the assistance is of a short-term nature.

In 2009, New Haven Liberty Community Services launched an Eviction Prevention Program/Foreclosure Prevention Program to assist low and moderate-income residents at risk of homelessness due to inability to pay their rent or mortgage costs. The programme attempts to prevent litigation, eviction or foreclosure through assessment, mediation, conflict resolution and the use of a rent bank. Clients may receive assistance from the rent bank once in an 18-month period, the maximum amount being USD 1 500. The programme is predicated on the idea that preventing homelessness is a cost-effective and socially effective means of addressing the problem of homelessness.<sup>152</sup> Some 90 % of all clients receive a grant award. However, the impact of Liberty's Eviction Prevention Program is difficult to measure due to deficiencies in data collection.<sup>153</sup>

In New York, HomeBase provides short-term financial assistance for rent arrears, relocation costs and additional beds to ease overcrowding, as well as providing for other needs.<sup>154</sup> An evaluation of the HomeBase programme showed that it was successful in reducing the average amount of time that participants spend in homeless shelters from 32.2 nights to 9.6 nights. Participants are 8.9 % less likely to apply for emergency shelter in the 27 months after the study than non-participants. Researchers found that every dollar spent on administering HomeBase leads to a USD 1.06 reduction in shelter costs.<sup>155</sup>

As a tertiary measure, Rapid Rehousing (RRH) programmes provide temporary financial assistance to help homeless people locate housing and address any barriers to moving into their new accommodation. These programmes involve providing a few months' rental payments and move-in costs, such as security or utility deposits. They may allow for a few months of support services after move-in to help with residential stability.<sup>156</sup>

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<sup>149</sup> Bergquist et al. (2014).

<sup>150</sup> See the State of New Jersey's Department of Community Affairs website:  
<http://libertycs.org/services.htm>.

<sup>151</sup> See the National Low Income Housing Coalition's Website: <http://nlihc.org/RHP>.

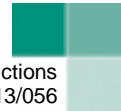
<sup>152</sup> See the Liberty Community Services Website: <http://libertycs.org/services.htm>.

<sup>153</sup> Kreiss-Tomkins (2012).

<sup>154</sup> See New York City's Department of Homeless Services Website:  
<http://www.nyc.gov/html/dhs/html/prevention/homebase.shtml>.

<sup>155</sup> Rolston et al. (2013).

<sup>156</sup> Bergquist et al. (2014).



Housing First (HF) was pioneered in the 1990s in New York City by the Pathways to Housing programme, emphasising the importance of getting vulnerable people (with evidence of mental illness) rapidly housed where they can be supported with medical, pharmaceutical, therapeutic and other services. Housing First has demonstrated positive results in maintaining successful tenancies, with housing retention rates routinely exceeding 80 %.<sup>157</sup> It is based on the idea of housing as a basic human right, and does not require abstinence from alcohol or drugs on the part of the homeless person being assisted. Instead, a harm-reduction approach is used, and a crucial component of the model is the provision of intensive mobile/floating support for people with complex support needs in their own housing. The European application of this model is described in detail in section 9.5.

Many Canadian cities have started to move towards implementing similar Housing First programmes such as Mainstay Housing in Toronto.<sup>158</sup> This not-for-profit agency is the largest provider in Toronto of housing with support for people with mental health issues, in partnership with a number of agencies that provide support services directly to tenants. It offers 867 units to those capable of independent living in a variety of housing options, with variable levels of tenant support. A Successful Tenancy Action Plan has been developed to enable tenants to sustain their housing. Supportive housing workers help tenants to meet their responsibilities and provide support, meeting with tenants individually and in community settings.<sup>159</sup>

The Community Wellness Initiative (CWI)<sup>160</sup> in Winnipeg, Canada, created in 2005, aims to support ‘the overall mental health and wellness of tenants living in public housing and aims to bring about positive change in their community’.<sup>161</sup> CWI identifies the key outcome of the programme as one of capacity building. CWI operates both a group programme of weekly events and activities and an outreach programme for one-on-one work with tenants who are marginalised or isolated and who are at risk of eviction. According to CWI staff, the programme has been very successful. In 2012, only one tenant out of the 110 who had enrolled in the programme was evicted. CWI offers individualised day-to-day support services for tenants, as opposed to simply providing information on where to find services.

Other tertiary prevention good practices include Boston Community Capital (BCC) a non-profit community development, which acquires foreclosed properties before evictions take place at deep discounts and then resells the home to its pre-foreclosure owner at a price reflecting its fair market value, providing a 30-year fixed-rate mortgage.<sup>162</sup> Through this process, homeowners significantly reduced both the principal amount on their mortgages by an average of 45 % and nearly halved their

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<sup>157</sup> Institute of Urban Studies (2014), p.10.

<sup>158</sup> See Mainstay Housing website: <http://www.mainstayhousing.ca/>.

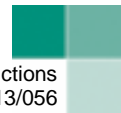
<sup>159</sup> For the success of the ‘At Home – Chez Soi’ demonstration project testing Housing First in five Canadian cities in the world’s largest randomised controlled trial on Housing First, providing housing for more than 1 000 homeless persons with mental health problems, see <http://www.mentalhealthcommission.ca/English/initiatives-and-projects/home>.

<sup>160</sup> Institute of Urban Studies (2014).

<sup>161</sup> See Manitoba’s Family Services and Labour Website:

<http://www.gov.mb.ca/fs/allaboard/wellness.html>.

<sup>162</sup> Cherry and Hanratty (2010), p. 115.



monthly mortgage payments.<sup>163</sup> To finance this initiative, BCC raised USD 3.5 million to support the development of a loan loss reserve fund and used USD 10 million of its own funds for loan capital.<sup>164</sup> In 2009, BCC launched the Stabilizing Urban Neighborhoods (SUN) Initiative, a USD 50 million pilot programme targeted at distressed homeowners in Massachusetts who were at risk of losing their homes to foreclosure.<sup>165</sup> It focuses on mortgaged homeowners who meet a simple set of eligibility criteria: Massachusetts residents with stable incomes (including salary, retirement and social security) who are late on their mortgage payments, facing eviction or going through foreclosure. The SUN Initiative has enabled more than 450 families facing foreclosure to remain in their homes, reducing their monthly mortgage payments and principal balances, on average, by 38 %.<sup>166</sup>

Finally, an Australian review of literature on support programmes for tenants at risk of eviction suggested that a number of key principles and elements were reflective of good practice.<sup>167</sup> These were: responsiveness; suitability to the needs of those who are targeted, taking into account specialised needs and skills; respect for clients' goals; full participation of those being assisted; cultural competency; sensitivity to the culture, race, gender and other characteristics of those being assisted; continuity of support; information sharing between partner agencies; seamless referrals to service providers; and on-going follow-up.

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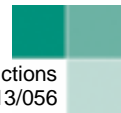
<sup>163</sup> Boston Community Capital (2009).

<sup>164</sup> Bodner (2012).

<sup>165</sup> Valle (2011).

<sup>166</sup> See Boston Community Capital Website: <http://www.bostoncommunitycapital.org/programs-services/sun-initiative>.

<sup>167</sup> RK Consultants (2013) *Homelessness Action Plan Evaluation – people at risk of Eviction*, Housing New South Wales, Australia. Available at: <http://www.housing.nsw.gov.au/Help+with+Housing/Homelessness/Homelessness+Action+Plan+and+National+Partnership+Agreement+-+Evaluation+Reports.htm>.



## 3 Findings

### 3.1 Introduction - data availability and limited comparability

In this study, the process of eviction is defined as comprising three stages: pre-court, the court phase, and the phase from court to execution of eviction. It has become evident that the data available on each stage can vary considerably across EU Member States. In general, there is very limited data available on the final stage – the actual physical eviction – compared with the other phases. Clearly, the numbers involved diminish between the initial phase and the court phase, and are substantially reduced by the subsequent eviction stage. Indeed, the data available on the last moment of the eviction process, removing households physically from the accommodation, reveals a significantly smaller number of households than in either of the previous phases. Thus, at each stage, a number of households will leave their homes before the next stage begins. However, there is limited data available on the housing situations of those who leave in this manner.

Often, the available national data on physically enforced evictions covers evictions from all tenures, including commercial properties, non-primary residences, garages or holiday homes, while data on court cases, notices to quit or repossessions might only relate to a specific tenure.

In order to be as precise as possible, and to avoid comparing disparate data, we sought data at three different points in the eviction process:

- the number of households receiving a notice to quit/notice of termination of the mortgage (pre-court cases);
- the number of households receiving a repossession/eviction order (court cases); and
- the number of households actually evicted (execution of cases after court decision).<sup>168</sup>

The national experts sought to obtain precise data on the different tenures occupied as principal primary residences. National-level data was requested, but where this was not available, regional or local-level data was sought. Information on the geographical distribution of evictions (at least to the level of NUTS-II regions), with separate reporting for each year from 2010 to 2013, was requested. Information concerning evictions from illegal occupation, temporary or permanent dispossession/exclusion from home, and for those affected by injunctions, was also researched.

Data from a number of Member States confirmed a wide variation in the system of recording household characteristics and the numbers involved in the eviction process, especially within the different phases, as outlined in Table 3.1. For example,

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<sup>168</sup> It should be noted that, in a number of Member States, a repossession order for formerly owner-occupied housing is still different from the physical removal of the former owner-occupier from the property by a bailiff. In these Member States, the new owner may accept the former owner-occupier as a tenant, or the members of the household might leave before they are physically removed by a bailiff.

in Austria, the number of households in private rented and social housing threatened with an eviction after receiving a notice to quit (pre-court phase) was 36 032 in 2013. Some 13 320 of these (37 %) received an eviction order (at the end of the court phase). The number of households eventually evicted was 'only' 4 955, and this figure included evictions from owner-occupied housing as well. Comparable data for those households who received a notice to quit but who were not evicted at the last stage of the eviction process is not available. Many people might have left 'voluntarily' and either found another home or became homeless. Some might have managed to stay in their homes, due to the efforts of preventive services, or through private arrangements with the landlord (for example reaching agreements to pay rent arrears in instalments). It is important to emphasise, however, that the number of households under threat of eviction from rented housing appears to be at least seven times higher than the number of households actually evicted from all tenures.

In Denmark, the number of court cases for evictions from rented residences (including private and public residences) was 17 479 in 2013, while the number of executed evictions was only 3 507, or some 20 % of the number of court cases. Thus, in Denmark, there were five times more households in rented housing who were threatened by eviction during the court phase than those who were eventually evicted.

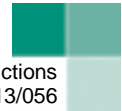
Data from Finland confirms that, even during the execution phase of the eviction process, many eviction enforcements may be cancelled. For example, the tenant may pay the rent or arrears, follow a payment scheme and remain in the housing, or they may leave 'voluntarily'. Many households 'disappear' before a physical removal takes place, leaving an empty flat or house to be repossessed by bailiffs. In Finland, some 6 585 households received an eviction order from the bailiff in 2013, but the number of homes where the bailiff executed an eviction by physical removal of households and their belongings or by changing the locks was only 1 514 (23 % of the eviction orders). In 1 893 cases, the home was empty (meaning that households had moved out beforehand). If we compare the number of executed evictions with the number of court cases for eviction in Finland (8 148 in 2013), we can see that 19 % of the court cases led to a physical execution of eviction. However, around half of the households that received an eviction order moved, either 'voluntarily' before the execution or through being evicted by the bailiff. Data from several other Member States confirms these important differences of numbers regarding the different stages of the eviction process.

The examples confirm that, to some extent, the prevention efforts of the authorities and self-help by households under threat of eviction can have a major impact. There is also an unknown percentage of households who might have 'disappeared' into homelessness or who may have found other housing before the final stage of the process.<sup>169</sup>

In a number of Member States, no national-level data was available at all on evictions. Where data was available for the various phases, it yielded important information on the quantitative extent and trends between 2010 and 2013. However,

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<sup>169</sup> See Chapter 5 for more information about the link between evictions and homelessness.



in a number of Member States, the numbers for 2013 were not available at the time of research. Altogether, the comparability of the data remained very limited, and national data from some Member States was insufficient for our requirements.

As shown in Table 3.1, the sets of data provided from the 28 EU Member States differ in many respects. The full set of data required was not available in any Member State, and the requested data could be differentiated into the three main types of tenure in only a few Member States.

**Table 3.1 Availability of data on the number of households involved in the process of eviction at three different stages differentiated according to the three main types of tenure**

Country	Pre-Court cases			Eviction orders			Execution cases		
	Owner-occupied housing	Private rented housing	Social/public housing	Owner-occupied housing	Private rented housing	Social/public housing	Owner-occupied housing	Private rented housing	Social/public housing
Austria (AT)		nd		nd	nd		nd incl. other		
Belgium (BE)	-	-	-	-	rd	rd	-	rd	rd
Bulgaria (BG)	-	-	ld	-	-	ld	nd, incl others	ld	ld
Cyprus (CY)	-	-	-	-	nd <sup>1</sup>	-	-	-	-
Czech Republic (CZ)	-	-	-	nd			nd incl. other		
Denmark (DK)	-	-	-	nd <sup>2)</sup>	nd			nd	
Germany (DE)	-	rd all stages		nd incl others	rd all stages			rd all stages	
Estonia (EE)	-	-	-	-	-	-	-	-	ld
Greece (EL)	-	-	-	-	National estimate	-	-	-	-
Spain (ES)	nd <sup>3)</sup>	-	-	nd <sup>3)</sup>	nd		nd <sup>3)</sup>	nd incl. others	dps
Finland (FI)	-	-	-	nd	nd		nd	nd	nd
France (FR)	-	nd		-	nd		-	nd	
Croatia (HR)	-	-	-	-	-	-	-	-	ld
Hungary (HU)		-	-	nd	-	National estimate	nd	-	-
Ireland (IE)	nd	-	nd	nd	nd	nd	-	-	nd
Italy (IT)					nd			nd	
Lithuania (LT)	-	-	-	nd incl. other <sup>1)</sup>					
Luxembourg (LU)	-	-	-	-	-	-	-	-	-
Latvia (LV)	National estimate	-	-	nd	National estimate		nd	nd	
Malta (MT)	-	-	-	nd for 2010 incl. other			-	-	-
Netherlands (NL)	)	-	-	nd <sup>4)</sup>	-	nd	-	-	nd
Poland (PL)	-	-	-		nd <sup>1)</sup>		nd <sup>5)</sup>		
Portugal (PT)	-	2013 nd incl. other		-	nd <sup>1)</sup>		-	-	-
Romania (RO)	-	-	-	-	-	-	-	-	-
Sweden (SE)	-	-	-	nd <sup>4)</sup>			nd incl. other		
Slovenia (SI)	-	-	-	nd <sup>6)</sup>	nd <sup>1)</sup>	ld	-	-	-
Slovakia (SK)	-	-	-	-	-	-	-	rd, for Roma only	-
United Kingdom (UK)	-	-	-	rd <sup>2)</sup>	rd	rd	-	-	rd

nd: national data (marked in green, if without caveats); rd: regional data only; ld: selected local data only; dps: data on part of stock; incl. other: including commercial properties, holiday homes, garages etc.

<sup>1)</sup> Court decisions on eviction cases are reported without classification of the result of the decision. <sup>2)</sup> Data on public auctions/repossessions has been reported. <sup>3)</sup> For owner-occupied housing (in ES), only the numbers of 'commenced first-residence mortgage enforcements' and of 'delivered first residences' ('voluntary or forced leaving of a first residence due to a mortgage enforcement') are provided. Real data for 2012 and 2013 exist and may be further differentiated, and the proportion of first residences has been projected in data for 2010 and 2011. <sup>4)</sup> Data on forced sales of dwellings with a national mortgage guarantee are reported, and the courts are not necessarily involved in the process in the Netherlands. <sup>5)</sup> Data on 'resolved eviction cases' has been reported. <sup>6)</sup> Data has been reported regarding 'solved/closed cases' of 'enforcement procedures on immovable property'. The outcomes of the decision are unknown, and second homes and commercial premises are included.



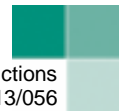
Only some Member States comprehensively record the numbers of households receiving a notice to quit or a termination of the mortgage in the pre-court phase. As such, this data is difficult to obtain. The available data on mortgage enforcements (ES and IE) is based on statistics from national banks. This includes details of initiations of legal proceedings for repossession. For example, in the case of Spain, the data available for owner-occupied housing relates to ‘commenced first-residence mortgage enforcements’ where a court was involved, while in Ireland the data reports ‘possession proceedings’. National data about notices to quit from rented housing (without differentiation into private/social rented housing) is reported from Austria and France. For Portugal, only 2013 data for eviction requests to the new National Rental Office and the number of notices to quit issued are reported, but these figures include housing and commercial contracts.

National-level data on court eviction orders was more often available for owner-occupied housing. However, this includes other repossession orders or completed auctions of owner-occupied housing. There were significant differences in what was actually recorded. In a number of cases (DK, HU, IE, LV and SE), repossessions or forced auction sales in court were counted. In Spain, the numbers included forced and voluntary sales after an eviction process was started, further disaggregated for some years. Occasionally, the numbers only related to forced sales of dwellings with a national mortgage guarantee, such as in the Netherlands. Statistics on eviction orders concerning social housing residents were reported only from Ireland and the Netherlands. In the latter, no data was available on eviction from private rented housing. For four Member States (CY, IE, IT and SI), national data on court orders in private rented housing was reported, but in two cases (CY and SI), this covered only eviction cases that had been ‘solved/closed’, albeit not as a result of a decision (whether the application to evict was accepted or rejected). In five Member States (AT, DK, ES, FI and FR), the data available on court eviction orders from rented housing does not differentiate between private housing and social housing. In two additional Member States (PL and PT), the available data records court decisions on eviction cases without indicating the results of these decisions.

Differentiated data for executed evictions in relation to the three tenure types was only available in Finland. Data was available only in three Member States (DK, FR and LV) for executed evictions from rented housing (without differentiation between private rented and social/public housing). Apart from Finland, national data for executed evictions from owner-occupied housing was available for four Member States (ES, HU, IE and LV).<sup>170</sup> National data about executed evictions from social housing was available only in Finland, Ireland and the Netherlands, and only in Italy from private rented housing. In three Member States (AT, CZ and SE) national data on executed evictions was available without any differentiation between tenures and included data from commercial properties, garages, second homes etc.

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<sup>170</sup> For Latvia, the information provided in fact relates to ‘completed enforcement cases’, but the expert explains that the data ‘only depict cases in which the owner of the property has changed, but does not show that the previous owner is necessarily physically evicted through placing the buyer in possession of immovable property (presuming that the debtor might not actually live in the property and that a number of the buyers would allow the previous owner to stay in the property by concluding a tenancy agreement with them)’ (Report of national expert for Latvia).



Significantly, in more than half of the 28 Member States, no national data on executed evictions was available at all. The only data available was from either specific regions or local areas, or applied to part of the stock of a specific tenure. In many cases, there was no data available at all about this stage of the eviction process.

For some Member States, the numbers of initiated court cases for enforced sales or eviction from rented properties are reported as a rough indicator of the extent of cases involving a threat of eviction. There are difficulties in relying on such data as there is always a large difference in numbers between initiated cases and the final decisions.

In contrast to all other Member States for which regional data is reported, United Kingdom data covers the whole area of this EU Member State. This encompasses data from England, Wales, Scotland and Northern Ireland, although the reports are not always compatible.

Overall, it can be concluded that most of the data reported from the 28 Member States is not directly and simply comparable, and is recorded according to very different criteria. In this study there was no scope to collect and examine primary data, and reliance was placed on existing data at the national level. Interviews undertaken for this study rarely provided sufficient, disaggregated, quantitative data. Indeed, a collection of national data at European level is not possible, since such data does not exist in many Member States at national level.

Nevertheless, national trends may be deduced from the data reported over the four-year period, and we may also deduce some broader tendencies for specific cohorts of Member States. The research also relied on other data sources, such as the 2012 EU-SILC<sup>171</sup> data on changes of housing and reasons for these changes, which offers a direct comparison of the 28 EU Member States, and which was based on the same questions to a survey sample of household members all over Europe. It is clear that the primary data needs to be comprehensively collected and systematised by the court systems, tribunals, adjudication systems, relevant public bodies and agencies and others.

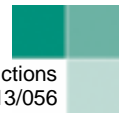
### **3.2 Comparative analysis of data and the underlying variations**

This section begins with an analysis of data collected for a special housing module of EU-SILC in 2012. It then compares some of the findings with our own data collected in this study and discusses possible reasons for having a lower or higher level of evictions for selected groups of Member States.

A sample of about 270 000 interviewees aged 16 years and older, living in about 130 000 households across all EU Member States, were asked the following questions for the EU-SILC housing module in 2012: 'Have you personally changed a

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<sup>171</sup> EU-SILC is the abbreviation for EU statistics on income and living conditions; for further details see [http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:EU\\_statistics\\_on\\_income\\_and\\_living\\_conditions\\_%28EU-SILC%29](http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:EU_statistics_on_income_and_living_conditions_%28EU-SILC%29).



dwelling in the last five years?' If they answered 'yes' they were then asked: 'What was the main reason for changing the last dwelling you were living in?' One of the 10 options was: 'eviction/distrain'.<sup>172</sup>

Table 3.2 shows the percentages of those who answered yes to the first question and those who gave 'eviction/distrain' as a reason. The combination of both answers indicates the percentage of the population that changed their dwelling during the previous five years due to an eviction. The order of EU Member States in the table follows the frequency of evictions in relation to the total population.

While this data benefits from a representative sample of people in all Member States being asked the same question, some disadvantages and potential shortcomings arise. Firstly, the data relates to persons, and not to households. The results at best indicate the percentage of persons involved in evictions, rather than the number of evictions (which often involve more than one person). Secondly, the answers relate to a five-year prevalence, rather than to the annual number of people involved in evictions.

Since the percentages are very small, especially regarding those who gave eviction as a reason, the reliability of the results may be questioned. A small miscounting would make a big difference to the results. For some Member States (LT and RO), the percentage was so low that it was rounded down to zero. Therefore, the figure zero in the table could indicate no cases at all, or a small number rounded down. Thus, the results for a few Member States indicate that (almost) no evictions have occurred there.<sup>173</sup>

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<sup>172</sup> There was another set of questions that could have been of interest in our context. The same 2012 housing module contained the following question: 'Do you intend to change your dwelling you are living in at the moment in the next six months?' If the answer was 'yes,' an additional question was: 'What is the main reason for the expectation for the household to be forced to leave the dwelling in the next six months?' One of five options was: 'Because of an eviction'. Unfortunately, the data analysis showed unreliable results for at least 7 of the 28 Member States.

<sup>173</sup> There is no reliable data about evictions from our national expert on Romania. For Lithuania, we can only refer to eviction cases in court, which include all tenures and also commercial premises. The number of new court cases in our study period 2010-2013 ranged between 446 and 688 per year (2 341 cases over the whole period; on average 585 per year). Data from the National Chamber of Bailiffs is relatively old and shows 386 eviction cases in 2007 and 222 in 2008.

**Table 3.2 Results of special housing module 2012 in EU-SILC interviews regarding 'change of dwelling in last five years' and main reason for 'eviction'**

	Inhabitants	Change of dwelling (% of total pop.)*	Eviction (% of those changing dwelling)	Eviction (% of total population)	Total number of evicted persons
Lithuania (LT)	3 003 600	5.6	0	0.00	----
Romania (RO)	20 096 000	1.6	0	0.00	----
Bulgaria (BG)	7 327 200	3.2	0.2	0.01	733
Croatia (HR)	4 276 000	4.1	0.5	0.02	855
Hungary (HU)	9 931 900	7.0	0.3	0.02	1 986
Slovakia (SK)	5 404 300	7.7	0.3	0.02	1 081
Czech Republic (CZ)	10 505 400	7.6	0.4	0.03	3 152
Denmark (DK)	5 580 500	31.3	0.1	0.03	1 674
Slovenia (SI)	2 055 500	9.8	0.4	0.04	822
Austria (AT)	8 408 100	20.2	0.3	0.06	5 045
Netherlands (NL)	16 730 300	21.9	0.3	0.07	11 711
Malta (MT)	417 500	7.4	1.0	0.07	292
Sweden (SE)	9 482 900	37.6	0.2	0.08	7 586
Greece (EL)	11 123 000	9.8	0.9	0.09	10 011
Ireland (IE)	4 582 700	14.8	0.6	0.09	4 124
Portugal (PT)	10 542 400	10.2	1.0	0.10	10 542
Germany (DE)	80 327 900	20.8	0.5	0.10	80 328
Italy (IT)	59 394 200	8.5	1.3	0.11	65 334
Spain (ES)	46 818 200	13.0	0.9	0.12	56 182
Finland (FI)	5 401 300	29.9	0.4	0.12	6 482
Latvia (LV)	2 044 800	10.1	1.2	0.12	2 454
Estonia (EE)	1 325 200	15.6	0.8	0.12	1 590
Poland (PL)	38 538 400	10	1.3	0.13	50 100
<b>European Union (28)</b>	<b>504 582 500</b>	<b>17.7</b>	<b>0.8</b>	<b>0.14</b>	<b>706 415</b>
Cyprus (CY)	862 000	25.1	0.7	0.18	1 552
France (FR)	65 287 900	27.1	0.9	0.24	156 691
Belgium (BE)	11 094 900	22.4	1.2	0.27	29 956
United Kingdom (UK)	63 495 300	30.8	0.9	0.28	177 787
Luxembourg (LU)	524 900	27.2	1.5	0.41	2 152

\*Change of dwelling during the last five years.

Source: Eurostat, EU-SILC module 2012 on housing conditions, <http://ec.europa.eu/eurostat/documents/1012329/1012401/Data+for+website+final.xlsx/8ee72609-f45e-469a-afeb-66eb613b2dcf> (last download 5 May 2015), own calculations.

There are good reasons to believe that people who have experienced an eviction might be underrepresented in the EU-SILC sample, since the sample was based on households living in 'regular' housing. Persons who became homeless after an eviction are much less likely to be included in the interview sample some years later. Another reason to expect an under-reporting of evictions in the EU-SILC data relates to the question: interviewees were asked for the 'main reason' for the last change of

dwelling. Some might have chosen other options as answers for the 'main reason', such as 'employment-related problems' or 'financial reasons,' despite having experienced an eviction. It is reasonable to conclude that the number of persons experiencing an eviction process in Europe is possibly considerably higher than the numbers set out by the EU-SILC report.

A comparison of the extent of evictions set out by EU-SILC with the judicial data available for Member States shows some disparities. For example, the combined results in Table 3.2 indicate that 0.03 % of the Danish population (1 674 persons) and 0.12 % of the Finnish population (6 428 persons) had experienced an eviction during the five years to 2012. The number of actual evictions will be smaller, as usually more than one person lives in an evicted household.

However, according to legal statistics collected from bailiffs in Finland for the four years from 2010 to 2013, a total of 8 777 households (an average of 2 200 households per year) had moved out of their homes in Finland before the execution of an eviction. They had received an eviction order, but the bailiff repossessed an empty dwelling. In the same period, an additional 5 435 households (roughly 1 360 per year) were physically removed by the bailiff from their homes. During the four-year period of this study (2010-2013), the number of households moving from their former homes in Finland due to an eviction (14 212 in total) appears to be more than double that of those reporting an eviction in the five-year period of the EU-SILC study.<sup>174</sup> Even if some households may have experienced more than one eviction over the period, a serious under-representation of the population who have experienced eviction in the EU-SILC sample seems evident.<sup>175</sup>

In Denmark, the under-representation seems even more apparent. According to court statistics during 2012 alone, some 3 709 evictions were executed in the rental sector. In addition, there were 3 685 repossessions from owner-occupied primary residences. During the four years from 2010 to 2013, the number of executed evictions from rented housing in Denmark was 16 147 (approximately 4 040 per year), and the number of mortgage-related repossessions was 14 244 (approximately 3 600 per year), making up a total of 30 391 households involved in evictions/repossessions during the four-year period. In the EU-SILC sample from Denmark, however, only 0.03 % of the Danish population (equalling 1 674 persons living in even fewer households) report having experienced an eviction during the previous five years – mid-2007 to mid-2012. In some ways, this under-representation may not be too surprising, since homeless people are not included in the EU-SILC sample.

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<sup>174</sup> Note the differences regarding households and persons and the duration of the period covered – five years in EU-SILC, four years in the reports of national experts for this study – which increases the difference between EU-SILC proportions and real data.

<sup>175</sup> Between 2010 and 2012, the number of eviction cases in Finland receiving an eviction order from the bailiff was even higher than those where a bailiff actually opened the door, at 26 828 (approximately 6 700 per year); while a certain proportion of these households managed to stay in their home and the execution of the eviction was halted, the execution process was also stopped in all those cases where the landlord told the bailiff that the household had left the home. Accordingly, the number of households who changed dwelling in the context of an eviction case during 2010-2013 is certain to be even higher than has been calculated in the main text above.



However, as the EU-SILC data is the only available data set with a comparable set of variables concerning evictions, it could be useful for comparative analysis and to qualify the results of our own data study from the reports of the national experts.<sup>176</sup>

In any case, the number of people threatened with eviction was considerably higher than the level indicated by EU-SILC. There are, of course, many people who are threatened with eviction but who manage to remain in their dwelling, who would not be counted here. Indeed, some of these people, too, may ultimately become homeless and would not be captured by the EU-SILC data.

Another important issue concerning the extent of evictions is the fact that, in a number of Member States, fixed-term contracts in the rental sector result in a lot of people in households losing their homes without the landlord going through a legal or formal eviction process. In some of the reports of national experts, such as that relating to England, UK, this is mentioned as an important factor, which often leads to a change of housing and potentially to homelessness without a formal eviction. The majority of such shorthold tenancies come to an end when the tenancy expires and tenants move to another property or tenancy.

Table 3.2 shows the EU-SILC results relating to both questions: change of dwelling in the past five years and eviction as a reason for moving. The combined percentage and absolute numbers are provided. The combined percentage varies between 0 % for Lithuania and Romania, a result of rounding a low percentage down to 0, and 0.41 % for Luxembourg. According to this data, an average 17.7 % of the EU population changed dwelling during the previous five years. The percentages vary between 1.6 % (RO) and 37.6 % (SE).

In total, more than 700 000 persons in Europe had changed dwelling because of an eviction according to EU-SILC data to 2012. From the methodological considerations mentioned above, we can assume that the real numbers would be much higher and would certainly exceed a total of 1 million persons over the period. The highest total numbers of evicted persons were found in the UK (almost 178 000) and in France (almost 156 000), while the lowest reliable numbers were in Malta (roughly 300) and Bulgaria (roughly 700). As population sizes have an important influence on the total numbers, focusing on the population ratio gives a more proportionate perspective.

Chart 3.2 illustrates the percentage of the national population who changed their dwelling during the five-year period as a result of eviction, with Luxembourg showing the highest ratio, followed by the United Kingdom, Belgium and France.

Examining those Member States with a very low proportion of the population being evicted according to EU-SILC (BG, HR, HU, LT and RO), it becomes apparent that

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<sup>176</sup> Note that caution is needed when comparing the results of the EU-SILC housing modules for 2007 and 2012 concerning the percentage of people giving eviction as a reason for their last change of dwelling. The system of calculating the proportion of answers was different in both modules. While in 2007, the percentage of all interviewed persons was given (including a high proportion who had not changed dwelling, leading more often to rounding down the rate of 'evictions' to zero), for the 2012 module the percentages that were provided related only to those who had changed dwelling during the previous five years.

they have a low rate of dwelling change (all below 8 %) and a low percentage of evictions among those who changed dwellings. Those at the other end of the scale (BE, FR, LU and UK) are among those Member States with relatively high dwelling change rates (all more than 22 %). Obviously, there is also a geographical pattern to observe at these two extremes. While those Member States with very low shares of their population affected by eviction are Central and Eastern European (CEE) Member States, the four with the highest eviction rate are all located in the North-western part of Europe.<sup>177</sup>

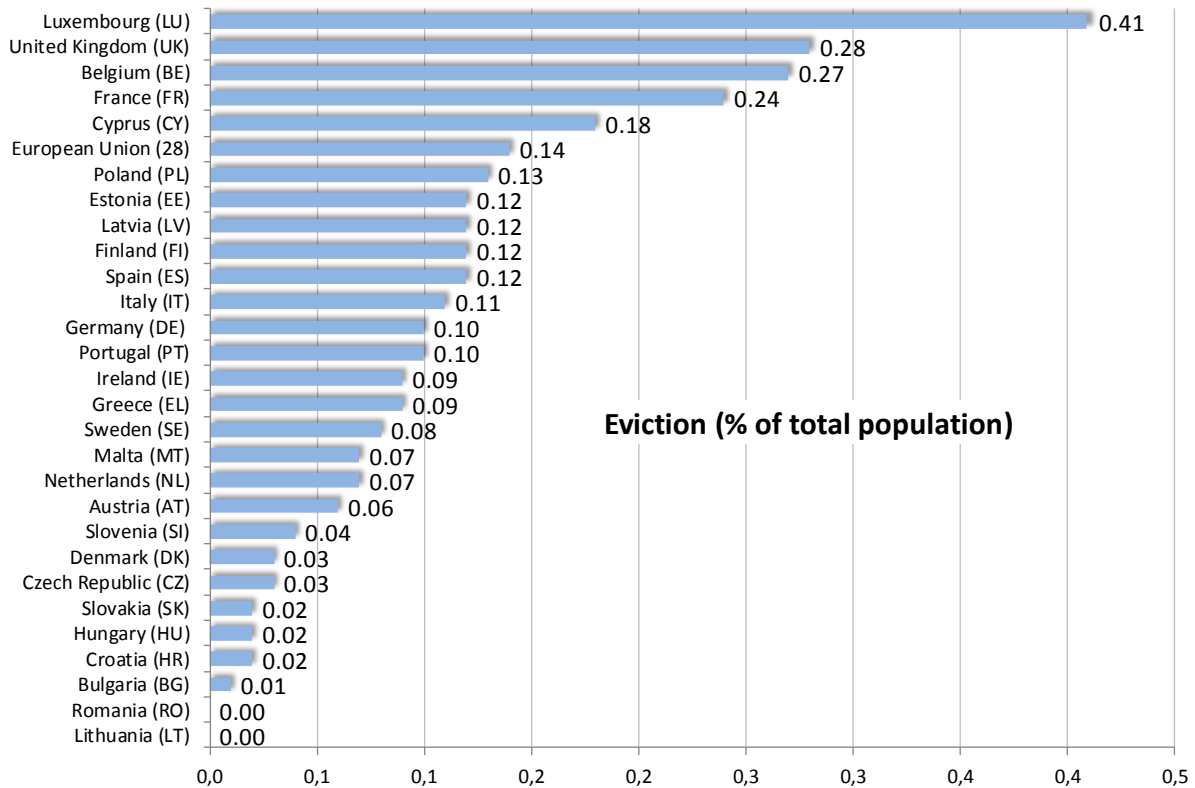
However, there are a number of exceptions to these patterns. Sweden and Denmark, for example, both Northern European Member States with extraordinarily high dwelling change rates of more than 30 % in the five years from mid-2007 to mid-2012, have a relatively low share of evictions among their population according to EU-SILC. Despite the significant numbers of notices we found in this study, few of those who moved gave eviction as a reason (0.1 % in Denmark and 0.2 % in Sweden). At a lower level, and despite the significant level of notices to quit, we have found that similar effects (a relatively high level of dwelling change and a low rate of eviction of those who changed dwelling) were observed in the EU-SILC study for Austria and the Netherlands. On the other hand, Latvia, Estonia and Poland, all CEE Member States, are among those with relatively high eviction rates in their population (0.12 to 0.13 %), although this is still below the EU average of 0.14 %. All three of these Member States have higher dwelling change rates than the other CEE Member States, and more of those who changed their dwelling give 'eviction' as the main reason.

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<sup>177</sup> Unfortunately, we lack any robust national-level data about evictions from Luxembourg, all of Belgium and the UK. While data for the four parts of the UK and from Flanders is available, only some estimates from bailiffs were reported regarding evictions in Luxembourg, indicating an annual number of about 250 evictions from rental dwellings and about 50 to 100 auctions and physical repossessions of owner-occupied dwellings. Given that, on average, more than one person will be involved in an eviction, and also that evicted households will most probably not be covered in EU-SILC, the absolute numbers of those who have changed dwelling because of an eviction during the preceding five years (calculated on the basis of EU-SILC) are higher than expected when compared with the estimates from bailiffs.



**Chart 3.2 Percentage of national population having changed dwelling during the period from mid-2007 to mid-2012 due to eviction (Source: EU-SILC housing module 2012)**

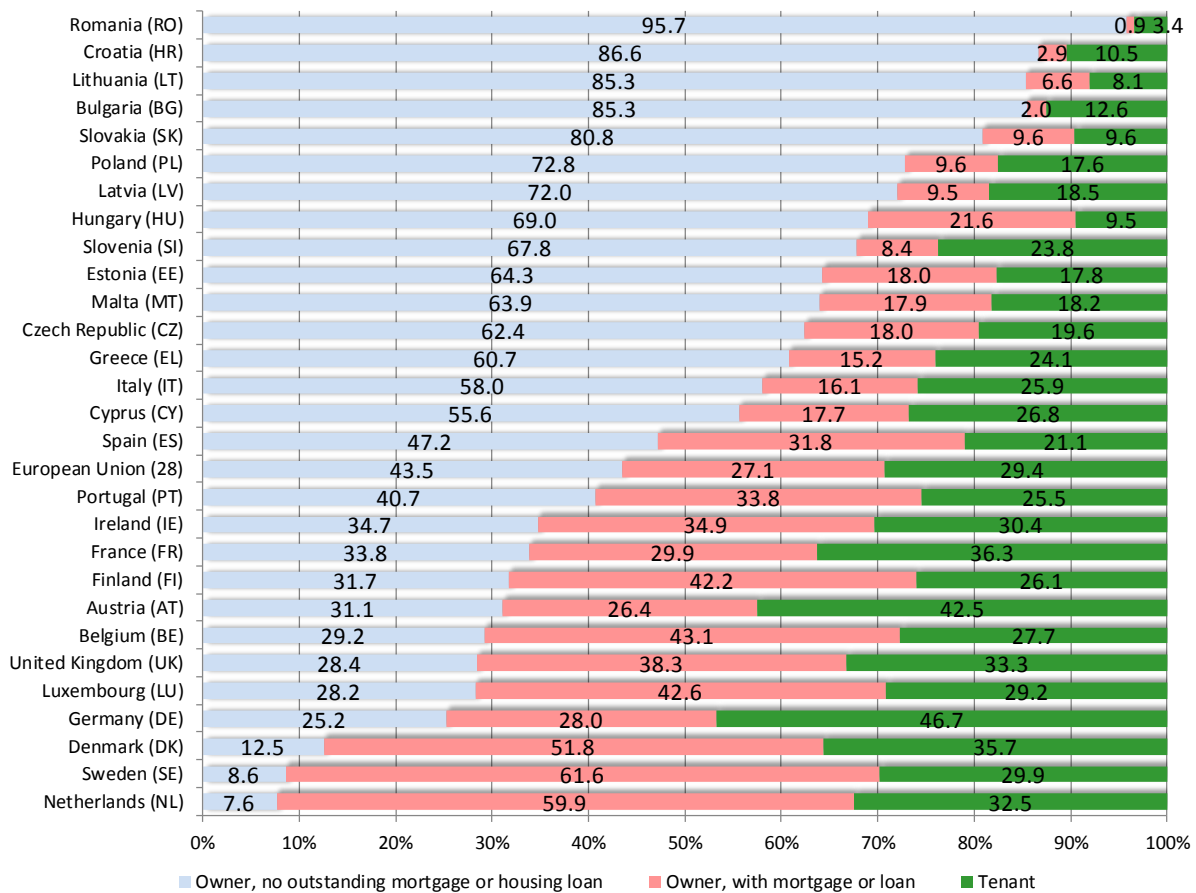


An explanation for the low level of evictions, in at least some of the CEE Member States, might be that the proportion of the population living in owner-occupied housing without any mortgage or loan is relatively high (see Chart 3.2.1), while the proportion of those living in rented housing is very low. If dispossessions from owner-occupied housing occur in these Member States they are mainly caused by payment defaults of non-home loan debts or utility costs, and are due to mortgage payment problems to a much smaller extent. Nevertheless, such arrears may also lead to high numbers of enforcement procedures in these Member States. In Hungary, almost 50 000 immovable properties were subject to eviction procedures in 2013.<sup>178</sup> Political decisions, such as restricting enforced sales due to defaulted foreign exchange mortgages in Hungary since 2011,<sup>179</sup> have also influenced the number of evictions.

<sup>178</sup> In Hungary mortgages used as general consumer credits have been identified as an important issue. Hungary has a relatively high share of owner occupied housing with an outstanding mortgage or loan at 21.6 %.

<sup>179</sup> Hungarian banks committed themselves to take a maximum of 2 % in 2011, 3 % in 2012 and 4 % in 2013 of all homes on sale out of the defaulted households housing stock per year, and they did not make use of the full quota. While 115 000 Hungarian mortgages were in default, the total number of effectively sold immovable properties (including 15-20 % belonging to legal persons, i.e. companies, not natural persons) between 2010 and 2013 was 10 433 (approximately 2 600 per year) and the number of evictions from sold properties in the same period was 950 between 2011 and 2013 (there was a moratorium on evictions in 2010).

**Chart 3.2.1 Tenure proportions in EU Member States 2012 (Source: EU-SILC)**



Some national experts for this evictions study (BG, ES, IT, FR, HU, RO, SI and SK) report the existence of a considerable rental ‘black market’ with no security of tenure. The extent of such black markets is difficult to measure, and we have no official data which allows for any comparisons between Member States, except for Spain and Italy. The problem is often described as a relevant deficit for CEE Member States. The consequence could be that illegal evictions in this sector might not be registered ‘officially,’ and tenants might be underrepresented in EU-SILC samples because they have no ‘official’ address where they live. Nevertheless, those included in the EU-SILC sample might still have reported a change of dwelling as an eviction, even if this eviction did not follow a legal process.<sup>180</sup>

It should also be mentioned that, in some CEE Member States, a significant number of evictions of Roma from legal dwellings was reported. For example, in Slovakia, an average of 800 persons per year were evicted during our observation period (2010-2013) in the five regions, with the highest number involving Roma people.<sup>181</sup>

<sup>180</sup> For more examples, see the next part of this report on trends between 2010 and 2013.

<sup>181</sup> Report of Slovakian national expert.

While EU-SILC data can only show the tenure status of those who have changed dwelling after they have done so,<sup>182</sup> data from EU Member States collected for this evictions study shows that the number of evictions from rented housing is considerably higher than the figure for owner-occupied housing during a repossession procedure, even in Member States with a large owner-occupied sector. For example, in Spain, the number of voluntary and forced moves from primary owner-occupied residences due to mortgage enforcement was 38 961 in 2013, while the number of court decisions on evictions from rented housing (private rented and social) was 38 148 in the same year (and 55 523 in 2012). This means that the level of court decisions on evictions in the rental sector was almost the same as or higher than the level in the owner-occupied sector, while only 21.1 % of the Spanish population in 2012 lived in rented housing and 78.9 % in owner-occupied housing, according to EU-SILC. However, Member States with a large rented sector, such as Germany, Austria or Denmark, did not score particularly poorly in relation to tenant eviction rates, as the EU-SILC data shows, since they displayed a relatively low or medium level of evictions.

It can be further observed from EU-SILC data analysis that some of the Member States that have been particularly badly hit by the economic crisis, such as Greece, Ireland, Portugal and Spain, do not show extraordinarily high proportions of evictions prior to 2012 compared with other EU Member States. It is likely that political decisions may have had some impact.

In Greece, the 'Katseli law'<sup>183</sup> enabled owner-occupiers who have been threatened with eviction since the end of 2010 to benefit from a loan and a cut in interest rates or a rearrangement of their monthly instalments. More than 60 000 households applied for alleviation of their debts under that law between 2011 and 2013. In 2013, eviction procedures for owner-occupied primary residences with a value of less than EUR 200 000 were suspended altogether. However, a survey conducted by the national expert for this research project shows a 31.8 % increase in the number of court orders for evictions from rented housing between 2010 and 2013.<sup>184</sup> The number of evictions that were eventually executed remains unknown and is estimated to be relatively low. There is evidence that household members either leave their homes voluntarily, moving to a cheaper residence, or are forced to stay homeless, usually by cohabitating using a temporary accommodation solution based on the support of informal family networks.<sup>185</sup>

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<sup>182</sup> EU-SILC data shows that, among owner-occupiers, a higher proportion of those with a mortgage changed dwellings than those without a mortgage over the previous five years in almost all Member States. However, a higher share of tenants changed dwellings, and they were more likely to do so because of an eviction. As the questions concerning change of dwelling and the reasons for it in EU-SILC as analysed here are retrospective, they only show the tenure status at the time of interview, not that before the change of dwelling took place. It is obvious that people who have experienced an eviction are much more often forced to live in rented accommodation afterwards if they have not become homeless.

<sup>183</sup> 'Katseli Law' on debt arrangements for over-indebted individuals - Law 3869/2010 amended by Law 4161/2013.

<sup>184</sup> On a relatively broad basis of 61 courts providing information, the number of court orders for eviction from rented housing was estimated at 14 500 in 2013, and it has increased since 2010, when it was estimated at 11 000.

<sup>185</sup> Report of national expert for Greece.

Portuguese national data on evictions was scarce. The only available data, provided by the Directorate-General of Justice Policies (DGPJ) for the period between 2010 and 2012, relates to the number of processes initiated and entered in first-instance courts for urban housing-related eviction cases. No breakdown by type of tenure is available. The data includes all eviction processes, irrespective of the type of tenure, and covers two stages in the process: processes initiated and processes ended. It is interesting to note that the number of cases which were brought to an end decreased between 2010 and 2013, from 1 687 to 1 176 (a decrease of 30.3 %).<sup>186</sup> This decrease was to some extent due to a new Tenancy Law introduced in 2012, which was intended to speed up the eviction process by introducing a new national body, the National Rental Office. In the first year of its existence, the National Rental Office received 3 858 requests for eviction (including commercial contracts) and issued 1 007 notices to quit. At the end of March 2014, the number of notices to quit issued since January 2013 had already increased to 1 630. Obviously, many landlords had waited for the new national entity to come into being in order to start an eviction procedure there instead of in the courts.

For Spain, the reported data on evictions from owner-occupied housing relates to initiated mortgage enforcements, but includes those owner-occupiers who left their premises during the process 'voluntarily'. The relatively high numbers of households in owner occupation that were affected by enforcement procedures between 2010 and 2013 (between 39 000 and 40 000 per year) are difficult to compare with those from other Member States.<sup>187</sup> The level of change between 2010 and 2013 was almost zero, but there was a decrease in 2011 to 33 133. In the rental sector (private and social), court cases for eviction were reported. As mentioned above, the total number in 2013 was 38 141, and it was 55 523 in 2012, but the data for the years before 2010 and 2011 appear to have been incomplete and less reliable.

In Ireland, while there are high levels of arrears in mortgaged and social rented properties, there was a relatively low level of mortgage-related evictions cases, although this has now risen. There were relatively high numbers of evictions (including illegal evictions) in the private rented sector. While there was a high level of initiated evictions in the social rented sector, the number of those actually evicted was very low. Nevertheless, there is great media and political interest in any evictions which take place due to the historical legacy of evictions.

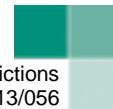
### **3.3 Comparative analysis of trends between 2010 and 2013**

In order to systemise our data on trends between 2010 and 2013 (numbers for 2013 were not yet available in all cases), we classified the extremely diverse data based on any different variables into four different groups:

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<sup>186</sup> The highest number of closed cases was registered in 2011, at 1 842.

<sup>187</sup> A breakdown was possible for the years 2012 and 2013, showing that 19 761 of the 39 051 'handovers' in 2012 were 'voluntary' and the rest judicial. In 2013, the number of 'voluntary handovers' was 17 907 out of 38 961 handovers. In short, roughly half or a little more of the reported evictions were judicial. In the large majority of these cases, the dwelling was already empty when the eviction was enforced. As in some other Member States with a low rate of rented housing, evictions from owner-occupied housing greatly impact on the households concerned, as there are few options to access other tenures.



- Member States with indicators showing a relatively low level of change in eviction trends between 2010 and 2013 (not more than +/- 10 %);
- Member States with indicators regarding the eviction process showing a decrease by more than 10 % during the observation period;
- Member States with indicators regarding the eviction process showing an increase by more than 10 % during the observation period;
- Member States with different indicators showing different and often opposing trends.

Most data is national-level data (used where available), but some is based on regional or local trends. However, not all of the reported data could be used, as it could not easily (or sometimes at all) be compared across tenures or stages in the eviction process. For some Member States only, the most significant data could be used as an indicator of national or regional trends.

The following trends are outlined over the prescribed observation period, depending on the last available data. In some instances, the data documented in the tables show significant increases or decreases between the start and end years. This can clearly be seen from the tables, and does not require further comment. It should be noted that the financial crisis in the years 2007 to 2009 might have had effects in the years before our observation period. This is not covered by our analysis. Similarly, there have been changes during the years after 2013 in some Member States, but again it is emphasised that the observation period of 2010-2013 was prescribed in the tender specifications for this research.

### **3.3.1 Member States with indicators showing a relatively low level of change in eviction trends between 2010 and 2013**

Relatively low levels of changes of +/- 10 % were found between 2010 and 2013 (or in the latest available year) in four Member States (AT, BE, EE and FI).

The low level of change observed in Austria related to the three main data sources available (the households receiving a notice to quit, those living in rental housing receiving an eviction order and households from all tenures being evicted by a bailiff). For Belgium, the trend numbers relate to eviction procedures initiated in Flanders involving private and social rented housing, and these have increased by 3 %. Numbers for households evicted from housing provided by social rental agencies in Flanders were available for 2010-2012, but as the number of rental units provided by these organisations grew during the period, it is problematic to compare the eviction figures. The numbers of households actually being evicted from social housing provided by the Walloon Housing Association related to an earlier period and showed a relatively low increase as well.

In Estonia, the only data trend available relates to a very low number of evictions from Tallinn public housing between 2011 and 2013. For Finland, a relatively low level of change was reported for the three most significant data sets available, which relate to all tenures: eviction summonses from district courts; households receiving eviction orders from bailiffs; and executions of evictions carried out by bailiffs.

**Table 3.3 Trend data on eviction processes –  
Changes by up to +/- 10 % between 2010 and 2013**

	2010	2011	2012	2013	Change between 2010 and 2013 (%)	Indicator
Austria (AT)	5 466	5 253	4 936	4 955	-9.3	Households evicted (all tenures)
Austria (AT)	13 788	14 071	13 625	13 320	-3.4	Households receiving eviction order in rented housing (private and social)
Austria (AT)	36 597	36 985	36 731	36 032	-1.5	Households receiving notice to quit in rented housing (private and social)
Belgium (BE)	12 566	12 740	13 561	12 958	3.1	Eviction procedures started in Flanders involving rented housing (private and social)
Estonia (EE)		28	34	26	-7.1	Evictions in Tallinn public housing (data for 2011-13)
Finland (FI)	8 310	8 042	8 076	8 148	-1.9	Eviction summons to district court from housing (all tenures)
Finland (FI)	6 641	6 959	6 643	6 585	-0.8	Eviction cases receiving an eviction order from bailiff (all tenures)
Finland (FI)	3 347	3 772	3 686	3 407	1.8	Execution of eviction by bailiff (all tenures)

Source: Reports of national experts for this study.

### 3.3.2 Member States with indicators showing a decrease by more than 10 % during the observation period

A substantial decrease in evictions of more than 10 % is reported for six EU Member States (CZ, DK, FR, HR, PT and SE).<sup>188</sup>

For Croatia, the trend numbers available relate to applications filed to Zagreb Civil Court for the vacation and surrender of (owner-occupied and private rented) dwellings, as well as evictions from public housing in the City of Zagreb. The number of court applications decreased by 34.5 %, and only a small share of these applications ended in the completion of enforcement by the end of 2013. At time of writing, 88 of the 487 applications filed in 2010 (and only 13 of the 319 applications filed in 2013) had been completed with the execution of enforcement. The numbers involving eviction orders in public housing show a decrease by 16.8 %, particularly for Zagreb, although this seems to be related to enforcement deficiencies. The data shows that most of the evictions ordered by the city authorities for their municipal stock were postponed.

<sup>188</sup> While this section compares trends, and there is a trend towards lower evictions in AT, DK and SE, the proportions of those evicted from rented housing appear to be relatively high, although strict comparability is problematic as the available national data does not always relate to similar stages of the eviction process.



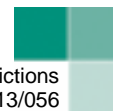
**Table 3.3.2 Trend data on eviction processes –  
Decreases by more than 10 % between 2010 and 2013<sup>189</sup>**

	2010	2011	2012	2013	Decrease between 2010 and 2013 (%)	Indicator
Croatia (HR)	487	345	286	319	-34.5	Applications filed to Zagreb Civil Court for the vacation and surrender of dwellings (owner-occupied and rented)
Croatia (HR)	214	152	174	178	-16.8	Eviction orders in public housing in Zagreb
Croatia (HR)	54	13	11	6	-88.9	Executed evictions in public housing in Zagreb
Czech Republic (CZ)	6 376	6 832	6 012	5 029	-21.1	Court proceedings on evictions (all types of tenures)
Czech Republic (CZ)	1 740	1 697	1 442	1 019	-41.4	Motions to execute court decisions for evictions (all tenures and including commercial property)
Denmark (DK)	4 382	4 405	3 790	3 507	-20.0	Executed evictions from rented housing (private and social)
Denmark (DK)	20 756	21 388	19 736	17 479	-16.0	Court cases for evictions from rented housing (private and social)
Denmark (DK)	3 726	3 554	3 685	3 279	-12.0	Repossessions from owner-occupied residences
France (FR)	58 739	55 957	49 685	51 096	-13.0	Notice to quit (private and social rented)
France (FR)	11 670	12 759	11 487	10 132	-13.2	Forced intervention by authorities in evictions from private and social rented housing
Portugal (PT)	1 687	1 824	1 640	1 176	-30.3	Urban eviction cases solved (all tenures) <sup>1)</sup>
Sweden (SE)	8 624	8 452	7 674	7 549	-12.5	Eviction applications to bailiff (all tenures including commercial property)
Sweden (SE)	2 727	2 567	2 338	2 293	-15.9	Executed evictions (all tenures including commercial property)
Sweden (SE)	1 168	1 039	849	1 050	-10.1	Executed forced auction sales of owner-occupied housing

<sup>1</sup> In Portugal a new national Rental Office started in 2013, with high numbers of eviction requests.

For the Czech Republic, the available data sets on eviction, both through court proceedings and on motions to execute court decisions for eviction, show a considerable decrease, notably in the last year of the observation period. While a

<sup>189</sup> Reports of national experts for this study.



breakdown according to tenure was not possible, it is reported that the vast majority of executions relate to the rented sector.<sup>190</sup>

In Denmark, all three available data sets on repossessions from owner-occupied housing and both court cases and actual evictions from rented housing show a decrease of between 12 % and 20 %.<sup>191</sup>

A decrease of around 13 % was reported for France during our observation period for two important indicators: notices to quit and forced intervention by the authorities in evictions from private and social rented housing.

Similarly, data from Sweden shows a moderate decrease in evictions, with executed forced auction sales showing a decrease of 10.1 %, eviction applications to the bailiff decreasing by 12.5 %, and executed evictions decreasing by 15.9 % (relating to all tenures and including commercial properties).

The 30 % decrease in urban eviction cases in Portugal must be seen in the context described above. There are reasons to believe that landlords delayed their eviction requests while waiting for the establishment of the new National Rental Office in 2013.

### **3.3.3 Member States with indicators showing an increase by more than 10 % during the observation period**

Increases in eviction-related indicators of more than 10 % between 2010 and 2013 are reported for five Member States (BG, CY, IE, LV and NL).

For Bulgaria, the data on dispossessions of all types of properties (including commercial properties) shows a clear upward trend of 46.5 % between 2010 and 2013. No data is available on rented housing, but interviews conducted for this study indicate that the number of 'official' evictions is relatively low in this sector. The reasons provided for this observation indicate that most cases are settled voluntarily in a pre-court phase. However, landlords seem to be taking direct action through illegal evictions: changing door locks and keys; disconnecting electricity; hiring private bodyguards to remove occupiers from the dwelling; etc. For evictions from social housing, trend data was available only for two cities (Burgas and Plovdiv), and showed a decrease in the number of evictions. However, this was at a relatively low level in any case, which raises the question whether this trend is representative for the whole country.

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<sup>190</sup> The national expert remarked that: 'there is no data on evictions available for different types of residences, not to mention illegal evictions. However, the experience of homeless people (as communicated by a social curator in Prague) show that illegal or semi-legal practices related to evictions (such as notices sent to previous or unoccupied addresses) are much more frequent than legal disputes'.

<sup>191</sup> Denmark is an example illustrating significant negative effects of the financial crisis in the period before 2010. The annual number of repossessions from owner-occupied primary residences was at a historical low in 2007, when only 1 015 repossessions were registered. With the onset of the crisis in 2008, the number increased sharply to a level of more than 3 700 in 2010, when it started to decrease moderately again, as reflected in the Table above.

In Cyprus, the national expert states that eviction procedures against households in arrears for housing loans for owner-occupied housing have not yet materialised. It was anticipated that the number of foreclosures would increase rapidly following new legislation in 2014 as part of the Memorandum of Understanding with the ECB, IMF and others,<sup>192</sup> which considerably shortens the period of execution in such cases from 2.5 to 10 years to a maximum of 1.5 years. The available data shows an increase of 23.4 % for court decisions on rented housing, based on a survey among rent control courts in Cyprus.

**Table 3.3.3 Trend data on eviction processes – Increases of more than 10 % between 2010 and 2013<sup>193</sup>**

	2010	2011	2012	2013	Increase between 2010 and 2013 (%)	
Bulgaria (BG)	904	970	1 131	1 324	46.5	Dispossession of all types of properties (incl. commercial property)
Cyprus (CY)	290	328	303	358	23.4	Court decisions on eviction cases in rented housing
Ireland (IE)	1 564	1 549	1 738	1 840	17.6	Evictions initiated by local authorities in district courts
Ireland (IE)	2 230	2 366	4 224	5 291	137.3	Eviction-related cases at Private Rented Tenancy Board
Ireland (IE)	363	608	604	766	111.0	Properties taken into possession by regulated mortgage lenders
Latvia (LV)	803	732	857	988	23.0	Eviction cases from rented housing (private and social) in court
Latvia (LV)	4 071	5 101	5 603	5 666	39.2	Effectively sold properties in forced auctions
Latvia (LV)	525	717	748	787	49.9	Completed enforcement of evictions from private and social rented housing
Latvia (LV)	138	309	375	279	102.2	Completed enforcement of evictions from repossessed owner-occupied housing
Netherlands (NL)	19 650	18 800	21 700	23 100	17.6	Judgments for evictions from social rental housing
Netherlands (NL)	5 900	6 000	6 480	6 980	18.3	Actual evictions from social rental sector
Netherlands (NL)	1 331	2 004	3 548	4 521	239.7	Forced sales of dwellings with mortgage guarantee

<sup>1</sup> including commercial properties and second homes.

In Ireland, the number of properties taken into possession by lenders in 2013 was 766. Over two thirds of these properties (67.2 %) were taken into possession by voluntary surrender, and the rest by court order. Total numbers of repossessions had

<sup>192</sup> Section 1.28 - available at <http://cdn.cyprus-property-buyers.com/wp-content/uploads/2014/05/Cyprus-MoU-May-2014.pdf>, last accessed 12 June 2015.

<sup>193</sup> Reports of national experts for this study.

increased since 2010 (363) by an extraordinary 111 %, although the numbers remained comparatively low in the context of arrears levels. 'Eviction-related cases' before the Private Residential Tenancies Board (PRTB) increased by 137 % between 2010 (2 230) and 2013 (5 291).<sup>194</sup> Data from district courts about eviction processes from local authority housing shows that 1 886 evictions were initiated in 2013, an increase of 17.6 % since 2010, the majority of them in the Dublin Metropolitan District. However, the actual numbers evicted from local authority housing remained extremely low and even decreased from 44 in 2010 to 22 in 2013.

Indicators presented for Latvia show an increase of 39.2 % for owner-occupied properties sold in forced auctions. The (much lower) number of former owner-occupiers who have been the target of a completed enforcement case by Latvian bailiffs has increased by more than 100 %. For private and social rented housing, an increase of 23 % is reported regarding eviction cases in court, and by 49.9 % regarding completed eviction enforcement cases.

For the Netherlands, no data is available for the private rented sector. The relatively high number of eviction court judgments and actual evictions in Dutch social housing reflects the scale of this sector, and shows an increase of 17.6 % (judgments) and 18.3 % (actual evictions) between 2010 and 2012. The sharp increase of 239.7 % reported for forced sales of owner-occupied dwellings with a mortgage guaranteed by the NHG (the national mortgage guarantee scheme) is mainly due to a high number of private sales (which increased from 936 in 2010 to 4 194 in 2013), while the number of private execution sales and public auctions has remained relatively low, and even decreased (from 395 in 2010 to 327 in 2013; the number provided in Table 3.5 is a sum of both indicators).

### **3.3.4 Member States with indicators showing different trends between 2010 and 2013**

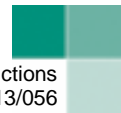
In 8 of the 28 Member States examined (DE, EL, ES, HU, IT, PL, SI and UK), the available data showed different trends for different indicators. In most Member States, reverse trends were observed. In Greece and Italy only, both available indicators showed an increase, although one was at a moderate level of less than 10 %.

For Germany, the available data about forced auctions of owner-occupied housing includes commercial properties and showed a substantial decrease of 30 % during the observation period. However, regional data on prevention cases (all tenures, but with the overwhelming majority of households living in rented housing) from municipal prevention centres in North Rhine-Westphalia indicate a slight increase in the number of households registered with the centres between 2010 and 2012 (+1.3 %).

In Greece, the overburden of eviction actions in the courts, the Katseli Law and the recent ban on eviction procedures for owner-occupied primary residences have impacted on evictions from owner-occupied housing. However, two main indicators

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<sup>194</sup> There were also increases in the numbers of tenancies registered during this period.



were reported for private rental housing (there is no social housing in Greece). These are both based on national estimates, which relied on a survey of over 60 courts. While the number of applications in these courts only slightly increased between 2010 and 2013, by 3.1 % (after a sharper increase of 25 % between 2010 and 2012, followed by a substantial decrease of 17.5 % between 2012 and 2013), the number of eviction orders issued by the courts is indicated as having increased substantially, by 31.8 %.

The effects of the Hungarian measures to reduce the number of forced sales were described earlier. The number of executed evictions from sold properties increased sharply between 2011 (199) and 2013 (517), although there was a moratorium in 2010. No comprehensive data is available for the private rented or social housing sectors in Hungary. Because of the under-regulation of the private rented sector, the number of 'official' evictions is estimated to be 'less than a dozen per year,' while the number of evictions from social housing may range between 500 and 1 000 per year, with an increase throughout the past few years, but more exact trend data is not available for this type of tenure.<sup>195</sup>

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<sup>195</sup> Evictions from social housing are decentralised to a local level, which means that, according to estimates, approximately 50 % of them are executed by bailiffs, and the rest by the municipalities. The available CSO data on evictions by municipalities shows a considerable increase.

**Table 3.3.4 Trend data on eviction processes – different trends for different indicators between 2010 and 2013<sup>196</sup>**

	2010	2011	2012	2013	Change between 2010 and 2013 (%)	Indicator
Germany (DE)	49 295	44 377	38 131	34 491	-30.0	Compulsory auctions or owner-occupied housing (including commercial properties)
Germany (DE)	34 885	36 082	35 355	n.a.	1.3 (2010-2012)	Prevention cases (all tenures) at municipal prevention centres (in North Rhine-Westphalia)
Greece (EL)	16 000	17 500	20 000	16 500	3.1	Estimate of applications to courts for eviction from private rented housing
Greece (EL)	11 000	13 000	16 000	14 500	31.8	Estimate of orders issued for evictions in private rented housing, based on sample of Greek courts
Hungary (HU)	2 377	2 769	2 739	2 548	7.2	Sold immovable properties in repossession process
Hungary (HU)	33 150	39 499	34 784	49 533	49.4	Immovable (incl. commercial) properties defined for execution of forced sales
Hungary (HU)	Moratorium	199	234	517	159.8 (2011-13)	Executed evictions from sold properties
Italy (IT)	65 664	63 846	70 315	73 385	11.8	Households receiving an eviction order (private rented housing)
Italy (IT)	29 889	28 641	29 154	31 399	5.1	Households actually evicted (private rented housing)
Poland (PL)	32 863	34 792	34 052	30 411	-7.5	Resolved court cases for eviction (all tenures)
Poland (PL)	7 014	7 260	7 812	8 557	22.0	Resolved bailiff cases (all tenures)
Slovenia (SI)	352	321	313	283	-19.6	Court decisions for eviction / vacating the premises (all tenures)
Slovenia (SI)	9 274	9 311	10 424	10 608	14.4	Solved cases in enforcement procedures on immovable properties <sup>1</sup>
Spain (ES)	39 894	33 133	39 051	38 961	-2.3	Voluntary or forced eviction after mortgage enforcements
Spain (ES)	23 052	19 036	55 523	38 141	65.5	Court cases regarding rental accommodation (private and social, including garages etc.) <sup>1</sup>
United Kingdom (UK)	23 147	22 740	23 079	n.a.	-0.3	Claims for eviction in private rented sector by standard procedure in E&W (only 2010-2012)
United Kingdom (UK)	61 100	63 101	65 054	n.a.	7.2	Eviction orders in social rented sector in E&W (2010-2012 only)
United	90 217	93 631	96 742	n.a.	7.2	Claims for repossession orders in

<sup>196</sup> Reports of national experts for this study.



	2010	2011	2012	2013	Change between 2010 and 2013 (%)	Indicator
Kingdom (UK)						social rental sector in E&W (2010-2012 only)
United Kingdom (UK)	3 390	3 588	3 732	3 694	9.0	Claims for repossession from owner-occupied housing (Northern Ireland, 2013 provisional data)
United Kingdom (UK)	14 906	13 972	12 358	n.a.	-17.1	Eviction cases initiated in Scotland (all tenures, 2010-2012 only)
United Kingdom (UK)	75 431	73 181	59 876	n.a.	-20.6	Claims for repossession of owner-occupied housing in E&W (2010-2012 only)
United Kingdom (UK)	21 597	25 712	31 178	n.a.	44.4	Claims for eviction in private rented sector by assured shorthold tenancy – accelerated procedure in E&W (2010-2012 only)
United Kingdom (UK)	609	590	717	1 070	75.7	Ejection decrees from private and social rented sectors in Northern Ireland

<sup>1</sup> Numbers are from different sources; reliability until 2011 questionable.

For Italy, both indicators documented in Table 3.3.4 show an increase in the number of households concerned. However, while the number of households receiving an eviction order from private rented housing has increased by more than 10 % (11.8 %), the number of households actually evicted from private rented housing has increased by only 5.1 %.

Polish data relating to court cases for eviction which were resolved (without any indication about the result of the decision, and for all tenures) shows a decrease of 7.5 % between 2010 and 2013 (but a slightly higher figure in 2011 and 2012), while bailiff cases for eviction (which can be more or less treated as being similar to physical repossession) show an increase of 22 % for all tenures over the period.

Slovenia is another Member State where reverse trends are reported. The number of court decisions to vacate premises (all tenures and including commercial properties) decreased by 19.6 % – for natural persons but not for legal persons. While this decrease is based on relatively small numbers (283 in 2013), the much higher number of closed procedures for the enforcement of immovable property (including commercial premises) showed an increase of 14.4 %.

For Spain, data from the National Bank of Spain relating to households who 'voluntarily' or forcibly left their primary residences after mortgage enforcements shows a very small decrease between 2010 and 2013 (-2.3 %) to just under 40 000 cases. By contrast, data for the rental sector reveals a sharp increase in the number of court cases concerning (social and private) rental accommodation over the period (much higher for the year 2012). According to the national expert, 'the high increase in the number of evictions in 2012 is due to insufficient responses by the courts to the National Institute of Statistics, which reduces their reliability' up to 2011.

Finally, United Kingdom regional indicators reveal relatively little change, but they often relate only to the period from 2010 to 2012. For England and Wales, claims for eviction orders and decisions to grant such orders in the social rented sector both showed a slight increase, while claims for evictions from private rented housing by the standard procedure even showed a very small decrease. Significantly, however, claims for eviction in the private sector by the 'accelerated' procedure (for assured shorthold tenants who have stayed on after receiving a notice to leave from their landlord) show a significant increase of 44.4 % over the period. More substantial changes are reported for England and Wales for claims for repossession of owner-occupied housing (a decrease of 20.6 %). For Northern Ireland, only a relatively small increase in claims for repossessions from owner-occupied housing was reported between 2010 and 2013, while the number of ejection decrees from the social and private rented sectors increased considerably (by 75.7 %). For Scotland, data on eviction cases initiated and disposed of in the sheriff courts (regarding all tenures) showed a considerable decrease of 17.1 % between 2010 and 2012.

### **3.3.5 Conclusions for data comparability**

The data that is currently available in most EU Member States on the eviction process does not allow for a reliable transnational comparison. Where available, it is too diverse in terms of tenures and the stage in the eviction process documented, and there is often a conflation of residential and commercial properties in the statistics.

The EU-SILC data, despite some weaknesses and a clear under-coverage of the total number of eviction cases, is currently the only source that allows for a tentative, albeit limited, comparison of changes of dwellings due to evictions covering all 28 EU Member States. It shows that evictions as a reason for a change of dwelling during the five years to 2012 (but also changes of dwelling as such) were less frequent in most CEE Member States than in the rest of Europe (but still relatively frequent in Poland, Estonia and Latvia). Some of the Member States particularly hit by the financial crisis (EL, ES, IE and PT) show a medium-level position relating to the extent of evictions, which might in part also be due to political measures in recent years. However, the EU-SILC data also shows that more than 700 000 households in the EU have changed their homes because of an eviction during the five years to 2012 – and, given the under-coverage of cases in EU-SILC, the real number is most probably considerably higher.

In EU-SILC, some of the Western Member States (BE, FR, LU and UK) are at the top of the list for changes of dwelling due to evictions. They show a relatively high residential 'mobility.' Their share of rental housing (where evictions occur more often than in the owner-occupied sector) is relatively high, and they also show a high proportion of owner-occupied housing with a mortgage or loan. However, none of these factors, either alone or in combination, clearly predicts a high eviction rate, as other examples, such as Denmark and Sweden, demonstrate.

For this study, trends over the period from 2010 to 2012–13 are based on national (or regional/local) data, as provided by the national experts. The variety and variable nature of the available data is quite conspicuous, and few clearly discernible patterns

or trends emerge. The largest group, comprised of eight EU Member States, demonstrates different and often opposing trends, sometimes for different tenures, but also for different stages in the eviction process regarding the same tenure. While consistently low levels of change in eviction trends (+/- 10 %) are reported from four Member States (AT, BE, EE and FI), more substantial decreases are reported from six (CZ, DK, FR, HR, PT and SE), with more substantial increases from five Member States (BG, CY, IE, LV and NL). Finally, there are a few Member States where no trends at all are reported, as data of any minimum quality is missing. Our detailed analysis of the trends does not reveal any overwhelming reasons for clear geographical patterns across Europe, nor is there a clear tendency regarding the different tenures. For instance, enforcement processes regarding owner-occupied housing have decreased or remained stable in some Member States, such as Spain, while they have increased in others. The same is true for evictions from rented housing.

There is a clear case for improving national databases on evictions from primary residences. One recommendation for the EU-SILC data module on housing would be to document the previous tenure type for those who have changed dwelling during the last five years and to introduce a clearer question (yes/no) on whether the interviewee has had to face an eviction process. In general, the coverage (sampling) of lower income groups in EU-SILC should be further improved to get more reliable data on situations such as being threatened with eviction.

### 3.4 Triggers, catalysts and inhibitors

Given that the comparability of the numerical data for each stage of the evictions process according to tenure and other factors is problematic, and in order to present some commonality of patterns for this study, the wide range of national evictions measures have been conceptualised and categorised into 'triggers', 'catalysts' and 'inhibitors'. These classifications can be applied across all legal systems, occupancy types and evictions processes. 'Triggers' can be regarded as the immediate reason for the eviction; 'catalysts' categorise measures which stimulate and advance the process of evictions; 'inhibitors' slow down, suspend or even curtail evictions.

The triggers for eviction mainly relate to the pre-court phase. For mortgaged properties, the main triggers are breaches of the mortgage contract, usually involving failure to pay one or more monthly instalments. Eviction proceedings can legally be instigated 1 month in arrears (BG, DE, EE, EL, FI, FR, IE, PT and SK), 3 months in arrears (BE, BL, CY, CZ, DK, EL, ES,<sup>197</sup> LU and LV), 6 months in arrears (HR and IT) and 12 months in arrears (RO - average).<sup>198</sup> There is no formal time limit in Hungary

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<sup>197</sup> Following the CJEU *Aziz* case, the Spanish Commercial Court in JM no. 3 (Barcelona 5 May 2014 JUR/2014/139100), held that, even where new legislation established three months' arrears – and for that particular case the parties agreed six months' arrears as a trigger for evictions procedures – the initiation of such proceedings for arrears of 2.02 % of the mortgage loan (even after six months' arrears), was abusive, thereby rendering the whole mortgage enforcement void. See also Case C-482/13 *Unicaja Banco* [2015], which established that, despite the law, a Spanish judge should be able to consider abusive interest rates for arrears set lower than the legal amount.

<sup>198</sup> Mortgage contracts are enforceable after 90 days' arrears. No evictions can take place during winter months without alternative accommodation being available.



or Malta. In relation to rented properties, a breach of tenancy terms will trigger eviction proceedings, and this is most commonly associated with arrears. A notice to quit can be issued after arrears of:

- 1 week (SE);
- 2 weeks (DK, EL);
- 1 month (CY, ES and UK (private rented));
- 2 months (DE [more than 1 month at two payment dates], FI and FR [where housing benefit is paid to tenant], PT [but 3 months if social rented], UK [social housing]);
- 20 days to 3 months (IT);
- 3 months (AT, CZ, EE and FR - where housing benefit is paid to the landlord, LV, HR, NL, PL, SK and RO in case of social housing);
- 1 year or EUR 1 500 in the case of utility debts, although this is a normative rather than official threshold (RO);
- a period that varies according to the contract (BG, HU and RO).

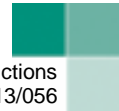
Rent or mortgage arrears of between one and three months act as a trigger for judicially regulated eviction proceedings in most EU Member States, while very long periods may discourage the offer of rented properties or the performance of the mortgage market (i.e. more expensive loans with tighter conditions).

Most Member States (such as BE, ES, LV, MT and PT) have legislation on state intervention in properties which are unfit for habitation and on vacating properties for rehabilitation or regeneration purposes. This 'declaration of ruin' or 'unfitness for habitation' means that a local authority may prohibit use of the property, thus leading to the removal or dispossession of its occupiers, and this was mentioned specifically as an issue or trigger for dispossession (in ES, MT and PT).

The absence of legal security of tenure, advocacy or legal representation, especially where there are no enforceable sanctions or penalties against illegal evictions, can act as a significant catalyst for evictions, and indeed many of these cases are likely to lead to homelessness. In some Member States, bailiffs act as catalysts, taking the lead role in mortgage arrears cases and arranging 'voluntary' or 'forced' sales of the indebted property, after which the new owner dispossesses the indebted occupant (AT, BG, CZ, DK, EE, ES, FI, LU, LV and SE) within a specific time, or in some cases immediately. In Slovakia, auction houses take over the process, and in Hungary a quasi-legal system applies.

It should be noted that notaries public can act as catalysts in the eviction process (ES, HR, HU, RO and SK). In some Member States (ES, HR and HU), they can perform out-of-court mortgage enforcements. In other Member States, mortgage contracts can grant a power of sale out of court to the lender.

It is important to emphasise that, as well as these judicially supervised processes, other legal evictions take place, as shown in Chart 2.5.1 above. This includes situations where notaries (ES, HR and HU), or auction houses (SK) take control of the eviction process, where an order requires one partner to leave the home (in



cases of domestic violence), or where a declaration of ruin (unfit for habitation) or a rehabilitation/regeneration-related public administration order is issued (BE, ES, LV, MT and PT).

There are also many non-judicially supervised/unauthorised or illegal evictions. Here, the context is usually a housing 'black market', which exists in the rental sector to an unknown degree across Europe.<sup>199</sup> The repossession/eviction process may be informal or unauthorised, and it may involve threats, bullying, cutting off services or utilities, or other measures. There is no research on these situations beyond anecdotal accounts, so it has not been possible to address this category to any significant degree in this study.

While squatting (unauthorised occupation) is reported to play a negligible role in Austria, Cyprus, Germany, Greece, Ireland, Poland, Portugal, Slovakia and Slovenia, since 2008 it has greatly increased in Spain (by 168.3 %). In Italy, it is estimated that 4.6 % of public dwellings are occupied without permission or squatted.<sup>200</sup> In several Member States (BG, ES, HU, IE, MT and UK), the owner of the property can trigger an eviction (often with police assistance). In many cases, the police can act independently to evict unauthorised occupants under the criminal law (AT, CZ, DE, DK, ES, FI, FR, IE, RO and UK).

In relation to evictions for domestic violence, the trigger for dispossession is usually a report by one party to the police (AT, BE, CZ, EE, IE, IT, HU, LT, LV, MT,<sup>201</sup> SI and UK).<sup>202</sup>

### 3.5 Average length of the judicial eviction process

The average length of all mortgage-related court cases, including those which do not result in eviction, varies considerably: 84 days (DK); a court judgment in 60 days followed by execution of the order by the bailiff in 36 days (FI); 6-12 months (RO); 8-24 months (EE); 10 months (ES); 12-24 months (BG); up to 18 months (DE); 799 days where contested or 619 days where consent is given (IE); or up to 4 years (HU). Although the average duration in Slovakia is 3 to 4 years, it may be up to 8 years where the case is defended.<sup>203</sup> In Cyprus, the process has been reduced to 2.5 years.<sup>204</sup> In Italy, the process can last between 19 and 90 months, depending on the tenures.<sup>205</sup> The period of notice for the mortgagor to leave the property after the

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<sup>199</sup> Although this is measured in ES and IT.

<sup>200</sup> Nomisma (2010), p. 41, which refers to data from 2008. In many EU Member States, squatters can acquire ownership of the property under the principle of adverse possession or *usucapio* after a number of years of possession and under certain circumstances, although criminal sanctions can also apply in cases of unauthorised entry or occupancy.

<sup>201</sup> In Malta, aggressors in domestic violence cases are not dispossessed until they are found adequate shelter/housing.

<sup>202</sup> As has already been pointed out, there are many dispossessions where persons who experience domestic violence leave to seek refuge elsewhere, but these are not included here.

<sup>203</sup> In SK, there are some 2.8 million debt enforcement procedures pending, with inevitable court delays.

<sup>204</sup> Interview with an academic of the University of Cyprus.

<sup>205</sup> Data collected by the offices of a court clerk and <http://pst.giustizia.it> - most recently accessed 1 June 2015.



eviction decision can be 3 days (EL);<sup>206</sup> between 1.5 and 3 months, depending on the intervention of social services (ES);<sup>207</sup> 8-12 months (amicable sale) or 6-10 months (forced sale) (FR);<sup>208</sup> 8 months (IT); 8 days (SI); 10 days (LV); 30-45 days (LT);<sup>209</sup> or 4 months (MT).<sup>210</sup>

The average length of the process for private/social rented dwellings<sup>211</sup> also varies widely: 39 days (DK); 1-3 months (HU, NL and SE); 3 months (ES, plus 1 month if the tenant does not leave the property on a voluntary basis);<sup>212</sup> 74-102 days (UK, in respect of AST which applies to the private rented sector only); 2-5 months (CY, if unopposed, or 4-5 years if opposed); 4 months (BG<sup>213</sup> and DE); 96 days from complaint to court to actual eviction (FI); 4 months unopposed but 9 months if there is opposition (from filing until resolution by decree) (ES);<sup>214</sup> 6-9 months (SI and SK); up to 9 months (MT – new process reduces this to 4 months); 6-9 months with no appeal or 1-18 months where there is an appeal (IE for private rented sector); 12-18 months (FR); 8-24 months (EE); or 12-36 months (IE for social rented properties). In Italy, the process can take between 12 and 18 months, depending on the city,<sup>215</sup> and if the tenant defends the action, the procedure can even take an undetermined number of years (10 years in the event that it reaches the highest court). In Slovenia, it is suggested<sup>216</sup> that eviction from both private and social tenancies can take between 6 and 28 months.

Finally, the average period between the court decision and actual physical eviction ranges from immediately to a number of months. Action can be taken immediately (SE), or the period can be 3 days (HU); 4-8 days from issue of a warrant (MT); 10 days (IT); 15 days (CZ);<sup>217</sup> 20 days (EL);<sup>218</sup> 2-3 weeks after the judgment (NL); 1 month, plus another 2 months if the tenant is in distress and social services must intervene (ES);<sup>219</sup> 36 days (FI); 45-90 days (LV); 30 to 45 days (LT);<sup>220</sup> while the tenant has 8 days to leave the property (DE and FR). In addition, in Slovenia (similarly to eviction suspension cases in DE and PT),<sup>221</sup> if the tenant plausibly demonstrates that he/she would suffer exceptional damage due to immediate eviction, the court can grant partial or complete postponement of the order. This

<sup>206</sup> Greece, Art. 926: Code of Civil Procedure.

<sup>207</sup> Real average time according to interview with court clerk.

<sup>208</sup> French Civil Code (1804) and French Consumer Code (2008).

<sup>209</sup> The Lithuanian Code of Civil Procedure, Art. 659.

<sup>210</sup> For a comparison of the durations of both defended and undefended mortgage enforcement proceedings in Europe, Illinois, Japan, Ontario and New York – see Luckow, A. (2014).

<sup>211</sup> These are distinguished when reported differently.

<sup>212</sup> Law of tenancy - *MietrechtsG, TenStatute* (MRG).

<sup>213</sup> Usual length of case for the court of first instance.

<sup>214</sup> Real average time according to interview with court clerk.

<sup>215</sup> [http://www.asppiroma.it/inquilino\\_moroso\\_perdita\\_proprietario\\_fino\\_a\\_20\\_mila\\_euro.htm](http://www.asppiroma.it/inquilino_moroso_perdita_proprietario_fino_a_20_mila_euro.htm)), last accessed 15 June 2015; and [www.filcasaimmobili.it](http://www.filcasaimmobili.it), last accessed 15 June 2015).

<sup>216</sup> Mežnar and Petrovič (2014) say between 6 and 10 months, whereas the SI Ministry of Justice states that eviction can take up to 28 months.

<sup>217</sup> According to the CZ 99/1963 Civil Procedure Code.

<sup>218</sup> Greece, Art. 943: Code of Civil Procedure.

<sup>219</sup> Real average time according to interview with court clerk.

<sup>220</sup> The Lithuanian Code of Civil Procedure, Art. 659.

<sup>221</sup> See above regarding the length of the process in mortgage-related cases.



postponement can range from 60 to 90 days in Slovenia, for both social and private renting.<sup>222</sup>

### 3.6 Profiles of evicted households and individuals

Data was collected in all EU Member States about the profile of households and individuals involved in the process of evictions. This study sought to examine household composition, the number of persons per household concerned, their sex and age, their country of birth and citizenship and their usual activity status or labour status. Where possible, additional information on the value of the dispossessed property (in cases of owner occupation), and on the income of households involved in the eviction process (all tenures), was requested.

In 14 of the 28 EU Member States (AT, CY, CZ, EE, HU, IE, IT, LT, LV, MT, PL, RO, SI and UK), no data was available on the characteristics of the households involved in the process of evictions. In seven of the remaining Member States, the information available from interviews was quite vague, involved only local data from small samples of households (BE, BG, EL, HR, PT and SI), or was applicable only to a specific subgroup (victims of domestic violence, LU).

More reliable profile information was provided for only seven Member States (DK, ES, FI, FR, NL, SE and the largest region of DE). This data varied greatly according to tenure, the phase of the eviction process and the region covered.

For other indicators in this study, some robust data from Finland and Denmark was available. In Finland, there is data for 2013 relating to evicted households – almost all from rented housing, covering a sample of almost 1 500 households and 2 300 persons. The results of a recent study in Denmark (in 2010) are reported, covering over 4 000 evicted households, exclusively from rented housing.<sup>223</sup>

Data reported from Germany relates to a regional study in North Rhine-Westphalia conducted in 2013, covering between 11 500 and 16 000 cases (with valid answers depending on the indicator) of ‘municipal prevention services’ (or ‘prevention cases’).<sup>224</sup> These households were threatened with eviction at different stages of the process, and almost all of them were tenants of private and social housing. From the Netherlands, results were reported of a survey of 492 households with rent arrears in social housing who had received a second summons from the bailiff.<sup>225</sup>

The most recent data from Sweden was from a survey in 2001 covering 90 households (95 % of whom were evicted from rented housing).<sup>226</sup> Data from France related to a survey in a rural area covering 202 households receiving a notice to quit their rented housing between 2007 and 2009.<sup>227</sup>

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<sup>222</sup> Article 112, Housing Act 2003.

<sup>223</sup> Høst et al. (2012).

<sup>224</sup> Busch-Geertsema et al. (2014).

<sup>225</sup> Unpublished data, <http://www.impuls-onderzoekscentrum.nl/huisuitzetting>. (accessed May 27 2015).

<sup>226</sup> Nilsson and Flyghed (2004).

<sup>227</sup> ADIL du Gard (2011) <http://www.adil30.org/ladil-du-gard/publications/> (accessed May 27 2015).

Spanish data seems to be the only source which includes or exclusively relates to owner-occupiers in this context. One of the sources is a web survey of households 'affected by mortgages' carried out by a lobby organisation working for owner-occupiers with mortgage problems in Spain, *Plataforma de Afectados por la Hipoteca* (Platform for those affected by mortgages) – PAH. The survey was based on information from 11 600 visitors to a web page who responded to surveys both in 2013 and earlier. Additional sources of information from Spain include a report by Càritas Barcelona, which provides some information on clients experiencing problems with mortgages and leases, as well as perception-based feedback received by the Government of Catalonia and the Basque Government in response to the question 'Who is most vulnerable to evictions?'

As shown below, there are many disparities in reported information across the available sources, providing at best a fragmented picture.

### **3.7 Comparative analysis – characteristics of the households involved in the process of eviction**

#### *Household composition and household size*

Most of the available data sources for those involved in evictions from rented housing shows a large percentage of one-person households. The share of single persons among all households varies from 71 % in Finland, 63 % (court cases) and 54 % (actual evictions) in Denmark and 57 % in Germany to 49 % or 50 % in France, the Netherlands and Sweden.<sup>228</sup>

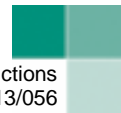
Lone parents (mostly mothers) with children were generally the second most numerous household type. They constituted 27 % of all evicted households in Sweden, 25 % of all households with a notice to quit in the French regional survey, 22 % of all households with a second summons from the bailiff in Dutch social housing, and 19 % of all court cases for eviction in rented housing in Denmark (14 % of those actually evicted). In Germany and Finland, other multi-person households were more numerous than single parents (DE: 17 % couples with children; FI: 15 % couples without children). In Germany, single parents were clearly overrepresented (in comparison to their share of the total population, with 14 % of all prevention cases (FI: 5 %).

The share of couples with children in their household (two-parent families) among the different samples of rented housing varied between 19 % (NL), 17 % (DE), 13 % (SE), 9 % (court cases in DK), 6 % (actually evicted households in DK) and 4 % (FI).<sup>229</sup> In most Member States mentioned here, two-parent families seem to be underrepresented compared with their share of all households in the population. More detailed country and tenure-specific household data would be necessary to make a more solid comparison.

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<sup>228</sup> All percentages are rounded.

<sup>229</sup> French data does not distinguish between couples with and without children.



Couples without children living in their household often constitute a rather small share of all households threatened by eviction from rented housing in those Member States where information is available. Their share of all households varies between 15 % (FI), 11 % (SE), 10 % (DE), and 6 % (NL, DK, court cases and evicted households).

Data from Denmark shows that the percentage of single mothers and parents with children drops significantly in the phases between the court case for eviction and the stage of actual eviction. One of the possible explanations for this may be that households with children threatened with eviction are more likely to receive some form of preventive social intervention. It seems probable that this will also be the case in several other Member States where hard data for this effect is not available.

Data reported for households with mortgage problems differs substantially from the patterns reported for evictions from rented housing in Spain. In the 2013 internet survey by the Spanish lobby organisation PAH, some 15 % of respondents were single-person households, and more than 65 % of all respondents had one or more children. Càritas Barcelona mediation services report 51 % of their cases as being couples with children, with a further 22 % comprising single mothers.

According to the Spanish survey on households with mortgage problems, households with three and four persons appear to be the most frequent cases (26 % have three persons, 24 % have four persons and 23 % have two persons per household). In those Member States where such data is available for households in the rented sector who are threatened with eviction, one-person households are the most frequent, followed by households with two persons (18 % in NL and 17 % in FI), followed by households with three persons (15 % in NL and 5 % in FI), and then households with four persons (12 % in NL and 4 % in FI). Households with more than four persons are relatively rare in these samples. Data from other Member States on household size is not available.

### *Gender*

Information (where it was available) on gender often related only to the adult persons involved in the eviction process, or only to the person interviewed for the survey. Evidence from Member States with data on evictions from rented housing shows that the majority of persons involved were male (67 % in FI, 66 % in SE, 57 % in DE, 54 % in NL). In Denmark, the gender of lone parents and single persons was reported. Some 79 % of all single persons were men, and 84 % of all single parents were women. As there were substantially more single persons without children than single parents with children among those evicted in Denmark, there is also a significant majority of men (68 %) when both groups are merged. While single mothers are also named as a specifically vulnerable group in Spain, national experts suggest that men are more affected by the loss of the right to use a family home due to divorce. This may also apply in other Member States, if children of minor age are involved.



## Age

Age groups are differentiated in various ways in the limited number of Member States where any data at all on the age of the persons involved in the eviction process was available. Even where this was available, no specific link with tenure could be made. In most Member States, the overwhelming majority of adults were aged between 25 and 65 (91 % in NL, 87 % in SE, 74 % in DE (25-60), 73 % in DK and 67 % in Finland). In France, some 65 % of the persons concerned were aged between 25 and 45. While young adults between 18 and 24 were not mentioned as particularly prominent in Sweden (9 %), France (5 %) or the Netherlands (4 %), they made up a substantial proportion in Finland (19 %) and Germany (20 %). In Denmark, too, young people were singled out as a particular group of concern, as one in four (25 %) of all evicted persons were between 15 and 24 years old. In all the Member States reporting data from the rented sector, older people over 65 made up a very small proportion of those threatened by eviction (5 % in NL, 4 % in SE, 3 % in FI, 2 % in DK; and 6 % in DE were 60 or older). While only limited data on mortgaged housing was available from Spain, this showed that the average age of people with mortgage problems in Spain was 51 years.

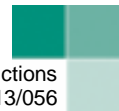
## *County of birth / citizenship / migration background*

The available data differs substantially here, as different definitions were used to cover migration background or ethnic background. The share of foreign-born persons among evicted persons in Sweden was 23 %. Similarly, 22 % of those involved in rented housing eviction prevention cases in Germany had a migration background (they or their parents had immigrated or had a foreign nationality; the proportion was similar to the overall population of the *Land*). In Denmark, some 23 % had a non-Danish ethnic background, and some 19 % of the evicted households had a non-European background. This points to a serious over-representation of this group, as it only constitutes 7 % of the total Danish population. In Finland, 13 % of the principal evictees were foreign born (among them 8 % born in a non-EU country), and 11 % were non-nationals (among them 7 % were nationals of a non-EU country). They were clearly overrepresented, as the share of non-nationals among the general population in Finland was 3.6 % in 2012. A relatively high proportion of households threatened with eviction from social housing in the Netherlands (42 %) were born in another country, including 22.2 % born in a non-EU country. In Spain, there was a higher level of immigrant households with experience of mortgage problems, eviction procedures or actual eviction compared with households of Spanish origin.

It is unclear to what extent undocumented migrants are included in the available data on the migration status of evicted households, but it is highly probable that they will be underrepresented, and that they will have left the housing before legal action takes place.<sup>230</sup>

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<sup>230</sup> However, neither the Platform for International Cooperation on Undocumented Migrants (PICUM) nor the recent study on Mobility, Migration and Destitution in the European Union carried out by Regioplan (2014) provide any data on the share of evictions among undocumented migrants in Europe. PICUM published a conference report on *Housing and Homelessness of Undocumented Migrants in Europe* in 2014, but the report does not refer to any more concrete numbers of evictions among this group.



In some EU Member States, Roma are reported as being particularly vulnerable to evictions. Both the Romanian and Slovakian national experts reported a large number of Roma being evicted from legal tenancies.

#### *Usual activity status/labour status/income*

Most available indicators show that a large number of households threatened with eviction were unemployed and relied on transfer incomes, notably subsistence benefits. In Germany, only 10.8 % of all homelessness prevention cases reported employment as their main income. About a quarter of those in the Netherlands and a third of those in Denmark had an income from regular employment or from self-employment. Data from Sweden shows a somewhat higher percentage (50 %) of evicted persons being employed or self-employed. Data for households with mortgage problems in Spain shows a high percentage of unemployment among the persons evicted after mortgage enforcement (44 %).

#### *Specifically vulnerable persons*

National-level data on specific risk groups who are more vulnerable than others to evictions is not collected across EU Member States. However, some analysis of specific risks obtained in this study is provided in the following chapter. Interviews by the national experts yielded some useful information. For example, in Bulgaria, asylum seekers, Roma and adults with disabilities and those with no family support are described as being particularly vulnerable to evictions, although no data is available to verify this. Similarly, in Romania, there is anecdotal evidence that drug addicts and ex-offenders are also especially vulnerable to eviction. There are some indications that households without children, especially men, are less protected against evictions than women, particularly women with children.

#### *Value of enforced mortgaged properties*

Data was provided for Spain only on the initial mortgage amount among those involved in a mortgage enforcement process. About 17 % of households responding to an internet survey had a mortgage of less than EUR 100 000, some 45 % had a mortgage between EUR 100 000 and EUR 200 000, while 34 % had a mortgage of more than EUR 200 000.<sup>231</sup>

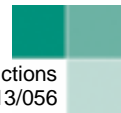
### **3.8 Conclusions**

The data currently available in most EU Member States on the eviction process does not allow for a reliable transnational comparison. Where it is available, it is too diverse in terms of tenure types, the stage in the eviction process documented and the conflation of residential and commercial properties in the statistics. There is a clear need for improvement in data collection on evictions at national level in most Member States before a European-wide comparison is possible. The limited data available from EU-SILC (2012) shows that evictions as a reason for a change of dwelling during the five years before 2012 were less frequent in most CEE Member

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<sup>231</sup> Data in original document does not add up to 100 %.





States than in the rest of Europe (although they were relatively frequent in EE, LV and PL).

Nevertheless, four broad trends were identified for the period 2010-2013 in this study. Four Member States (AT, BE, EE, and FI) showed relatively low levels of changes in overall eviction patterns (up to +/- 10 %) over the period. Overall evictions decreased by more than 10 % during the period in six Member States (CZ, DK, FR, HR, PT and SE). Evictions increased by more than 10 % in five Member States (BG, CY, IE, LV and NL). Finally, eight Member States exhibited contrasting trends between tenures and even within different stages of the eviction process within the same tenure type. For some Member States the absence of reliable data prevents the defining of any trend.

The length of the evictions process varies widely between Member States and between tenures, depending on national laws and procedures and the speed with which landlord/lenders wish to advance the process. Actual times do not always match the legally foreseen times.<sup>232</sup> The average length of the eviction process varies widely between Member States and tenures, according to national laws and procedures. These range from 84 days for mortgage-related cases (DK) to over 7 years (IT). For rented housing, the process can vary between 39 days (DK) and 10 years (IT). Usually, however, the process takes between 6 months and 2 years for mortgaged property and between 1 and 2 years for rented property.

For half of the Member States, no data was available on the characteristics of the households involved in the process of evictions, while for a quarter of them the information available from interviews was quite vague or was based on local data from small samples of households. Indeed, data on the household characteristics of those evicted was available only from a quarter of all Member States, and was mostly related to rented housing, or to social rented housing in Northern Member States. Only from Spain was data available on the profile of owner-occupiers involved in an enforcement process – but only from an internet survey.

While it is problematic to extrapolate any EU-wide conclusions from such a small base, the limited data available shows that single persons and especially single men account for the highest share (50-70 %) of the households threatened with eviction from rented housing in the few Member States where such data was collated (DE, DK, FI, FR, NL and SE). This is a significant finding, although there are specific sets of circumstances here, in some cases involving a particular set of social housing arrangements. It has also been suggested that the integrity of the social housing system requires that those in arrears be evicted and rehoused quickly.<sup>233</sup> Clearly, the situation in other Member States, especially those with little social housing and Southern European Member States, could be quite different. The absence of fuller data on the household characteristics of those evicted means that a general EU-wide

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<sup>232</sup> It was not possible to compare real and formally anticipated legal times in every jurisdiction, and where these are not available the Member State is not mentioned in this report.

<sup>233</sup> For instance, the Danish homelessness count in 2013 found that 21 % of homeless people stated eviction as the main reason, and also that some 78 % of the homeless people had a mental illness, a substance abuse problem, or both.



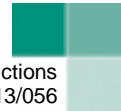


conclusion that single men have the highest risk of eviction cannot be safely extrapolated from this finding.

From the data available, it would appear that single parents (mostly single mothers) tend to be overrepresented, while households consisting of two parents with children seem to be underrepresented. There are some indications that preventative interventions for households with children in general tend to reduce their share among those households actually evicted (compared with those threatened by eviction). In contrast, a rather high share of parents with children and a low proportion of single people is reported among households facing mortgage enforcement in Spain. Regarding age, young people are a group of particular concern in some Member States, but not in others. There is an observable tendency for those under 45 to be the most frequent group of adults evicted, with few people aged over 60 to 65 facing eviction in rented housing. Again, this is to be contrasted with an average age of 51 among adults facing mortgage enforcement in Spain (according to the internet survey).

The share of documented persons with a migrant background (measured differently in almost every Member State with data on this question) ranges from 13 % in Finland (foreign born, all tenures) to 42 % (foreign-born household members threatened with eviction in social housing) in the Netherlands. The most frequent percentages were around 22 to 23 %, and in some (but not all) Member States with relevant data, a clear overrepresentation of non-nationals or households with non-European backgrounds was documented. This would suggest that migrants are overrepresented among the evictions recorded, and the actual prevalence may be higher when non-recorded evictions are included.

Finally, the data on household income and employment show – unsurprisingly – a tendency towards unemployed households being overrepresented among the households threatened with eviction. There is a clear need in most EU Member States for more knowledge about the structure of households threatened with eviction in order to identify the most vulnerable. Generally, court and bailiff data is not sufficiently differentiated to document the profile of these households.

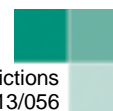


## **4 Risk factors for eviction**

### **4.1 Introduction**

The risk of eviction is shaped by economic and social mechanisms that operate on structural, systemic, interpersonal and individual levels. Structural factors such as poverty, unemployment and a lack of affordable housing interact with individual vulnerabilities, such as low educational skills, psychosocial vulnerabilities, weak family ties and lack of social support networks, in shaping the risk of eviction for the individual. These risks are mediated by systemic and institutional factors, such as the functioning of social welfare and protection systems and the legal standards and procedures regulating repossessions and evictions.

Table 4.1 shows a conceptual model of risk factors on structural, systemic, interpersonal and individual levels. The model is also applicable to the understanding of risk factors for homelessness following an eviction.



**Table 4.1 Analytical framework of risk factors for evictions (and homelessness following an eviction)**

Level of cause	Factor	Comment
Structural	Poverty	High level of poverty
	Unemployment	High unemployment rate, financial turmoil
	Lack of affordable housing	High housing and rent prices, supply shortage of affordable housing
Systemic/ institutional	Legal systems	Legal procedures on evictions and repossessions contain few mechanisms to prevent eviction
	Social protection systems	Weak protection against unemployment and loss of income, low subsistence benefits
	Availability of support services	Shortage of social support, prevention and outreach for high-need groups i.e. individuals with psychosocial vulnerabilities
	Housing allocation systems	Insufficient social housing available for low-income and high-need groups
	Integration and coordination between existing services (including housing)	Lack of holistic approaches to housing and support
Interpersonal	Family status	Single people more vulnerable
	Relationship situation	Abusive partners
	Relationship breakdown	Death, divorce, separation
	Lack of social network	No support from family, friends or social networks
Personal	Economic / employment status	Low disposable income, no job, working poor, low savings
	Ethnic status/minority background	Cultural barriers, discrimination
	Citizenship status	Lack of access to social protection
	Disability / long-term illness	Includes mental ill health and learning disability
	Educational attainment	Low attainment
	Addiction	Alcohol, drugs, gambling
	Age / Gender	Young / old, male/female/transgender/other
	Immigrant situation	Refugee status / recent arrival

Source: Adapted from Edgar and Meert (2005).

Risk factors may operate and interact differently under different contextual circumstances, and the underlying social and economic mechanisms are often complex. Single triggers for evictions and subsequent homelessness are rare. Instead, differences in welfare and legal systems across EU Member States may impact in different ways within and between them. Disparities are also evident between urban economic growth centres with high housing costs and rural areas with lower housing costs, but also potential adverse structural circumstances such as higher unemployment.

In this section, risk factors are analysed as they manifest themselves on both a societal level and an individual level. This analysis considers whether evictions are



mainly related to socioeconomic circumstances such as unemployment or poverty; whether they relate to psychosocial and other health-related vulnerabilities or to a combination of these factors; or whether different combinations of factors create varying reasons for evictions in different Member States. The analysis is based on available evidence from all Member States and on the primary research carried out for this study in each Member State, including the collection of statistical evidence and interviews with stakeholders.

The evidence on risk factors for evictions is highly heterogeneous across Member States. Only in one Member State (DK) is there strong quantitative evidence on the relative importance of different risk factors, based on a multivariate statistical model. However, in several Member States there is evidence from survey data on the reasons for evictions. The qualitative interviews performed for this evictions study contributed significantly to knowledge about the main reasons for evictions, especially in Member States with limited or no existing research. Despite limitations in the available evidence, some overall trends can be identified.

#### **4.2 Overall variations in patterns of risk factors and mechanisms behind evictions**

Across the EU, unemployment and financial instability in households is highlighted as a major risk factor for eviction. The economic crisis has reinforced this pattern, especially in the Member States that were hardest hit by the crisis in Southern Europe and parts of Central and Eastern Europe (CEE).<sup>234</sup> In Southern Europe, evictions were associated mainly with unemployment and household breakdown, whereas in most CEE Member States evictions were associated primarily with more general poverty-related problems. In CEE Member States, low income and the lack of savings, among both the working poor and people on subsistence benefits, are associated with the risk of eviction, in combination with the often weaker social protection systems. Rent and mortgage arrears, which are often related to consumer debt, as well as utility arrears (often due to high heating costs in cold winters, especially in housing estates in need of renovation), are highlighted as important reasons.

In Northern and Western Member States,<sup>235</sup> unemployment, financial instability and household breakdown play a significant role in the risk factors for evictions. However, there is evidence of significant levels of evictions among individuals with complex support needs, due to mental ill health and substance abuse. These groups are prevalent among evicted people in the east and south too, but in these Member States, more general poverty and unemployment problems are mainly highlighted in the interviews. This is a pattern which can be explained by the variations in general economic conditions and among the welfare systems in these Member States.

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<sup>234</sup> Southern European Member States in this classification include Cyprus, Greece, Italy, Malta, Portugal and Spain. The Central and Eastern European (CEE) Member States include Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.

<sup>235</sup> This category of Northern and Westerns States includes Austria, Belgium, Denmark, Germany, Finland, France, Ireland, Luxembourg, Netherlands, Sweden and the UK.



In many EU Member States, there are reports of structural challenges around expensive housing markets. The lack of affordable housing in larger cities exacerbates the financial problems of many low-income families. It forces them into housing they can barely afford, which increases the risk of rent arrears. Moreover, changes in demographic and household composition reinforce the structural lack of affordable housing, as more and more households are single-person households, which creates a need for additional housing. A shortage of social housing, with lengthy waiting lists in many Member States, forces low-income and vulnerable households into the private rental markets, where, depending on the market situation and legal regulations, increasing rent levels limit their options.

Table 4.2.1 shows the housing cost overburden rate for households at risk of poverty (below 60 % of the median equivalised income). The housing cost overburden rate is the percentage of households where the total housing costs (net of housing allowances) represent more than 40 % of disposable income (net of housing allowances).

**Table 4.2.1 Housing cost overburden rate (%) for all households and those at risk of poverty<sup>236</sup>**

Country	2010		2013	
	All	Poor	All	Poor
Austria	6.5	34.3	7.2	39.1
Belgium	8.9	37.9	9.6	39.0
Bulgaria	5.9	20.2	14.3	38.5
Croatia	14.1	48.4	8.4	34.8
Cyprus	3.1	10.9	3.3	11.5
Czech Republic	9.7	49.4	11.7	51.6
Denmark	21.9	71.1	18.9	75.0
Estonia	6.0	26.2	7.2	29.3
Finland	4.2	16.4	4.9	20.4
France	5.1	22.1	5.0	21.7
Germany	14.5	42.2	16.4	49.2
Greece	18.1	67.7	36.9	93.1
Hungary	11.3	36.7	12.7	37.0
Ireland	4.9	23.1	4.9	23.6
Italy	7.5	29.4	8.7	31.7
Latvia	9.8	31.9	11.4	38.2
Lithuania	10.6	38.5	8.2	28.8
Luxembourg	4.7	24.4	5.6	25.9
Malta	3.7	13.3	2.6	11.5
Netherlands	14.0	43.4	15.7	48.3
Poland	9.1	30.5	10.3	33.5
Portugal	4.2	15.9	8.3	30.9
Romania	15.0	39.3	15.4	39.4
Slovakia	7.6	35.2	8.3	36.2
Slovenia	4.3	20.6	6.0	26.3
Spain	9.7	35.2	10.3	38.3
Sweden	6.5	39.6	7.9	39.6
United Kingdom	16.5	54.9	7.9	27.1

The table shows that the housing cost overburden rate in poor households is high in many Member States. However, there is no clear average pattern across different regions of the EU. The highest housing cost overburden rate in poor households is found in Greece, at 91 % (in 2013), whereas the second highest rate is found in Denmark, at 73 %. In Greece, the housing cost overburden rate increased sharply between 2010 and 2013, both for the general population and for poor households.

<sup>236</sup> Source: Eurostat poor households (at risk of poverty) are defined as being those with an income below 60 % of the median income.  
<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tessi163&plugin=1>.



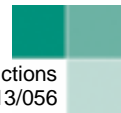


Table 4.2.2 shows the percentage of all EU households in arrears on mortgage or rent payments. In most Member States only a small overall number of households are in arrears with mortgage or rent payments – for example 3.4 % in Belgium, 1.1 % in Malta and 6 % in France. However, the relatively low levels of housing arrears in CEE Member States can partly be explained by the high rates of owner occupation, often without any mortgage debts following the privatisation of the large-scale rental housing stock in these Member States. But these aggregated figures can mask many individual instances of very high arrears and unsustainable debt.

There is a significantly higher level of arrears in the Member States that have been most affected by the crisis (CY, EL, ES, HU, IE and PT). One quarter of poor households in Greece (with a 50 % increase since 2010) and one fifth of those in Ireland were in arrears in 2013. One sixth of poor households in Hungary were also in arrears – an increase of 50 % since 2010. While the figure for France was 17 %, this represents a declining trend since 2010. Indeed, the trend over the period 2010-2013 has been for an increase in housing arrears of at least 40 % in some Member States (CY, DK, EL, HU and LU) among poor households.

**Table 4.2.2 Percentage of all households and poor households with arrears on mortgage or rent payments<sup>237</sup>**

Country	2010		2013	
	All	Poor	All	Poor
Austria	3.9	12.4	4.0	11.1
Belgium	3.4	9.6	3.0	7.6
Bulgaria	1.7	2.1	2.0	1.9
Croatia	1.7	1.3	0.9	0.9
Cyprus	5.6	7.3	8.8	13
Czech Republic	3.5	16.6	3.2	14.1
Denmark	2.7	6.6	3.4	11.5
Estonia	2.7	5.1	2.8	3.9
Finland	4.7	14.2	5.1	11.7
France	6.1	18.8	5.5	16.9
Germany	2.0	5.3	2.1	5.1
Greece	10.2	15.2	14.9	25.1
Hungary	5.6	10.2	6.8	16.8
Ireland	8.1	18.5	12.0	20.2
Italy	4.2	10	4.9	11.5
Latvia	5.8	13.9	4.3	8.3
Lithuania	1.3	1.9	0.9	1.7
Luxembourg	1.4	4.4	2.9	7.6
Malta	1.1	4.2	2.3	5
Netherlands	3.1	8.4	3.5	7.8
Poland	1.0	2.1	1.5	2.6
Portugal	4.8	9.8	5.7	13.7
Romania	0.6	0.3	0.8	1.2
Slovakia	6.8	14.6	4.1	13.4
Slovenia	2.4	6.2	3.7	9.4
Spain	6.4	13.7	6.4	14.9
Sweden	2.3	6.8	2.3	8.6
United Kingdom	4.8	8.6	4.2	10.6

Whereas the share of households with arrears on mortgage and rent payments is relatively small in most Member States, there is much higher variation in the share of households with arrears on utility bills (see Table 4.2.3). There are high levels of utility arrears in most CEE Member States, with at least 50 % of households at risk of poverty in arrears in Bulgaria, Croatia, Greece and Hungary. In Hungary and Greece, about 61 % of poor households have utility arrears. There were increases of more than 30 % in these arrears in Croatia, Cyprus, Greece, Ireland and Portugal between 2010 and 2013 for households at risk of poverty.

<sup>237</sup> Eurostat, EU-SILC.

[http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc\\_mdes07&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_mdes07&lang=en).

**Table 4.2.3 Percentage of all households with arrears on utility bills<sup>238</sup>**

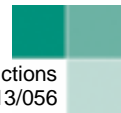
Country	2010		2013	
	All	Poor	All	Poor
Austria	4.4	11.4	4.6	14.1
Belgium	5.8	17.4	5.0	13.2
Bulgaria	31.6	49.4	34.0	54.1
Croatia	28.0	32.3	30.4	47.2
Cyprus	16.3	23.5	21.9	39.9
Czech Republic	4.2	17.7	4.0	20.0
Denmark	3.2	9.1	3.7	9.9
Estonia	11.0	23.7	10.4	17.8
Finland	6.9	15.0	8.4	14.5
France	7.1	23.3	6.2	19.8
Germany	3.5	9.3	3.6	8.8
Greece	18.8	38.0	35.2	61.4
Hungary	22.1	52.1	24.5	61.5
Ireland	12.6	24.6	17.9	32.5
Italy	10.5	23.5	12.0	26.3
Latvia	22.5	39.4	20.7	33.9
Lithuania	10.9	21.0	13.2	28.8
Luxembourg	2.1	5.2	3.1	8.5
Malta	6.8	14.4	11.4	19.3
Netherlands	2.1	6.6	2.4	7.1
Poland	13.9	28.7	14.0	27.6
Portugal	6.4	13.0	8.2	19.4
Romania	27.0	36.9	28.8	40.4
Slovakia	9.6	20.8	5.9	21.2
Slovenia	18.0	33.6	19.7	35.7
Spain	7.5	17.0	8.3	18.4
Sweden	4.3	11.8	4.2	12.8
United Kingdom	5.6	10.5	8.7	18.7

The general rate of utility arrears was lower – although it was still over 30 % – in Bulgaria and Croatia. There are some exceptions, such as Slovakia, where only 6 % of the overall population had utility arrears. Indeed, for the general population, the highest rates of utility bill arrears in 2013 were in Greece (35 %) and Bulgaria (34 %). By contrast, the level of utility arrears is much lower in most Northern and Western Member States. For example, only 2 % of households had arrears in the Netherlands, with 4 % in both Denmark and Sweden.

In the following sections, the variations in risk factors for evictions across Member States are explored in more detail, first for the Northern and Western Member States,

<sup>238</sup> Eurostat, EU-SILC.

[http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc\\_mdes07&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_mdes07&lang=en).



and then for the CEE and Southern Member States, as somewhat distinctive patterns can be identified comparing the North and West with the East and South. Patterns in the specific Member States that have available evidence are also explored in more detail.

#### **4.3 Vulnerable people with complex needs at risk of eviction in Northern and Western Member States**

In Northern and Western Member States, risk factors for evictions are generally complex. Unemployment, relationship breakdown, high rents and a lack of affordable housing, as well as complex support needs among particular groups of people, such as those arising from psychosocial problems, are identified as significant risk factors. Where detailed evidence is available, it shows that a relatively large number of vulnerable people with complex needs are evicted in Northern and Western Member States.

The most comprehensive analysis of risk factors for eviction is found in Denmark, where a study of the risk of eviction has been carried out for about 1 million households in private and public rented housing, based on extensive administrative data registers. This is the only study among EU Member States where relative risk factors for eviction have been examined using a multivariate statistical model.

Table 4.3 shows risk factors for eviction as identified using a statistical model in a Danish study from 2012.<sup>239</sup>

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<sup>239</sup> The results are based on a logistic regression model, and the table shows relative risks for each risk factor, displayed as odds ratios. A number higher than 1 refers to a relatively higher risk for the group, compared to a reference group, whereas a number between 0 and 1 refers to a lower risk. For instance, an odds ratio of 1.66 for cash benefit receivers means that the odds of evictions taking place are 1.66 times higher for cash benefit receivers than for the reference category, which is people who are self-employed.

**Table 4.3 Risk factors for eviction from rented housing in Denmark<sup>240</sup>**

Variable (reference group)	Odds ratio (OR)	Standard Error (SE)	Significance level (P) <sup>241</sup>
<b>Housing benefit</b> (no benefit)			
Housing benefit	0.63	0.02	***
<b>Household type</b> (single male)			
Single woman	0.45	0.01	***
Couple	0.57	0.03	***
<b>Children in the household</b>			
Children per adult	0.94	0.05	
Children per adult squared	0.98	0.01	*
Children per single women	1.21	0.07	***
Children per adult in couples	0.74	0.06	***
<b>Age, oldest in household</b>			
Age, oldest in household	1.08	0.01	***
Age, oldest in household squared	0.99	0.00	***
<b>Changes in household</b> (no change)			
Divorce	2.50	0.08	***
Moved from institution	2.06	0.29	***
Moved out of parental home within last year	0.69	0.04	***
<b>Ethnic background</b> (Danish)			
Western	0.86	0.09	
Non-western	1.06	0.12	
<b>Primary income source</b> (self-employed/employee)			
Unemployment benefit	1.17	0.06	***
Cash benefit	1.66	0.09	***
Permanent benefit	0.46	0.05	***
In education	0.69	0.03	***
Other	1.52	0.11	***
<b>Type of rented housing</b> (public housing)			
Private rented	0.31	0.02	***
Municipal	0.99	0.39	
<b>Municipality</b> (Copenhagen)			
Suburban Copenhagen	1.07	0.09	
Four other largest cities	0.99	0.15	
Other	0.93	0.08	

The research is based on administrative data for all households in rented housing, although it is restricted to households with single men, single fathers, single women, single mothers, couples without children and couples with children, and the category of 'other households' has been excluded. Furthermore, the analysis was restricted to households with an income less than DKK 400 000 per annum, (EUR 53 000), and to

<sup>240</sup> Høst et al. (2012), p. 138.

<sup>241</sup> \*) 0.01p<0.05, \*\*) 0.001<p<0.01 \*\*\*) p<0.001.

dwellings of between 25 and 150 square metres with a maximum rent of DKK 100 000 per year (EUR 13 000).

This Danish research shows that the risk of eviction is generally higher for single males, and relatively lower for single women and couples. For single women, the presence of children in the household seems to increase the risk of eviction, although the risk of eviction decreases for couples with children. These results generally suggest that there is less protection against eviction for single men. Recent divorce substantially increases the risk of eviction. So, too, does having recently moved to rented housing from institutional accommodation. When assessing other risk factors, the risk of eviction for non-western immigrants appears to be only marginally higher than it is for native Danes and immigrants from western countries, and the difference is not significant. This may be explained by more non-western immigrants receiving income transfer benefits, which is verified in the multivariate model.<sup>242</sup>

In the Danish study, a survey among evicted people was conducted about one year after their evictions. Thus, people who were evicted in 2010 were interviewed in 2011. However, due to the precarious situation of many evicted people, the response rate was low. From a sample of 1 500 evicted people, only 377 were interviewed. The reasons given for eviction were financial (70 %) and personal debt (55 %). Some 79 % reported that they had difficulties in handling their financial situation. Some 62 % of those evicted stated that, at the time of eviction, they or their partner had lost their job, and 40 % reported that the loss of their job was a reason for the eviction. Of the surveyed evicted people, some 42 % reported that they had been through a divorce before the eviction, and 47 % reported that the divorce was a reason for the eviction (20 % of total). Some 27 % had also experienced the death of a close relative before the eviction, although only 2 % suggested this as a reason for the eviction. Physical illness was given as a reason for eviction by 24 % and mental illness by 40 %. In total, some 57 % of those surveyed reported a mental illness, and 71 % stated that their mental illness was a reason for the eviction. Some 39 % of those surveyed reported alcohol or drug abuse at the time of the eviction. However, the number who reported that their substance abuse was a reason for the eviction was lower, at 17 %. Some 36 % of the evicted people had engaged in criminal activity, while some 9 % reported that their criminal actions were a reason for their eviction.

Qualitative interviews were conducted with municipal social workers working with evicted people. The social workers identified three significant cohorts of evicted people: people in economic hardship, people in socially marginalised groups, and people who do not prioritise paying the rent. The presence of the first and second cohorts was widely confirmed by the quantitative profiles of those evicted. Regarding the third cohort, the interviewed social workers reported that they had noticed some changes, especially among young people, who prioritise purchasing material goods rather than paying rent. This latter cohort cannot be further identified through the statistical data.

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<sup>242</sup> The immigrant group was divided into people with origins in countries in the western world (e.g. EU/EEA, US and Japan), and countries outside the western world ('third world' countries).



The comprehensive analyses from Denmark – in the context of a relatively advanced welfare state – show how the risk of eviction must be understood in a multidimensional framework, where both socio-economic and psychosocial risk factors play an important role. It is also noticeable in this context that people with complex support needs form a relatively large segment of people who are evicted. While this pattern may point to unmet support needs among high-need groups, it may also reflect that, in Denmark, a relatively high number of people with complex support needs are housed in ordinary housing, through the comprehensive public housing allocation systems that exist in Denmark for vulnerable people in acute housing need. Therefore, although housed, these people are at potential risk of eviction, and indeed they appear to have a higher risk of eviction than most other groups.

Evidence about the reasons for evictions also exists in Finland, where data shows that, in 96 % of cases where an eviction order has been issued by a bailiff, there is a debt connected to the eviction. Previous studies have shown that the most important reason for evictions is rent arrears.<sup>243</sup> However, there is some evidence that, while many executed evictions are formally based on rent arrears, they sometimes take place, in reality, because of other issues, such as disruption to neighbours, antisocial behaviour etc. Rent arrears are more easily proven, whereas disturbances would require testimony by often reluctant neighbours.<sup>244</sup>

In France, non-payment of rent is the principal immediate reason for eviction, as it represents the ground of more than 94 % of the 155 000 eviction cases. A qualitative study<sup>245</sup> of evicted households revealed that the main reason for non-payment of rent was a fall in income due to job loss or marital separation (creating an imbalance in the household incomes). Illness, accidents and difficulties in managing budgets or unaffordable housing costs were also mentioned.<sup>246</sup> Evictions from illegal or unauthorised occupancies (building and land) only involve 4 000 cases per year.

Another French study<sup>247</sup> conducted among 202 households who had received a notice to quit has shown that they had an average rental stress of 56 % – rising to 61 % for private housing tenants.<sup>248</sup> Other studies in France show that living alone or being a lone parent (essentially young mothers) is a particular risk factor for non-payment of rent, and for eviction thereafter. Some 14 % of lone-parent households have had a ‘payment incident’, compared with only 6.7 % for all households.<sup>249</sup> In another study, lone parents represent 27 % of the households who received a notice to quit and 32 % of the surveyed households who phoned a prevention of eviction service, whereas they represented only 8 % of the total population.<sup>250</sup>

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<sup>243</sup> Salovaara-Karstu and Muttillainen (2004), p. 95; Kettunen (2010), p. 15.

<sup>244</sup> Kettunen (2010), p. 15.

<sup>245</sup> Adil du Gard (2012).

<sup>246</sup> Adil du Gard (2011).

<sup>247</sup> Adil du Gard (2011).

<sup>248</sup> The ‘rental stress’ (*taux d’effort*) is the rate of housing costs as part of total household income. The rental stress is generally lower for public/social housing renters, because of lower rents and larger amounts of housing benefits.

<sup>249</sup> Nivière (2006).

<sup>250</sup> Adil du Gard (2011).

Rent arrears are the predominant reason for evictions in Germany, but they may have been caused by a range of other factors, such as unemployment, substance abuse, domestic conflicts, separation of partners etc. There is little evidence on the exact combination of such factors, but research shows that it is highly probable that poor and unemployed households with substance abuse problems are more vulnerable to evictions than other poor and unemployed households. A large study on prevention cases throughout Germany has shown that 60 % of the 2 625 surveyed households that were threatened with eviction in a six-week period in the winter of 2003/04 had a purely financial need, while, for the remaining 40 %, the prevention workers saw a need for further support. For 20 % of the total sample, there were requirements due to addiction or mental health problems, and for 18.2 % there were requirements to address particular social difficulties.<sup>251</sup>

In Ireland, recent research has identified a high level of mortgage arrears among those who took out mortgages between 2004 and 2008 with high loan-to-value levels and among those who suffered income shocks or unemployment.<sup>252</sup> Many of those in arrears are currently employed, albeit this is often in precarious employment, and they have suffered a drop in income or a change in employment conditions.<sup>253</sup> Moreover, there is currently a significant shortage of social and private rented housing for those on low incomes or on welfare benefits. The upper limits on levels of state rent supplement are viewed as being too low for families to secure decent private rented housing. In some cases, tenants pay unofficial 'top-ups' from their welfare income to secure private rented housing, increasing the risks of arrears and debt.<sup>254</sup>

Qualitative interviews in the Netherlands report eviction risks arising from divorces, relationship breakdown, job loss, reductions in working hours, and illness. The NVVK<sup>255</sup> has argued that many lenders adopted unsustainable lending practices in the past, based on two incomes per household. Also in the Netherlands, the death of the breadwinner, the bankruptcy of one's own business, losing control over finances and poor money management are identified as issues leading to arrears and the potential risk of eviction.<sup>256</sup> The National Mortgage Guarantee Scheme (NHG) calculated in 2013 that, in 65 % of evictions cases, the borrower's divorce was the cause of debt arrears.<sup>257</sup>

Several UK studies on risk factors for evictions have identified high housing costs, unemployment, low income, unmet support needs resulting in poor financial

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<sup>251</sup> Busch-Geertsema et al. (2005), p. 30.

<sup>252</sup> See Frost, Goggin and Lyons (2014).

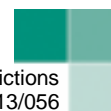
<sup>253</sup> McCarthy (2014).

<sup>254</sup> Focus Ireland (2012). Interview with Senior Staff at Focus Ireland, Dublin, 3 April 2014.

<sup>255</sup> The NVVK is the Dutch federation for debt assistance and social banking (or Dutch Association for Public Credit). Interview with the NVVK.

<sup>256</sup> <http://huizenveiling.org/executiveveiling-voorkomen/>, last accessed 26 April 2014; interview with representatives of Novalink, Amersfoort 29 April 2014. Interview with a manager of Rabobank Nederland, Delft, 30 April 2014.

<sup>257</sup> Quarterly figures NHG, 4<sup>th</sup> quarter 2013, p. 2  
[https://www.nhg.nl/fileadmin/user\\_upload/Documenten/PDF/kwartaalberichten/Kwartaalbericht\\_4e\\_kwartaal\\_2013.pdf](https://www.nhg.nl/fileadmin/user_upload/Documenten/PDF/kwartaalberichten/Kwartaalbericht_4e_kwartaal_2013.pdf), last accessed 6 May 2014.



management, and individual irresponsibility.<sup>258</sup> Additionally, the UK has a longstanding structural problem with providing an adequate supply of affordable housing, particularly in London and the south-east. Consequently, rented and owner-occupied housing is very expensive, and there have been various restrictions to the supply of affordable social housing.

In 2012–13, an estimated 12.9 million UK citizens were living in poverty, an increase of some 2 % compared with 2002–03. A clear association between poverty and private renting has appeared during this period, with an increase of some 2 million people living in poverty in the private rented sector (from 2.2 million private tenants living in poverty to 4.1 million).<sup>259</sup> A study in 2009<sup>260</sup> (see Table 4.3.1) found that almost half (43 %) of those facing mortgage arrears cited loss of job income as a reason.

**Table 4.3.1 Reasons for mortgage arrears in the United Kingdom<sup>261</sup>**

Reasons for mortgage arrears	Percentage selecting this as a reason
Loss of job/income	43
Increase in monthly repayment amount	16
Other essential unplanned expenditure	16
Ill health	15
Paid other debt instead	14
Divorce/separation	8
Decided to spend money on other items	7
Forgot to pay	5

As shown in Table 4.3.1, some 16 % mentioned an increase in the monthly repayment amount as a reason for mortgage arrears, 16 % reported other essential unplanned expenditure and 15 % reported ill health. Some 14 % reported that they had paid other debt first, whilst only 8 % reported divorce/separation as a reason. Some 27 % of the respondents offered more than one reason as the trigger for arrears – for example, one quarter of those who highlighted relationship breakdown (divorce/separation) as a causal factor also reported job loss. These triggering factors also correlate with the likelihood of arrears progressing to possessions. Gall's study found that some 18 % of those highlighting divorce or separation reported that these led to repossessions, and that 9 % of people had, at the time of survey, not arranged repayment of their arrears. Similarly, those reporting job loss or ill health had higher rates of repossessions, and were least likely to agree to repayment arrangements. A change in employment status, returning to a lower-paid job, a reduction in hours or a failure of self-employment may also have a major impact, as social benefits may not adequately compensate for these situations.<sup>262</sup> Poor working households with a mortgage may struggle to find assistance with repayments. The

<sup>258</sup> Rhodes & Bevan (2010), Wallace & Ford (2010).

<sup>259</sup> MacInnes, Aldridge, Bushe, Tinson & Born (2014).

<sup>260</sup> Gall (2009).

<sup>261</sup> Gall (2009).

<sup>262</sup> Home ownership expert UK – interview.

recession created additional causes of arrears,<sup>263</sup> such as over-indebtedness arising from exposure to riskier, high-interest mortgages, coupled with limited opportunities for refinancing debts.<sup>264</sup>

In the UK social rented sector, a study by Phelps highlighted an overrepresentation of women, lone parents and those in employment among eviction cases.<sup>265</sup> Problems in the administration of the housing benefit scheme, a rent support welfare measure, can lead to accumulated arrears.<sup>266</sup> Other problems often stemmed from losing unemployment-related benefits on moving to insecure, erratic employment.<sup>267</sup> A major reason for evictions from social housing is the so-called 'spare room subsidy', popularly known as the 'bedroom tax'.<sup>268</sup> This is leading to increases in housing costs among the poorest lone adults in UK society.<sup>269</sup> The 'bedroom tax' removes some benefit payments from any lone adult with more than one bedroom, on the basis that they have more living space than they require. Research by the National Housing Federation (NHF) in England in 2014 reported that two thirds of tenants renting from NGO social landlords (housing associations) who were affected by the 'bedroom tax' were in rent arrears.<sup>270</sup>

However, the UK national expert has pointed out that the great majority of people who experience repossession or eviction from the rented sectors do not experience homelessness. The statutory homelessness system makes it unlikely that a simple loss of housing, or the loss of earned income, will result in homelessness. In the UK, there is an array of social protection, preventative measures, social housing and homelessness services. Without these various systems in place, poverty, leading to rent arrears, which then leads to eviction and subsequently to homelessness, would almost certainly be far more common than is the case now. There would almost certainly be a much stronger association between income poverty and homelessness, such as exists in the USA.<sup>271</sup>

#### **4.4 Poverty, unemployment and weaker social protection systems as main reasons for evictions in CEE and Southern Member States**

##### **4.4.1 CEE Member States**

In the CEE Member States, according to qualitative interviews, poverty, unemployment, over-indebtedness and financial instability in households are found to be the main reasons for evictions. Rising unemployment in the aftermath of the 2008

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<sup>263</sup> Wallace and Ford (2010).

<sup>264</sup> Wallace and Ford (2009).

<sup>265</sup> Phelps (2008).

<sup>266</sup> Hunter et al. (2005).

<sup>267</sup> Phelps (2008).

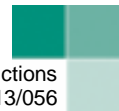
<sup>268</sup> *The Guardian* 14 May 2015 - <http://www.theguardian.com/money/2015/may/14/tenant-evictions-reach-six-year-high-rising-rents-benefit-cuts>.

<sup>269</sup> Shelter (2013) *Briefing: What's wrong with the bedroom tax?*

[http://england.shelter.org.uk/\\_data/assets/pdf\\_file/0020/650630/Bedroom\\_tax\\_-\\_Shelter\\_briefing\\_March\\_2013.pdf](http://england.shelter.org.uk/_data/assets/pdf_file/0020/650630/Bedroom_tax_-_Shelter_briefing_March_2013.pdf).

<sup>270</sup> <http://www.housing.org.uk/media/press-releases/two-thirds-of-households-hit-by-bedroom-tax-are-in-debt-as-anniversary-appr/>.

<sup>271</sup> National Alliance to End Homelessness (2014).



financial crisis is mentioned in most CEE Member States as having generally contributed to increased financial instability, especially for low-income households. Due to the large-scale privatisation of public housing in the post-communist period, the tenancy structure in these Member States is dominated by owner-occupied housing. Relatively few people live in either private or social rented housing. For those in low-income, low-wage and unemployed households, who are often on subsistence benefits, rent arrears and utility arrears (due to high heating costs in cold winters) are a major reason for evictions. In addition, low levels of savings contribute to the vulnerability of low-income households, as many of them have no financial buffer in a crisis situation. In most CEE Member States, the remaining, non-privatised social rented sector is small, which causes significant barriers to providing housing for vulnerable families and individuals. Much of this social rented housing stock needs renovation, which may add to heating costs and could increase the risk of utility arrears. On the other hand, according to qualitative interviews, arrears in social rented housing are not always rigorously enforced by local authorities.

Along with people experiencing poverty in general, certain segments of society seem to be particularly vulnerable to evictions. According to the qualitative interviews, people with a Roma background are generally vulnerable to eviction – including evictions from informal settlements. Moreover, people with mental disabilities are vulnerable to eviction from their own property. They may become victims of property frauds, others may take advantage of them and their property, or relatives may no longer be willing to act as their carers. This is a problem generally reinforced by the relatively weak social protection system for these groups, especially in the poorest CEE Member States.

Renting on the unofficial or ‘black’ market is also identified in interviews as a significant issue in some CEE Member States, although this also takes place in other Member States. Due to long waiting lists for non-profit dwellings or emergency units, the only option for many vulnerable people is this unofficial market. There is weak legal protection here, since no formal procedures for evictions are followed and few records on evictions exist. The risk of eviction and subsequent homelessness can be high, but there is little research in this field.

In Bulgaria, an expert from the National Ombudsman’s office shared the view that many Roma people (who for decades have occupied public properties in informal settlements) are the most vulnerable to evictions in Bulgaria. They would have no place to go in cases of forced eviction and demolition of their housing, due to the fact that they and their close community have been living in these areas for decades. A similar situation is reported from Romania.

Some adults with disabilities are also vulnerable to evictions in Bulgaria. When they are evicted from their own property, they are often placed by their relatives in institutions situated far from their community. Relatives become official guardians for these people. In 2012, out of 7 500 persons under this type of guardianship, some 3 500 were placed in social care ‘homes’.<sup>272</sup> Apart from the cases in which adults

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<sup>272</sup> BG, Bulgarian Centre for Non-profit Law (2014) <http://www.equalrights.bcnl.org/>, last accessed 13 May 2014.



with disabilities are evicted due to fraud or family abuse, some social services refuse to accept patients who have been discharged from psychiatric wards who do not have relatives and a place to stay, despite their obligation to assist and accept such people.<sup>273</sup>

Reasons to initiate eviction or foreclosure procedures have been identified in Hungary through qualitative interviews conducted for this study. The main reasons for evictions in the owner-occupied sector are: arrears with utility fees, other service fees (e.g. mobile phone subscription or car loans), or defaulted mortgage and other loans secured on the debtor's dwelling (or on another person's dwelling). Among mortgage loans, foreign exchange loans present people with the highest risk of falling into arrears. For tenants in the public sector, the main reasons are rent or utility bill arrears. For private sector tenants, the significant reasons also include rent or utility bill arrears, although illegal eviction (or forced departure) is reported to be most common, as the sector operates mostly in the black economy. Arrears are often related to household break-up, when the decrease in household income results in affordability problems.

In Latvia, a study on the causes and duration of unemployment and social exclusion was carried out in 2007. This was based on interviews with about 1 000 respondents from among different cohorts of people who had been subjected to unemployment risk and social exclusion: disabled people, young people who had left the formal education system, single parents, parents on childcare leave, ex-prisoners, young people lacking work experience after graduating from educational establishments, people of pre-retirement age and homeless people. It concluded that the main risk factor for evictions was residents' low income level and unemployment, and the corresponding inability to pay the high rental and utilities charges.<sup>274</sup>

Qualitative interviews performed for this study in Poland point to adverse economic circumstances (poverty and unemployment) as the main causes for evictions. Furthermore, many eviction cases involved people with psychosocial vulnerabilities (mental illness and substance abuse). Sometimes, a combination of these factors leads to eviction.<sup>275</sup>

In Slovenia, the qualitative interviews identified individuals' complex needs and problems – combined with economic problems, renting on the unofficial market, and a general lack of preventive programmes – as factors creating risks of eviction. Low income and insufficient social support seem to be the major risk factors. The most vulnerable people being evicted from non-profit dwellings appeared to be single mothers and single older men.

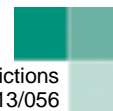
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<sup>273</sup> BG, National Ombudsman (2014) <http://www.ombudsman.bg/news/3015>, last accessed 13 May 2014.

<sup>274</sup> Institute of Philosophy and Sociology of the University of Latvia (2007), pp. 29 and 185.

<sup>275</sup> Interviews with a member of the Supreme Court of Poland, a former member of the Polish Civil Law Codification Commission, and also with the Director of the Civil Law Department of the Polish Ombudsman Office.





#### 4.4.2 Southern EU Member States

Similarly to the CEE Member States, there is relatively weak statistical evidence on the risk factors for evictions in Southern Member States. However, the available evidence, including the qualitative information recorded for this study, indicates that unemployment and household breakdown (including divorce) appear to be the two factors most strongly associated with the risk of eviction in the Southern Member States.

In Spain, the main cause for defaulting on mortgage repayments is unemployment, which in 2013 affected 26 % of the workforce. Unemployment is highlighted as the reason for defaulting on mortgage payments in 70.4 % of the cases in the survey carried out by the *Observatorio* DESC and PAH.<sup>276</sup> Another study<sup>277</sup> carried out in 2013 shows that unemployment is very high (68 % for mortgagors and 75 % for tenants) among those availing themselves of intermediation services in order to prevent evictions. Other causes of mortgage default raised by the *Observatorio* DESC and PAH Report included increases in mortgage instalments (32.8 % cases), and the existence of other debts (21.3 %). Over-indebtedness (correlated with unemployment) was also identified as a problem for mortgagors and tenants. Separation and divorces were the cause of defaulting for 15.1 % of those responding to the *Observatorio* DESC and PAH survey.

There is no statistical evidence on the risk factors for evictions in Greece. Qualitative interviews for this study with officials from the responsible statutory authorities revealed that the most important risk factors related to overall low income, directly linked to the types of employment undertaken by those at risk. In 2012, Greece ranked third among EU Member States in terms of the proportion of the population at risk of poverty or social exclusion. Some 34.6 % of the population were living below this specific threshold.<sup>278</sup> The Greek unemployment rate is currently the highest among all EU Member States.<sup>279</sup> Most households threatened by eviction have experienced at least one job loss (many must take on two jobs to make ends meet).<sup>280</sup> Other individual factors were also highlighted in these interviews, such as antisocial behaviour related to psychosocial instability.<sup>281</sup> Further risk factors that may lead to an eviction are the breaking of family bonds, including divorce, and domestic violence. Overall, the most important risk factor leading to an eviction in Greece is assessed to be diminishing and sometimes complete loss of income, followed by household breakdown.<sup>282</sup>

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<sup>276</sup> DESC and PAH (2013), p. 107.

<sup>277</sup> Càritas Barcelona (2013), p. 80.

<sup>278</sup> Eurostat (2013).

<sup>279</sup> Eurostat (2013).

<sup>280</sup> Interview with the social workers responsible for tackling this issue, Department of Welfare, Athens, March 2014.

<sup>281</sup> Interview with the Greek Association of Tenants, which stressed the significance of antisocial behaviour as an important risk factor after loss of income and inability to pay the rent.

<sup>282</sup> Interview with the Greek Association of Tenants, 30 March 2014.

There is no statistical evidence on the risk factors for evictions in Portugal. Qualitative interviews<sup>283</sup> performed for this study were unanimous in highlighting the importance of unemployment as a predominant risk factor for eviction. The rise of unemployment has had a major impact on the income of many households and on their ability to cope with their housing costs. This applies particularly to families in the private rented market and in the owner-occupied sector. Moreover, these housing costs are often part of a wider set of personal/family debt repayments, which were undertaken at an earlier time of economic stability and higher income. The economic crisis, reductions in pay, increased taxes, increased unemployment and limited access to welfare benefits have all contributed to increased arrears and risks of evictions. A significant factor highlighted in the interviews was the discrepancy between high rents in the private rental sector (for what are often low-quality dwellings), and a rising 'market demand' from low-income families who are unable to access municipal social housing due to a shortage of supply. According to the local authorities contacted, these families are in fact living below the poverty line, with very low incomes.<sup>284</sup> Although many of them are beneficiaries of the Social Inclusion Income, they still have major difficulties in meeting rent levels in the private rented sector.

In Italy, the vast majority of evictions are caused by non-payment of rent (89 % in 2013). From 2007 to 2013, the eviction orders issued for non-payment of rent almost doubled. According to the qualitative interviews, adverse economic circumstances are the most important risk factors behind evictions from rented housing.

#### 4.5 Conclusion

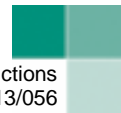
This analysis shows both commonalities and variations across EU Member States in the risk factors and mechanisms leading to evictions. In all Member States, the financial instability of households and contributory factors such as low income, over-indebtedness and unemployment are highlighted as major risk factors for evictions. In most Member States, dysfunctional housing markets and high rent levels in larger cities are important structural reasons imposing financial strains on low-income households. Divorce and household breakdown are generally highlighted as a significant risk factor for evictions. In all Member States, there are reports of individuals with complex needs (e.g. mental illness and substance abuse problems) among those evicted.

While there are certain commonalities in the risk factors identified, the analysis also shows that there are significant differences. To a considerable extent, evictions in the Northern and Western Member States are part of a wider pattern of social exclusion among people with complex needs. General poverty problems appear to be the predominant risk factor in the CEE Member States. Unemployment and household breakdown are particularly highlighted as the two predominant risk factors in the Southern Member States.

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<sup>283</sup> NGOs, municipalities, an over-indebtedness support unit, enforcement agents, and a legal eviction expert.

<sup>284</sup> In June 2013, the mean figures for the level of benefit were EUR 82.64 per person/month and EUR 206.38 per household/month.



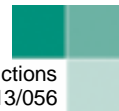
In Northern and Western Member States, there is complexity in the risk factors for evictions. While socioeconomic risk factors such as unemployment and low income are significant in these Member States, there is also a clear tendency for evictions to form part of a wider pattern of multidimensional social exclusion. People with high levels of support and other needs are strongly overrepresented among those evicted in those Member States where risk factors have been examined. Indeed, there is a somewhat complex relationship between welfare systems and the risk of eviction for people with complex needs. This pattern indicates unmet support needs for people with complex problems, and points to gaps in the otherwise relatively extensive welfare systems in most of these Member States. However, the prevalence of people with complex needs among those evicted may reflect the fact that, in some Member States, these households are generally more likely to be integrated into ordinary, permanent housing. This means that they may have normal tenancies and could therefore be subject to the normal rules for evictions, without any leniency. In other Member States, these households may be less likely to be housed under such general tenancy arrangements and are not necessarily subject to generally enforceable tenancy rules.

In CEE Member States there is weaker evidence on the risk factors for evictions, as statistical evidence is largely absent. According to qualitative evidence, the risk of eviction in these Member States is more widely associated with general poverty problems, not only for unemployed people on subsistence benefits, but also among the working poor. In these Member States, rent arrears and utility arrears (due to high heating costs in cold winters and dilapidated housing in need of renovation) are highlighted among the main reasons for evictions. The high level of owner-occupied housing arising from the large-scale privatisation of social housing in the post-communist transition period appears to be a significant factor in the low levels of evictions in most CEE Member States. However, this does not apply to many vulnerable people who are at higher risk of eviction, in particular Roma people and people with mental disabilities.<sup>285</sup> There is a general absence of statistical evidence on the risk of eviction for any particular populations.

In Southern Member States the statistical evidence on risk factors for evictions is generally weak, but the evidence available from Spain points to unemployment and family breakdown as major risk factors, a pattern which, according to qualitative interviews, has been reinforced in the aftermath of the financial crisis.

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<sup>285</sup> See Mathema and Dan (2014), p. 231, quoting the *Regional Roma Survey 2011* for RO: “Some 54 % of urban Roma report to have difficulty paying rent, versus 39 % of rural Roma, and a higher share of urban Roma face the risk of eviction”. For mental health issues related to evictions, see, for BG, Bulgaria, *National Ombudsperson* (2014) <http://www.ombudsman.bg/news/3015> (13 May 2014). The HU national expert has also reported mental health problems related to evictions for this study.



## 5 Evictions as a pathway to homelessness

### 5.1 Introduction

This chapter explores evidence on the link between evictions and homelessness across EU Member States. Not all evictions result in homelessness, as many evicted families and individuals manage to find another housing solution. Opportunities for re-housing and the extent of welfare services will impact on the extent of homelessness following an eviction, and this is examined in depth in chapters 6 to 9 on preventive measures. Research has indicated that, in cases where evictions lead to homelessness, there is often a process where the evicted family or individual at first asks for help and support from family or friends. While some find a housing solution during this period, for others, this period of staying with family or friends may gradually strain support relations. Eventually, they may have to turn to homeless shelters and services.<sup>286</sup> Indeed, the fact that there are different definitions of homelessness, especially between Southern and Northern European Member States, is itself an issue.<sup>287</sup>

### 5.2 Evidence on the link between evictions and homelessness in Northern Member States

Detailed data is only available in a few EU Member States on the situation of evicted households after eviction. Where such evidence exists – mainly in Denmark, Finland and the Netherlands – it shows that, although most evicted households succeed in finding new housing, about one in four evicted people were found to be in a homelessness situation when surveyed sometime after the eviction. However, in these Member States, evictions are widely concentrated among people with complex support needs, who have a higher risk of becoming homeless after an eviction. There is no comparable statistical evidence on the share of evicted people becoming homeless after eviction in Southern, Central or Eastern Member States.

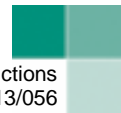
In Denmark, the relationship between evictions and homelessness was examined in 2012,<sup>288</sup> along with other consequences of evictions. About 18 % of those surveyed were not found in the housing registers after the first year following an eviction, whereas 79 % were recorded at a fixed address. Some 3 % were in institutional accommodation, which did not include homeless shelters. The percentage of those people who were not recorded as being in any type of housing decreased in the second and third years to 14 -15 %. While the exact circumstances of the people not recorded to be in housing cannot be determined, the report concluded that the individuals not recorded as being in housing are likely to be in a homelessness situation.

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<sup>286</sup> Kemp et al. (2006), Pleace et al. (2008), McDonagh (2011).

<sup>287</sup> For this study, homelessness is defined according to the so-called 'ETHOS light' definition, (see Edgar, W. et al. (2007), p. 66), but there are varying national definitions which are not so comprehensive. For instance, in Denmark and Finland, evicted people staying temporarily with family and friends are regarded as homeless.

<sup>288</sup> Høst et al. (2012).



The Danish eviction study included a survey among evicted people one year after an eviction. Some 25 % of them were found to be homeless, and 9 % were rough sleepers, shelter users, staying in hotels, or in short-term transitional housing. Approximately 16 % lived temporarily with family or friends, a group included in the Danish homelessness definition. About 31 % were in private rented housing, 38 % in public housing, and about 6 % in other housing. Similar results were found in a previous eviction study conducted using the same methods from 2008.<sup>289</sup> However, the 2012 study also concluded that homeless people, among those previously evicted, are likely to have been under-represented in the survey, and that the actual number of homeless people among those evicted may be even higher.

Some 20 % of evicted households reported that they had lost family relations following the eviction, 37 % reported loss of relationships with close friends, and 29 % reported the loss of other social relations. Significantly, some 66 % reported that the eviction had led to a loss of personal safety. Amongst those households surveyed who either had children living with them or had regular access to their children before eviction, 6 % reported that they lost this access to their children after eviction. Of those with children of school age, some 33 % had to change their children's schools.

In Denmark, the homelessness count in 2013 found 5 820 people to be homeless, including 595 rough sleepers, 2 354 using shelters, and 1 653 staying with family or friends. This amounts to about 0.1 % of the total Danish population of 5.6 million. These homelessness counts generally show that homelessness in Denmark is widely concentrated among people with complex support needs. Some 47 % of homeless people have a mental illness, while 65 % have a substance abuse problem. Indeed, some 78 % have a mental illness, a substance abuse problem, or both. Eviction was stated as a main reason in 21 % of all homeless cases in the 2013 count. This was highest in older age groups, at 26 % – among both 50-59 year olds and those aged 60 years or older. It was somewhat lower among young homeless people, at 18 % among 18-24 year-olds and 17 % among 25-29 year-olds. According to the report of the count, the actual number of homeless people who experienced an eviction may be higher than was recorded, as the eviction may have happened some years before, while other more imminent reasons may be reported in the questionnaire.<sup>290</sup> An indication of a higher share of evictees among homeless people may be found in a recent user survey on Danish homeless shelters, in which 68 % of the 175 shelter users interviewed reported that they had previously been evicted.<sup>291</sup>

In Finland, the link between evictions and homelessness has also been established through both administrative and survey data. About one in four of Finnish executed evictions led to homelessness – the same figure as that established from similar Danish data. Data analysis conducted for this report has shown that some 27 % of persons actually evicted in Finland were registered as having no permanent place of

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<sup>289</sup> Christensen and Nielsen (2008).

<sup>290</sup> Benjaminsen and Lauritzen (2013), p. 135.

<sup>291</sup> Benjaminsen et al. (2015), p. 60.



residence since the start of the eviction process.<sup>292</sup> Amongst evicted people with no permanent place of residence, some 78 % were men and 22 % were women, whereas the respective share of all evicted persons was 72 % men and 28 % women, indicating a slightly higher risk amongst men of becoming homeless after an eviction in Finland. Among the evicted persons with no permanent place of residence, some 18 % were 18-24 years old (19 % of the total evictees), 80 % were 24-65 years old (78 % of the total evictees) and 2 % were 65 or older (3 % of the total evictees). The risk of homelessness after an eviction is broadly similar for Finnish nationals and immigrants.

A study carried out in homeless reception centres in Helsinki showed that, in most cases, the homelessness was caused by a multitude of interrelated problems and reasons such as substance abuse, mental health problems, problems in relationships, poor life management and a lack of support or social networks, combined with poverty.<sup>293</sup> Another study in Helsinki, in 2013, showed that a quarter of the need for crisis accommodation arose from eviction judgments, which were mostly due to rent arrears. About 17 % of the respondents needed crisis accommodation because their landlord had annulled the contract, and 18 % had discontinued the contract themselves. Over 40 % of them came to crisis accommodation from temporary accommodation with relatives or friends, which was because of divorce or separation from cohabitation in 28 % of cases.<sup>294</sup> The high percentage of those approaching the service after living with relatives or friends implies that many turn to relatives and friends at the first stage of homelessness and turn to social services only after these resources are used up. Previous Finnish studies on homelessness have noted that young people and immigrants often find a place to stay with relatives and friends and do not turn to social services.<sup>295</sup>

In Sweden, evidence on evictions as a reason for homelessness has been examined by the Swedish Board of Health and Welfare in national homelessness counts (one-week counts) since 1993. In 2011, there were 34 000 homeless people,<sup>296</sup> with 4 500 in situations of acute homelessness. For 25 % of them, eviction was a cause of homelessness. Among homeless people living in the institutional care category of housing, eviction was mentioned in 24 % of cases; in 25 % of cases among those in secondary housing; and in 18 % of cases among people in short-term insecure housing.<sup>297</sup>

The Swedish case is paradoxical, as the overall number of evictions has been decreasing and is at a relatively low level, while at the same time the number of

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<sup>292</sup> Data about the persons evicted by the bailiff from the ULJAS-data system were merged with personal and housing history data from the Population Information System by personal identity code to check whether those evicted had been registered as having no permanent place of residence.

<sup>293</sup> Erkkilä's and Stenius-Ayoade (2009).

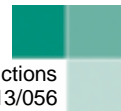
<sup>294</sup> Voutilainen (2013), pp. 7-9.

<sup>295</sup> See Mikkonen and Kärkkäinen (2003), Hannikainen and Kärkkäinen (1997), Josefson (2007).

<sup>296</sup> The large numbers of reported homeless people in Sweden mainly concern people who live in relatively long-term housing but with no permanent contracts, e.g. in 'training flats' and apartments with social contracts (second-hand contracts). These people are officially regarded as homeless persons, due to the lack of permanency of their living arrangements.

<sup>297</sup> Socialstyrelsen (2011), p. 79.





homeless people has been increasing, and is now at a higher level than in the other Nordic countries (adjusted for population size). National Board of Housing Building and Planning reports show that social services agencies have increasingly become landlords for persons not accepted in the regular housing market. Almost half of those included in the study live in accommodation provided by these long-term housing solutions. This group includes many families, which means that homelessness and insecure housing is a reality for quite a large group of children in Sweden. While many factors may influence the relatively low and decreasing number of evictions in Sweden, including preventative efforts by local authorities, another reason may be that increasing segments of vulnerable households are being excluded from the ordinary housing market due to strong access barriers. At the same time, they are not exposed to the risk of eviction for mortgage or rent arrears as they have no permanent rental contracts.

In contrast, and paradoxically, a possible reason for the relatively higher number of evictions but lower numbers of homeless people in Denmark compared with Sweden may be that more vulnerable people gain access to ordinary housing in Denmark, which has maintained a waiting list-based system with public allocation systems for households in acute housing need. The relatively high level of people with complex support needs among evicted people in Denmark may reflect a higher risk of eviction for these people if they do not get sufficiently intensive social support along with access to social housing. In Sweden, many vulnerable people do not gain access to their own permanent tenancy contracts in the first place, but are instead housed on secondary contracts – that is, they are not the named tenant. These secondary contracts may, however, be useful in preventing evictions, as the municipality can take over the contract in cases where tenants with complex needs are threatened by an eviction. This example illustrates that no simple relationship exists between the extent of evictions and the extent of homelessness, and that the mechanisms generating both are embedded in the wider characteristics of the housing and welfare systems.

### **5.3 Evidence on the link between evictions and homelessness in Western Member States**

In the Netherlands, 13 % of newly homeless adults in the four largest cities (Amsterdam, Den Haag, Rotterdam and Utrecht)<sup>298</sup> stated in 2012 that they had been evicted in the previous three months. However, there are great differences between these cities. In Amsterdam, 137 (9 %) of the newly homeless adults had been evicted in the previous three months, 196 in Den Haag (16 %), 125 (16 %) in Rotterdam, and 5 (2 %) in Utrecht.

Many evicted people find temporary accommodation, before eventually relying on homeless shelters. In Amsterdam, all household members who were evicted from social housing and private rented residences in 2010 were traced.<sup>299</sup> Two thirds of them were one-person households. After one year, 13 % of people from these evicted households had used social relief services or a postal address for homeless

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<sup>298</sup> Planije (2013), p. 56.

<sup>299</sup> Akkermans and Råkers (2013), p. 55.

people. After 2.5 years, this number had increased to 20 %. The number of households regarded as 'administratively homeless' (not registered at a permanent address in the population register for a period of time) after 2.5 years was more than 50 %. The groups identified as having a higher risk of becoming homeless after an eviction were single men, 36-64 year olds, and people of Moroccan descent or from other African nations.

While it is unclear how many evictions lead to homelessness, some information is available on the number of homeless people reporting evictions as the cause of their homelessness. In a study among 120 recently homeless adults in Amsterdam, 38 % stated that their homelessness was caused by an eviction.<sup>300</sup> In a sample of 513 homeless people who had registered themselves at one of the access points for social relief in the four major cities of the Netherlands (Amsterdam, Rotterdam, Den Haag and Utrecht) in 2011, some 32.2 % reported an eviction as the cause of their homelessness.<sup>301</sup>

Moreover, Dutch research shows that, after an eviction, it is extremely difficult to find new housing.<sup>302</sup> Social housing associations request a landlord statement from the previous landlord, verifying that the tenant has always made their rent payments. Evicted tenants are not able to obtain such statements from their previous landlord, and therefore it is nearly impossible for them to acquire a new social housing residence. They have to find housing in the more expensive private sector, or find (temporary) accommodation elsewhere. Some housing associations provide 'second chance accommodation' for evicted tenants. If tenants accept appropriate care and budget management services, they are allowed to rent a social housing unit again.

In Germany, a study of prevention services in North-Rhine Westphalia requested local data from 13 cities (of which four could comply) on the relationship between the announced eviction dates, enforced evictions and households to be accommodated (directly) after an eviction.<sup>303</sup> One larger city with 324 000 inhabitants had registered 1 587 prevention cases in 2012 (4.9 per 1 000 inhabitants). An eviction date had been set by the bailiff only for 321 households (20.2 % of all prevention cases known in 2012). The eviction was executed against 226 of them (70.4 %), but only 28 households had to be provided with temporary accommodation afterwards. In another city with 103 000 inhabitants, a total of 663 prevention cases became known to the prevention service during 2012 (6.4 per 1 000 inhabitants). For 96 households (14.5 % of all prevention cases known in 2012), an eviction date was set. The eviction was executed against 71 of them (74 %), and 19 households had to be provided with temporary accommodation afterwards.

This demonstrates again that, in the overall process of eviction, from the initial notice to the execution of the eviction, a high number of households exit or 'escape' from the process. Many received support from the municipalities, avoided homelessness through self-help, i.e. through finding an agreement with the landlord (paying back

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<sup>300</sup> Van Laere, De Wit and Klazinga (2009).

<sup>301</sup> Van Straaten et al. (2012).

<sup>302</sup> Akkermans and Räkera (2013), p. 57.

<sup>303</sup> Busch-Geertsema et al. (2014).

arrears in instalments), or by moving to another dwelling. However, interviews also show that many homeless people have – in the period directly after losing their home – tried to find informal support, typically by staying with friends and relatives. They only become officially homeless after these sources of informal support have been exhausted. Therefore, caution is required when observing the large gap between the number of executed evictions and that of households to be provided with temporary accommodation directly after an eviction.

Data from NGOs providing services for homeless people in Germany show that, in 2012, almost half (47.2 %) of all registered homeless clients had lost their last home by moving out without a notice to quit (28.2 %), or by voluntarily ending the tenancy themselves (19 %). Very few had become homeless as a result of their tenancy period ending normally (1.7 %) or because they had to leave as offenders in a case of domestic violence (0.8 %). For the remaining half, we know that they had received a notice to quit from their landlord. Of the 21.7 % of homeless people surveyed who had been evicted, some 2 % left their home after a court case was initiated, and 26.6 % had left before courts or bailiffs were involved.<sup>304</sup>

A qualitative French study<sup>305</sup> among 100 evicted households has shown that, after eviction, some 5 % of them were ‘on the streets’, 24 % were housed by family or relatives, 15 % were housed in accommodation for homeless people and 8 % in a ‘supported dwelling.’ An earlier study<sup>306</sup> showed that 19 out of 93 evicted households surveyed had no conventional housing after eviction, 15 were living with family or relatives, 2 were in temporary accommodation and 2 were living on the streets.

In Ireland, a report on reasons for family homelessness in Dublin by Focus Housing in 2013<sup>307</sup> showed that 72 % of people had been residing in private rented housing prior to becoming homeless. The primary causes of homelessness were rent arrears (36 %), overcrowding/family relationship difficulties (16 %), refused state rent supplement (8 %), landlord moving/selling property (4 %), and a reduction to the maximum rent limit (4 %).

#### **5.4 Short-term tenancies as a major pathway into homelessness in the United Kingdom**

While in most Northern and Western Member States a link between evictions and homelessness can be established, UK research points to a complexity of pathways from evictions to homelessness. Short-term (6 or 12 months) or assured shorthold tenancies (ASTs)<sup>308</sup> were introduced in 1988 and now account for almost all private rented tenancies.<sup>309</sup> While the automatic expiry of AST arrangements has emerged

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<sup>304</sup> BAG W (2013), p. 7, data is based on 13 792 homeless persons.

<sup>305</sup> Adil du Gard (2012).

<sup>306</sup> Adil du Gard (2011).

<sup>307</sup> Focus Ireland (2013). A total of 25 families residing in a range of emergency accommodation in Dublin were interviewed as part of the study.

<sup>308</sup> This term applies to England and Wales, while in Scotland these are termed ‘short assured tenancies’.

<sup>309</sup> The EU Country Specific Report (2013) requested the UK to ‘Take steps to improve the functioning of rental markets, in particular by making longer rental terms more attractive to both tenants and

as a reason for homelessness, this link with evictions is complex in the United Kingdom, where there is an array of social protection, preventative, social housing and homelessness services. While the statutory homelessness acceptances do not record the full extent of homelessness, as many homeless people are not in priority need, or are single or otherwise not eligible, the prevalence of terminations of ASTs as a reason for the loss of the last settled home rose from 6 150 households in 2010 to 13 230 in 2013 (rising from 14 % to 25 % of all statutory local authority homelessness acceptances in England).<sup>310</sup> In the same period, about a third of local authority statutory homelessness acceptances were assessed as having become homeless after losing their last settled home because ‘friends or relatives were no longer willing to accommodate’ them. This was a greater number than that of people reporting the loss of their last settled home due to eviction because of mortgage or rent arrears (5 %).

UK research indicates that most homeless families have low support needs.<sup>311</sup> A clear difference appears across welfare systems, as research from the Scandinavian countries shows that homelessness there is more concentrated among people with complex support needs. UK research on young people suggests that they are quite unlikely to experience eviction, because they have often not lived independently prior to becoming homeless.<sup>312</sup> However, similarly to Scandinavian countries, there is evidence in the UK of the presence of a high-need, high-risk population of people with recurrent and sustained homelessness, who have not lived independently for many years or have never lived independently. This group faces multiple barriers to securing a tenancy, ranging from low income to unmet support needs. Social and private landlords can be reluctant to house this group, who are seen as presenting housing management problems.<sup>313</sup> This means that they can struggle to secure any housing.<sup>314</sup>

Scotland and Wales exhibit a very similar picture to England. Generally (outside the AST system), they have only a low number of statutorily accepted homeless households evicted for rent or mortgage arrears, typically at levels of around 5 to 6 % since 2010.<sup>315</sup> Less data is available for Northern Ireland on the links between eviction and homelessness.<sup>316</sup>

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landlords’. See [http://ec.europa.eu/europe2020/pdf/csr2013/uk/csr2013\\_council\\_uk\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2013/uk/csr2013_council_uk_en.pdf).

<sup>310</sup> P1E, DCLG. See

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/437273/201503\\_Statutory\\_Homelessness.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437273/201503_Statutory_Homelessness.pdf). For a description of the limitations of the statistics in terms of overall UK homelessness see <http://www.crisis.org.uk/data/files/publications/NationsApart.pdf>.

<sup>311</sup> Pleace et al. (2008).

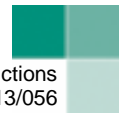
<sup>312</sup> Pleace et al. (2008), Quilgars et al. (2008).

<sup>313</sup> Bretherton and Pleace (2011).

<sup>314</sup> Jones and Pleace (2010).

<sup>315</sup> Fitzpatrick et al. (2012).

<sup>316</sup> Pleace and Bretherton (2013), Fitzpatrick et al. (2013).



## 5.5 Evidence emerging on the link between evictions and homelessness in Central and Eastern European (CEE) and Southern European Member States

### *Central and Eastern European Member States*

In the CEE Member States, the evidence base on the link between evictions and homelessness is weaker than in Northern and Western European Member States.

In Estonia, a questionnaire-based study among 926 homeless people in Tallinn<sup>317</sup> showed that some 22 % had mentioned eviction, forced sale or annulment of the lease contract as a cause of homelessness, while 18 % mentioned reasons related to rent debts, inability to pay rent, etc. Some 36 % were former lessees, 24 % were ex-owners of their housing, and 30 % had legally resided with someone else, e.g. their spouse, children, etc. Some 63 % of night shelter residents and 46 % of people living on the streets had previously been either owners or lessees of their housing. Another Estonian study identified typical chains of events leading to homelessness, such as:<sup>318</sup>

- unemployment → misuse of alcohol → rent debts – eviction or enforced sale of an apartment;
- unemployment → misuse of alcohol → end of family life or cohabitation – loss of housing;
- drug addiction → banished from family or end of family life → loss of housing;
- labour migration to cities → failure to find permanent employment → poor housing conditions or homelessness;
- inappropriate use of dwellings → landlords terminate lease → person goes to shelter;
- physical or mental impairments → loss of housing due to fraud → homelessness;
- risky financial behaviour → loss of employment or income → loss of housing.

In Hungary, a homelessness survey in 2011 showed that some 6 % of respondents had been evicted, 15 % could not pay their rent any more (in private and public rentals), 8 % lost their home, which was related to their job, 7 % were expelled from their home, 5 % were victims of housing-related fraud, and the dwelling became uninhabitable in 3 % of cases. The study concluded that half of the respondents suffered from a gradual home loss process ('housing slope'), while the other half had never enjoyed a stable, secure housing situation. Furthermore, 12 % of the respondents became homeless after being released from an institution (child care, social care institutions, hospitals, jails etc.).<sup>319</sup>

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<sup>317</sup> Kodutud (2012), pp. 9-10.

<sup>318</sup> Kőre (2003), p. 17.

<sup>319</sup> See:

[http://www.bmszki.hu/sites/default/files/field/uploads/valtozo\\_es\\_valtozatlan\\_otthonalanul\\_9.pdf](http://www.bmszki.hu/sites/default/files/field/uploads/valtozo_es_valtozatlan_otthonalanul_9.pdf), last accessed 14 June 2015.





The information on what forms of homelessness occur after an eviction is very sporadic. The above-cited study on homeless people (among other research) and the interviews that were conducted demonstrate that the loss of housing is often a final stage of the process when people occupy increasingly poorer-quality housing.

Qualitative interviews with homeless service providers in Hungary identified particular groups with a higher risk of homelessness following an eviction. These include older single people without family, people who have lost their income or have a very low income, isolated people, often with some type of mental or psychological problem, and divorced people, especially men. Many people in these groups have come from private rentals.

In Vilnius, Lithuania, a study in 2011 of 61 people begging on the streets found that the two key reasons for homelessness among the interviewees were loss of housing (38 %) and loss of income (38 %).<sup>320</sup>

In a study<sup>321</sup> in Ljubljana, Slovenia, some 54 % of homeless interviewees indicated that eviction was the third most common reason for homelessness after 'financial troubles' and 'individual decision'. Another Slovenian study<sup>322</sup> indicated that eviction following rent arrears was the cause of homelessness for 19.4 % of respondents. Loss of dwelling due to mortgage arrears was indicated as a reason by 4.5 %, while 11.9 % indicated that they lost their housing as it was inappropriate as a place to live (e.g. because of demolition). The most common reasons listed were loss of job (75.5 %), grave illness (57.5 %), divorce or death of a partner (47 %), and domestic violence (43.9 %).

### *Southern European Member States*

There is relatively little evidence in Southern European Member States on pathways from evictions to homelessness. The existing evidence predominantly points to unemployment and family break-up/instability as major reasons for homelessness, while eviction is less often given as a cause. Family support is important in cases of evictions, reflecting the generally weaker role of the public welfare system. This leaves people with weak family ties in a particularly vulnerable situation, where support from NGOs is often more or less the only support available. Many NGOs are under pressure due to general cutbacks in public financing, while there are growing general demands, as unemployment has risen dramatically. Moreover, it should be noted that differences in welfare systems are also reflected in different perceptions of what encompasses a homelessness situation after an eviction. While in many Northern EU Member States, staying temporarily with family or friends following an eviction is recognised as homelessness, this is not the case in Southern Europe.

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<sup>320</sup> *Socialinės rizikos asmenų, neturinčių nuolatinės gyvenamosios vietos, ir elgetaujančiųjų 2013-2018 metų integracijos ir socialinės pagalbos programa*, Vilnius (Programme on the integration of and social support for persons at social risk and at risk of homelessness and begging 2013-2018, Vilnius).

<sup>321</sup> Dekleva and Razpotnik (2007).

<sup>322</sup> Mandič et al. (2012).



In Spain, the INE 2012<sup>323</sup> survey showed that, of 22 938 homeless people, half had spent more than three years away from their own dwelling. Almost half (45 %) considered that they were homeless because they had lost their jobs, while 78 % were currently unemployed.<sup>324</sup> Some 26 % considered that they were homeless because they had been unable to pay their housing costs, compared to only 11 % in a similar study in 2005. Approximately 21 % reported their reasons for homelessness as divorce/separation (20 % in 2005), in 13 % of cases it was because they had moved into a new city, and for 12 % it was due to an eviction from their dwelling (up from 8 % in 2005). A further 6 % reported that their homelessness was due to a lease contract running out. The importance of the family in cases of evictions is significant in Spain, as many people return to the family home.

There is also a legal obligation in Spain for relatives to give shelter to evicted relatives.<sup>325</sup> This includes food, medical assistance and housing, which means that, if a relative (parents, grandparents, children, grandchildren and brothers/sisters) has enough capability (e.g. a free room) he or she is obliged by law to provide the relative in need with those services. Indeed, the person in need can apply to a judge to ensure that this is provided, and there is no limit on age or duration for these provisions. Of course, the vast majority of people offer essential support towards evicted relatives on a voluntary basis, especially parents, who have often fully repaid their mortgages. It is estimated that some 5.5 % of the expenses of older people in Spain are dedicated to their children and grandchildren, and some 40.4 % have used their retirement pension to help relatives and friends (in 2009 it was only 15.1 %).<sup>326</sup> With some 300 000 families without any employment – a figure that has tripled since 2008 – many depend on the retirement pensions of their elderly relatives.<sup>327</sup> Approximately one fifth of all unemployed people live on the pension of an elderly relative, and the number of elderly people who live in their own dwelling with their sons and daughters (27.9 %) has more than doubled. Returning to the parents' home may not be an ideal situation, however, and there is always a risk that elderly relatives are no longer capable of helping their families.

In Greece, a study of 200 homeless people in 2008, before the crisis,<sup>328</sup> showed that 50 % of them attributed their homelessness to low income, 46 % to unemployment, 35 % to lack of family support, 17 % to a divorce, 13 % to substance abuse, 8 % to psychosocial problems, and 7 % to the foreclosure of property.

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<sup>323</sup> INE (2012), available at <http://www.ine.es/prensa/np761.pdf>, last accessed 16 June 2015.

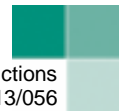
<sup>324</sup> Sales i Campos, A. (2014), p.16.

<sup>325</sup> See Articles 142-144 of the Spanish Civil Code of 1889. Art. 142 states: 'Support shall be deemed to mean everything which is indispensable for food, shelter, dress and medical assistance. Support shall also comprise education and instruction of the recipient of support while he is underage and even thereafter, when he has not finished his training for a cause not attributable to him. Support shall include pregnancy and delivery expenses, if not otherwise covered.' Article 143 states: 'The following persons shall be mutually obliged to give each other support with the scope provided in the preceding article. 1. Spouses. 2. Ascendants and descendants. Siblings shall only owe one another basic living needs, when needed for any reason not attributable to the recipient of support; these shall extend, as the case may be, to the support required for their education.'

<sup>326</sup> Fundació Encuentro (2013), p. 227; Laparra and Pérez Eransus (eds.) (2012).

<sup>327</sup> Laparra and Pérez Eransus (eds.) (2012).

<sup>328</sup> Klimaka (2008).



In Portugal, experts consulted for this study generally considered that eviction was usually not the major reason for homelessness, although this might apply to unemployment. Absence or a drastic reduction in the household's income forces them to move to their family's home (many young couples with children are moving back to their parents), a situation similar to that in Spain. Menezes (2009) highlights the inadequacy of the Portuguese social support system and exemplifies how, in the event of unemployment, a person (especially a man) may easily end up evicted and homeless. A spell of unemployment followed by the lack of an immediate link with the employment centre, plus the time it takes for people to receive their unemployment benefit, may lead to an eviction situation. This applies to several individuals, but its impact is particularly strong if the family network is weak or absent.<sup>329</sup>

## 5.6 Conclusion

Evidence of a link between evictions and homelessness varies significantly across EU Member States, and no universally simple relationship exists between the level of evictions and homelessness. Where this evidence does exist, it shows that about one in four evicted households are found to be in a homeless situation sometime after the eviction. However, this evidence is from Member States with relatively extensive welfare systems, where evictions are widely concentrated among people with complex support needs, who may be at higher risk of homelessness following an eviction. In most cases, these people initially seek temporary accommodation with family or friends (if possible), while in other cases they move to homeless shelters. There is a definite pattern involving a process where an evicted family or individual may eventually strain their support relations, finally resorting to homeless services.

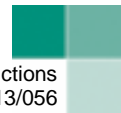
Thus, in some Northern European Member States, there are relatively high numbers of people with complex needs among both evicted people and homeless people. Paradoxically, this might be interpreted as a pattern arising in particular in the more advanced welfare states. In these Member States, both evictions and homelessness are widely concentrated among people with complex support needs, perhaps reflecting the fact that many individuals with such complex needs are housed in ordinary housing, with the aim of reintegration into society. The eviction and homelessness of these people points to unmet support needs, and thereby to gaps in the otherwise relatively extensive welfare systems in Northern European Member States.

Complex links between housing policies, evictions and homelessness are also found in the UK, where there is no generally apparent strong link between evictions and homelessness. While avoiding the lengthy formal legal eviction process, the termination of ASTs is associated with increasing levels of local authority homelessness acceptances in England and Wales.

In the CEE Member States, the evidence base on the link between evictions and homelessness is weaker than in Northern and Western Member States.

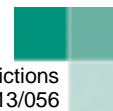
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<sup>329</sup> Menezes (2008), p. 157.



The nature of homelessness in Southern European Member States is quite different compared with Northern, Western and CEE Member States. In Southern Europe, it rarely involves those with complex support needs or addiction issues, and is more directly related to economic and structural issues and housing costs. Since almost 50 % of homelessness in Greece and Spain is caused by unemployment, the major differences become clear. Personal and health problems are rarely reported as a major cause of homelessness. Families, including extended families, play a much more extensive role in providing financial, housing and personal support in the aftermath of an eviction. Indeed, while temporary accommodation with family or friends is recognised as a form of homelessness in most Northern EU Member States, it is generally not viewed as such in Southern Europe, where families sometimes have a legal obligation to assist. These differences reflect general differences between welfare systems, with a higher degree of welfare state obligations in the North, compared with a higher reliance on and provision of family support in the South, where the public welfare system has a relatively smaller role. However, for individuals with weak or no functional family ties, weaker welfare protection systems in some parts of the EU pose an even greater risk of extreme marginalisation.

Whether homelessness which occurs a considerable time after an eviction can be regarded as being directly caused by that eviction is debatable. However, it is evident that eviction is often part of a chain of events that eventually lead to homelessness. Poverty and an insufficient supply of adequate and affordable housing may be associated with rent and mortgage arrears leading to eviction, raising questions about the relative importance of different factors that can be associated with homelessness causation on an individual level. In this way, the eviction problem should also be understood in relation to structural factors and their interplay with risk factors at an individual level.



## Part II Prevention and anti-eviction measures: analysis and recommendations

### 6 Examining prevention and related anti-eviction measures

The prevention of evictions can involve state and other actions and interventions at macro, meso and micro levels in housing systems, and can include arranging targeted support and other measures. This chapter provides an explanation of the model utilised in subsequent chapters of this study to refine and examine the range of eviction prevention measures that exist across EU Member States. Clearly, the original nature of this research study required the development of an analytical model encompassing the various stages of the eviction process, the actions of many actors and a wide range of impacts.<sup>330</sup> The key prevention measures reported by national experts were examined and classified using the most appropriate model available. The following chapters contain this analysis and, where evidence is available, set out the effectiveness and cost-effectiveness of the measures.

#### 6.1 Primary, secondary and tertiary prevention measures

Prevention of evictions can be differentiated into three different stages or levels of prevention: primary, secondary and tertiary prevention. These conceptual classifications were originally proposed and used for a better understanding of prevention in the field of homelessness by Busch-Geertsema and Fitzpatrick (2008):

Primary prevention measures – activities that reduce the risk of homelessness among the general population or large parts of the population. It is at this level of prevention that general housing policy (supply, access and affordability), and the overall ‘welfare settlement’ (such as the availability of income benefits, housing benefits, employment protection and so on), are most relevant.

Secondary prevention – interventions focused on people at high potential risk of homelessness because of their characteristics (for example, those with an institutional care background), or in crisis situations which are likely to lead to homelessness in the near future (such as eviction or relationship breakdown).

Tertiary prevention – measures targeted at people who have already been affected by homelessness.<sup>331</sup>

Primary prevention can be differentiated into three broad areas of state action:

1. welfare state-related measures (mainly social measures, which have important legal and financial aspects);
2. housing system-related measures (mainly legal measures, some of them with important financial and social aspects);
3. mortgage market-related measures (mainly legal measures, with important financial and social aspects).

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<sup>330</sup> Holl, van den, Dries and Wolf (2015), in their international literature review of interventions to prevent tenant evictions, suggest that very little research has been conducted in this area in the past quarter century, and that little reliable data is available on the cost-effectiveness of interventions to prevent tenant evictions.

<sup>331</sup> Busch-Geertsema and Fitzpatrick (2008), p. 73.



Secondary prevention measures can take place at different phases of an eviction process:

1. prior to default (mainly social measures with a relevant financial aspect);
2. prior to the start of a judicial claim (after a default has occurred; partly legal and partly social measures);
3. once a judicial claim has been made (legal measures with a strong social aspect);
4. after a court decision for eviction has been taken (mainly legal measures).

There are also other secondary prevention measures which are not specifically linked to any particular stage, constituting primarily legal measures, but also including social and financial approaches.

Tertiary prevention measures aim to reduce the potential harm caused and to prevent long-term homelessness by rehousing evicted persons as quickly as possible. This category of measures might include measures to alleviate the potential consequences of homelessness for health and life by providing shelter, basic nutrition, medical support etc. Tertiary prevention involves both legal and social measures.<sup>332</sup>

In this evictions study, national experts were provided with a list of potential anti-eviction measures and were requested to select or add the most relevant and effective measures to prevent and tackle evictions from the different tenures and to rehouse evicted households in their Member States. They were asked to provide an in-depth analysis of the effectiveness and cost-efficiency of the selected measures, and to propose measures which did not yet exist, but which could be effective.

Analysing the range of measures which were reported across the 28 Member States within various domains (legal, social and financial), it is important to consider the national character of these measures, bearing it in mind that the impetus for their creation or implementation may not necessarily be related to evictions. Of course, construing these as eviction prevention measures stretches many of the original objectives of these mechanisms or policies. Consequently, the connection to evictions is not always apparent unless it is understood within the broader prevention framework. Some measures straddle one or more of the categories, and indeed involve elements from legal, financial and social domains.

Many national experts reported that scientific evidence of the effectiveness of specific anti-eviction measures was scarce – indeed, it was absent in many cases. It was even more difficult to find any robust evidence on their cost efficiency. Targeted research has been undertaken to estimate the costs of homelessness and to draw comparisons only in a few EU Member States. Indeed, to analyse the cost efficiency of prevention is a difficult task, as the ‘contra factual’ is not known, i.e. it is not known how many households with rent or mortgage arrears who had received advice or financial support have ended up homeless, and how long they have remained homeless. In addition, the real costs of evictions and homelessness, including the

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<sup>332</sup> Busch-Geertsema and Fitzpatrick (2008).

costs of other services in the health system, the criminal justice system and other areas are not known.

There are many arguments in favour of preventing evictions from occurring. Apart from the human hardship and trauma often caused by evictions, in cases where homelessness arises, there is a need to protect children and vulnerable people from long-term or irreparable harm. There is evidence that, where households with children are evicted and forced to relocate, those children do not achieve as much educational success as others.<sup>333</sup> This may be exacerbated by relationship breakdown or because of a crisis arising from the personal experience of distress of the actual eviction, with illnesses such as depression often developing.

Financial arguments have always been advanced in relation to evictions, in terms of loss of income and in terms of costs for lenders, landlords and property owners. Indeed, the direct and indirect costs of evictions can be enormous, both for the homeless person and for overall society.<sup>334</sup> Ford et al. classify these costs as social, social psychological, health, administrative, financial, political and organisational.<sup>335</sup> A European Commission analytical document from 2013 pointed out that the costs, in real terms, of failing to address homelessness can be very high.<sup>336</sup> Few homeless people are in permanent employment, and their main source of income often comes from social support, charity or begging. Roofless people often require complex, integrated types of support over a longer period of time and tend to use the most expensive and intensive forms of support, such as emergency hospital care.

Approximate calculations in Austria and Germany indicate that EUR 1 spent on prevention services (including counselling and the taking on rent arrears) may save EUR 7 of costs for providing temporary accommodation and rehabilitation for homeless households. These calculations were originally based on separate municipal budgets used for two purposes (prevention services and services for homeless people) in the City of Cologne, which were divided by the number of persons served by each service.<sup>337</sup> The calculations lack scientific rigour, however, and are rather outdated, but they are among the few which are available at all. A more recent calculation in Germany was made by the city of Bielefeld. The authorities there have improved their prevention system over the period 2004 to 2008 and have substantially reduced the number of places for temporary accommodation.

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<sup>333</sup> Hanushek et al. (2004).

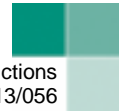
<sup>334</sup> Some studies outside of Europe have tried to calculate such costs. It is estimated that the annual cost of homelessness in Canada in 2007 is between CAD 4.5 billion and CAD 6 billion (Gaetz (2012)). Another study showed that a homeless person costs between AUD 700 000 and AUD 4.5 million to Australian society (Baldry et al. (2012)). The social costs of homelessness are especially high in the justice and health domains (Flatau and Zaretsky (2008); Culhane (2008)).

<sup>335</sup> Ford, Burrows and Nettleton (2001).

<sup>336</sup> SWD (2013) 42 final, pp. 5-6.

<sup>337</sup> A calculation by the City of Cologne in 1986 showed that the annual costs per person of providing temporary accommodation (approx. EUR 4 000 at that time) were seven times higher than the costs per person of providing prevention services (approx. EUR 550). It should be mentioned that the total budget spent on prevention was about 30 % higher than the budget for temporary accommodation (Deutscher Städtetag (1987), p.73). However, this needs to be treated with some caution, as the data is quite old (from the 1980s) and is based on accumulated budget data.





In their annual report for 2011, the city claims to have saved more than EUR 1.6 million compared with annual spending in 2004.<sup>338</sup>

Another example is provided by FAWOS<sup>339</sup> in Vienna, where EUR 1.63 million was spent in 2012 on office and personnel costs and funds for covering rent arrears. There was contact with 2 931 households (6 741 persons) at an average cost of EUR 241.82 per person. This may be compared with the costs of rehousing and re-integration, which are more than EUR 600 per person per month. Another recent calculation has been provided in the Netherlands, suggesting that every euro invested in preventing homelessness for people at serious risk of eviction could save EUR 2.20 in homelessness service utilisation costs.<sup>340</sup>

A significant argument in favour of preventing evictions is the actual cost of carrying out (executing) the eviction process.<sup>341</sup> This can be considerable, involving police, social workers and others. It may involve emergency measures to protect children and might depend on a range of actors. There may be damage to the property and, of course, the relocation costs of the evicted household may have to be borne by the state. Similarly, the costs of providing emergency accommodation and rehousing arrangements may be considerable, and in some countries, where hotels are used for temporary emergency rehousing, these costs can be extremely high.<sup>342</sup>

The FEANTSA report on the costs of homelessness in Europe<sup>343</sup> highlighted the costs of providing homelessness services, healthcare and social services, costs associated with the criminal justice system, the loss of economic productivity, the economic effects of visible rough sleeping and the personal costs of those who experience homelessness. It also showed that the empirical basis for cost comparisons in Europe is very weak, and further primary research would be needed to provide more robust evidence.

A recent OECD report<sup>344</sup> on integrating social services for vulnerable groups has pointed out that the public service cost of caring for the chronically homeless can be up to seven times higher than average per capita social spending.<sup>345</sup> However, it is only three times higher when supported housing with care services is provided. The report suggest that the cost of treating a homeless person with complex mental health needs is 18 times greater than the cost of providing preventative at-home service support. Overall, however, the OECD report accepted that it is almost impossible to disentangle the costs of homelessness across OECD states, and that more research in this area is needed.

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<sup>338</sup> Stadt Bielefeld (2011), p. 5.

<sup>339</sup> *Fachstelle für Wohnungssicherung*, or Specialist Office for Housing Assurance.

<sup>340</sup> Van Leerdam (2013). However, a methodological weakness of this study was that actual data or even estimates based on actual data were missing for important aspects, and 'expert opinion' had instead been taken as a basis for calculations.

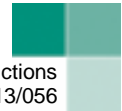
<sup>341</sup> Andritzky (2014).

<sup>342</sup> In Ireland, for instance, hotel costs for providing emergency accommodation for homeless families have increased tenfold between 2012 and 2014, reaching an estimated EUR 4.5 million.

<sup>343</sup> Pleace et al. (2013).

<sup>344</sup> OECD (2015).

<sup>345</sup> OECD (2015), p. 112.

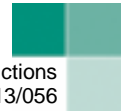


## **6.2 Conclusion: prevention versus cure**

It is possible to conclude that there are clear indications that prevention is not only better but also much more cost-effective than 'cure.' However, there is a need for more robust primary research in order to achieve solid cost comparisons.

Despite the shortcomings set out above, the differentiation into primary, secondary and tertiary prevention of evictions and homelessness is a useful device for analysis and framing of preventative measures. Clearly, some measures apply to broad strata of the population and may therefore be rather unspecific. Some are more focused on those at imminent risk or are even restricted to those who have been evicted already.

Some measures relate to structural issues, and some to individual situations or behaviour in a crisis situation. In some cases, a measure may apply to more than one of the categories. However, it is important to emphasise that research evidence on both the effectiveness and the cost efficiency of anti-eviction measures is very limited.



## 7 Primary prevention measures

### 7.1 Introduction

Primary prevention measures are often macro-level measures which impact on general access to housing, and consequently to a reduced level of evictions and homelessness. Some of these relate to general policy issues on housing supply access and affordability. Many EU Member States have highly developed housing systems, which promote access to housing within developed markets and also provide a level of social or subsidised housing for those excluded from the market. However, the general availability of income benefits, housing benefits, employment protection and other supports can have a major impact on preventing evictions, alongside the more focused and targeted secondary and tertiary prevention measures.

For the purposes of this study, primary prevention measures are differentiated into three broad areas of state action. Firstly, welfare-related state housing measures encompass key interventions on income support and housing benefits and subsidies. There is clear evidence that social transfers within EU Member States have an enormous impact on access to housing and the retention of such housing. Secondly, housing system-based measures are principally large-scale structural and policy responses to ensuring an adequate availability of housing. These often ensure a pool of subsidised or social housing, which is justified on the basis of safeguarding housing rights for all and other objectives. There is a general aspiration among European housing organisations, such as the European Housing Forum, that such policies could be tenure neutral,<sup>346</sup> maintaining a balance and choice between owner occupation and renting. However, across Europe there is a primacy in housing policy towards developing and supporting market-based measures for the development and allocation of housing for the general population. This involves financial, legal and social measures, subsidies and regulatory approaches. Thirdly, mortgage market-related approaches at macro level characterise the housing policies of many Member States as providing an avenue for access to housing for the majority of the population. These approaches prioritise owner occupation, linked to mortgage markets. Of course, many issues relating to the risk of over-indebtedness, responsible lending and consumer protection impact on evictions. Some innovative approaches in developing intermediate tenures have the potential to engage the benefits of both mortgaged and social housing.

For many EU Member States, a key part of housing policy relates to the promotion and development of increased housing for private renting. In some cases, there are moves to 'liberalise' the market (including rent control), reducing tenancy protection. However, experience in Member States with stable and sustainable rental systems shows the benefits in terms of stability and affordability of having well-regulated systems. Indeed, there is already an elaborate compendium of the individual subsidies, guarantees and support agencies which are in place across Member States, and which support and often underpin the private rented sector.

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<sup>346</sup> See De Boer and Bitettie (2014) on the benefits of tenure neutrality in Germany.



## 7.2 Welfare-related state housing measures

There is a general acceptance that welfare measures for low-income and vulnerable people are of major importance for the primary prevention of evictions and homelessness. This includes the provision of welfare, subsistence and housing benefits, often in combination with low-cost housing and subsidies for utility costs. Sufficient social housing for those unable to access secure and affordable housing in the market is often a fundamental structural preventative factor. For vulnerable people with mental illness, substance abuse problems, physical handicaps or chronic illness, housing sustainability often involves addressing care needs or psychosocial support needs. In recent years, significant progress has been made in the understanding of interventions aimed at improving the housing and tenure stability of vulnerable people, as well as in relation to the evidence base for such interventions. The most effective support interventions are integrated into the mainstream local service provision aimed at vulnerable people. However, in practice, such preventive social support is often activated only when a threat of eviction is imminent or after an eviction. Such support measures are examined under secondary and tertiary prevention measures.

The purpose here is not to provide details of welfare and housing benefit schemes across EU Member States, but to extract some of the key concerns in relation to primary prevention measures against evictions and homelessness. Examples of support schemes in different Member States are outlined, and examples are provided of the challenges involved, given different financial and social conditions.

### 7.2.1 Income and housing benefits

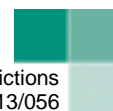
Access to housing is related to income, and all Member States ensure minimum standards of living through the use of social transfers, subsidies or other means of support.<sup>347</sup> The diversity of welfare regimes and of EU policies on social security has given rise to a wide range of measures on minimum income and housing benefits. However, in the aftermath of the financial crisis, some welfare protection systems have faced increased pressure, due to negative economic growth, slow economic recovery, rising unemployment, increasing public deficits and austerity measures to reduce public deficits.

An indication of the overall importance of welfare benefits in lifting low-income households out of poverty can be seen when comparing the at-risk-of-poverty rate before and after social transfers, as shown in Table 7.2.1.

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<sup>347</sup> See

[http://www.eapn.ie/pdfs/155\\_paper%20I%20-%20Issues%20for%20Social%20Standards%20and%20social%20rights.fin.pdf](http://www.eapn.ie/pdfs/155_paper%20I%20-%20Issues%20for%20Social%20Standards%20and%20social%20rights.fin.pdf).



**Table 7.2.1 At-risk-of-poverty rate before and after social transfers<sup>348</sup>**

Member State	At-risk-of-poverty rate before social transfers, 2013	At-risk-of-poverty rate after social transfers, 2013
Austria	25.9	14.4
Belgium	26.3	15.1
Bulgaria	26.7	21.0
Croatia	29.7	19.5
Cyprus	24.3	15.3
Czech Republic	16.6	8.6
Denmark	28.1	12.3
Estonia	25.4	18.6
Finland	26.4	11.8
France	24.2	13.7
Germany	24.4	16.1
Greece	28.0	23.1
Hungary	26.3	14.3
Ireland	38.5	14.1
Italy	24.6	19.1
Latvia	26.0	19.4
Lithuania	30.3	20.6
Luxembourg	29.4	15.9
Malta	23.3	15.7
Netherlands	20.8	10.4
Poland	23.0	17.3
Portugal	25.5	18.7
Romania	27.8	22.4
Slovakia	20.1	12.8
Slovenia	25.3	14.5
Spain	30.0	20.4
Sweden	27.1	14.8
United Kingdom	30.1	15.9

Before social transfers, the at-risk-of poverty population is generally much higher than after transfers, even in countries viewed as having more equal societies, such as the Nordic countries. The lowest population shares at risk of poverty, both before and after social transfers, are found in the Netherlands and in the Czech Republic. The highest poverty rates after social transfers are found in Greece, Romania and Bulgaria. These Member States also have the lowest reductions, comparing poverty rates before and after social transfers. Social transfers reduced the at-risk-of-poverty rate by around 50 % or more in the Czech Republic, Germany, Finland, Ireland, the Netherlands, Sweden and the United Kingdom.<sup>349</sup>

However, a recent study<sup>350</sup> observed that, although income transfers substantially reduce poverty rates, they are not adequate to fully alleviate poverty, and have decreased everywhere in recent years. Southern European and CEE Member States have comparatively low adequacy rates, averaging close to 30 % of median income. Benefit adequacy and coverage is a recurrent issue in the European Semester

<sup>348</sup> Eurostat, EU-SILC (2013).

<sup>349</sup> The greatest impact was in Ireland, where the rate was reduced from 38.5 % to 14.1 % in 2013.

<sup>350</sup> Nelson (2013).

analysis and several Member States received a country-specific recommendation regarding these issues.

One key issue was raised in both more and less affluent Member States and in both more and less extensive welfare systems. This was the increasing gap between combined welfare and housing benefit levels and increasing rent levels, particularly in urban growth centres, where a high level of evictions from private rented housing is evident. The specific nature of this problem varies, depending on whether the focus is on very high rent levels in cities such as London, Munich, Paris or Stockholm, or on general poverty problems for lower-income people in CEE Member States. There is a major current challenge in aligning welfare and housing benefit levels with housing costs to enable low-income and vulnerable people to access secure and affordable housing.

Comparing individually paid housing subsidies is complicated, because of varying eligibility and the inclusion of housing welfare benefits and subsidies within general welfare payments as an alternative to their constituting a separate payment. Practices vary, and in some Member States benefits also include provision for utility costs. Denmark offers an example of a relatively strong social protection and welfare benefit system, which has remained relatively intact in the aftermath of the financial crisis. Housing costs are paid out of a means-tested subsistence benefit payment. Lower payments are made to people aged under 30, except those with severe psychiatric diagnoses. Claimants with dependent children generally receive higher benefits. Other low-income applicants can claim a supplementary housing benefit related to rent level, size of dwelling etc. However, even in this relatively generous benefit system and its relatively large public housing sector, with targeted allocation mechanisms towards vulnerable people, there are increasing challenges in securing affordable housing for vulnerable groups in Denmark, especially in urban centres.

The UK social security and tax credit system generally provides an extensive safety net for low-income employed and unemployed households, who cannot afford social or private rents. Although ceilings set on the overall household welfare benefits are increasing a little, many poor households are unable to afford private or social rents.<sup>351</sup> More poor households are living in unaffordable and inadequate private rented housing, which is reflected in social housing waiting lists. Indeed, in 2014, some 10 % of London's 3.3 million households were on these lists.<sup>352</sup> In 2012–13, 28 % of people in the lowest income quintile spent an average of 28 % of their net income on housing compared with the highest income quintile, which spent 9 %.<sup>353</sup> This is despite the availability of rent subsidies through the housing benefit/universal credit system to support poorer households.

In most CEE Member States welfare protection systems are generally relatively weaker, and the overall benefit levels of both income and housing benefits are relatively low in terms of purchasing power.

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<sup>351</sup> Stephens and Fitzpatrick (2007), Fitzpatrick and Stephens (2014).

<sup>352</sup> <https://www.gov.uk/government/statistical-data-sets/live-tables-on-rents-lettings-and-tenancies>, last accessed 14 June 2015.

<sup>353</sup> MacInnes et al. (2014).



Clearly, general welfare protection and welfare measures interact with mechanisms in the housing system in shaping the extent to which affordable housing is available to low-income and vulnerable groups. This can impact significantly on the overall risk of eviction.

### **7.3 Housing system-related measures**

A second primary prevention approach involves a set of housing system-related measures. Some of these can be traced to policies and programmes respecting housing rights, social equity, equality and social cohesion. Social policies across EU Member States have led to the existence of a pool of public housing, although this is not always sufficient for primary, or indeed tertiary, prevention of evictions. At a wider level, all Member States have acted through a range of legal, social and financial instruments to develop a sufficient supply of housing. Access to secure housing often depends on the balance or equilibrium between owner occupation with a mortgage, and intermediate and rental tenures. In market-based systems, the promotion of sufficient supply is fundamental for affordability and access.

In terms of cost efficiency, there is a societal benefit in developing stable settled communities, creating social cohesion and enabling the full potential of individuals, families and communities. Housing markets do not respect fundamental rights *per se*, and access is primarily based on ability to pay. Thus, fundamental rights to housing that are enforced through laws, regulations, structured intervention and correctives are necessary, as is social housing. Overall, a range of these rights and interventions are in place, to a greater or lesser degree, across all Member States, with varying levels of success.

#### **7.3.1 Availability of sufficient housing stock for selling/social renting/rehousing**

The availability of housing for renting, purchasing or rehousing can have a primary preventative effect and can also offer significant rehousing options for evicted people. Governments make available a stock of dwellings for selling, social renting and rehousing, through housing policies, subsidies and supports.<sup>354</sup>

Many initiatives take place to promote housing construction and development, involving exhortation, regulation, taxation, subsidies and direct provision,<sup>355</sup> at various stages of housing production, exchange, allocation and renovation.<sup>356</sup> Often, a national housing plan or strategy sets out the main interventions to achieve these goals. These range from supply-side intervention through subsidised land, tax relief, development plans and functioning mortgage and land registration systems. Some of the initiatives on the demand side involve subsidising the consumer through individual mortgage or rent subsidies or other arrangements, such as a mortgage guarantee. In recent decades, many Member States have promoted home

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<sup>354</sup> There is not sufficient space to set out the elements of developed housing systems here. For an analysis of the elements of modern housing systems, see Angel (2000).

<sup>355</sup> Doling (1997), p. 40.

<sup>356</sup> Balchin (1996).

ownership,<sup>357</sup> which is often advantaged by concurrent limiting of benefits and rights within tenancies. In some cases, the state takes on a direct provision or appropriation role, or sponsors NGOs or housing organisations and others to do so. This may require investment in a major social housing programme.

However, the access and availability of sufficient rental, purchase or re-housing properties is not the same as the totality of the housing stock. Some Member States have a large housing stock concurrent with poor access to housing for those who need it. For instance, in Malta, there were some 3 249 applications on the waiting list for public housing in 2013 (representing 2.12 % of total households), while at the same time the number of completely vacant dwellings was 13 times this number. Similarly, in Spain, with 3.5 million empty properties which could be used as primary dwellings, there are efforts to bring empty housing into use. These include financial penalties of up to EUR 900 000 for failure to rent or sell empty units. The Catalan Housing Act 18/2007 provides for five years of appropriation of any dwelling that has been unoccupied for two or more years (derogated by the end of 2011 but reinstated in 2015), on the basis of the violation of the social function of property. From 2015, a tax of EUR 500 to EUR 1 650 *per annum* has been levied on empty properties in areas of high housing demand.

### 7.3.2 Equilibrium of housing tenures

Eurostat data for 2012 shows that 7 out of every 10 households in EU Member States (70.6 %) lived in owner-occupied dwellings, with over two fifths of households (43.4 %) being owner-occupier households without a loan or mortgage. Only a quarter of the total number of households were owner-occupiers with a mortgage or loan. Just 18.5 % of total households were tenants with a market-price rent, and 10.9 % were tenants in reduced-rent or free accommodation. The proportions vary widely across Member States, with owner-occupation rates of over 90 % in Central, Eastern and Southern European Member States, and less than 50 % in Germany. Hypostat 2014 shows that, in 2013, owner-occupation levels were over 90 % in Lithuania, Romania and Slovakia, and over 80 % in Bulgaria, the Czech Republic, Estonia, Hungary (almost 90 %), Latvia, Malta and Poland.<sup>358</sup>

Government actions through legislation, regulations, taxation, subsidies and institutional arrangements impact on the balance of advantage of different tenure choices.<sup>359</sup> There is a dynamic between the different tenure types, which can impact on access and affordability.<sup>360</sup> Generally, the principle of tenure equilibrium or neutrality is regarded as significant for the exercise of choice in the housing system. Of course, in some situations positive action may be needed to create or establish such an equilibrium. Demand factors within the owner-occupation market depend on demographics, income levels and the user cost of housing, which, in turn, depends on interest rates, current and future expectations of real house prices, the relative

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<sup>357</sup> Toussaint and Elsinga (2009).

<sup>358</sup> See Chart 3.2.1 above for comparisons of tenures across EU Member States.

<sup>359</sup> Kemeny (1992).

<sup>360</sup> Kemeny (1995).

price of owning versus renting and policies such as housing taxation.<sup>361</sup> Residential investment in new owner-occupier housing is influenced by construction costs, house prices, demographics and policies impacting on the profitability of housing investment. Similar and more complex considerations relate to the supply and demand of private rented housing, although social rented housing is more geared towards meeting housing needs rather than demand. Its supply depends directly on state funding and action.

Across EU Member States, the primary policy consideration is to facilitate the market to operate effectively, ensuring exchange of housing, land planning use, access to mortgage finance, sustainable equity etc.<sup>362</sup> There is a legacy of privatisation of social or state housing in CEE and some other Member States. In many Member States, there has also been a focus on those who are badly housed or homeless, 'whose prospects of future betterment are uncertain, and whose residential segregation, in many cases, compounds social and economic inequality'.<sup>363</sup> The promotion – through tax, lending policies and the privatisation of state housing – of owner occupation as a route to the normalisation of property ownership has been the predominant force in most Member States in recent times, although the Northern European post-war welfare state social housing systems have retained a wider set of approaches. However, in all cases, there is a retreat from the state provision of housing, and market-based approaches have become dominant, especially in rental systems. State action increasingly revolves around attempting to ensure the sustainability of the housing market for the production and allocation of housing. For example, in Spain, renting as a form of tenure has declined from 51.4 % in 1950 to 12 % today, after 60 years of policies and legislation (e.g. taxation, gatekeepers, clear and stable rights and obligations of the parties, access to cheap funding, sale of public housing, etc.) supporting home ownership. However, since the 2007 crash – which led many families to over-indebtedness due to unsustainable mortgages – there have been measures to increase the number of rented properties (e.g. favourable taxation, encouraging rented public housing, new legislation on leases intended to increase the offer of properties for rent, etc.).<sup>364</sup> Member States with more balanced levels of housing tenures and a healthy rental market, such as Germany and Austria, have not suffered the consequences of the crisis so much in housing.<sup>365</sup>

ECB interest rates in the eurozone exercise a major influence on access to owner-occupied housing and thus on housing market equilibrium. To ensure financial stability and to avoid mortgage over-indebtedness, mortgage lending will be capped according to credit worthiness and loan-to-value/income ratios following the entry into force of Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property (the Mortgage Credit Directive).<sup>366</sup> The resulting

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<sup>361</sup> Andrews, Caldera Sánchez and Johansson (2011), p. 22.

<sup>362</sup> Kleinman et al. (1998), p. 242.

<sup>363</sup> Kleinman et al. (1998), p. 242.

<sup>364</sup> See more details at Nasarre-Aznar, Garcia and Xerri (2014), pp. 194-195.

<sup>365</sup> See de Boer and Bitetti (2014).

<sup>366</sup> Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010. The directive entered into force



situation may generate greater reliance on rented housing and social housing, and this has already been recognised in Ireland.<sup>367</sup> Developing a real alternative to home ownership could be a major contributor to preventing over-indebtedness and mortgage-related evictions.

### 7.3.3 Social/affordable housing

The guarantee of housing rights and concurrent social policies can lead to the development of social housing for those excluded from the market.<sup>368</sup> A sufficient stock of social housing can offer secure, affordable housing for those on a low income; those in precarious employment or who are unemployed; those who are unable to compete in housing markets; and those requiring support to maintain tenancies. In this way, social housing stock can act as a major structural preventative factor for evictions.<sup>369</sup> As well as acting as a primary prevention mechanism, adequate social housing can enable rapid rehousing for those who have been evicted. However, as allocating social housing is often a sub-national – regional or local – competence, access to social/affordable housing is largely dependent on local rules and policies, with income ceiling requirements and priority allocation procedures operating in many cases.<sup>370</sup> In a number of Member States, significant barriers inhibit access to social housing for homeless people. There is, however, a developing tension between allocating social housing entirely to people on very low incomes, perhaps with significant support needs, and the sustainability of the social housing sector itself, particularly in relation to the repayment of large-scale development borrowing through rental income and in relation to the tenant composition (social mix) in social housing estates.

Social/public housing has had a long history in Europe, where it has played a vital role in the economy, in regeneration and in meeting housing need.<sup>371</sup> However, the extent and nature of social housing varies greatly.<sup>372</sup>

The provision of social and affordable housing by Member States must be compatible with EU law. Articles 106 and 107 of the Treaty of Lisbon prohibit assistance granted by a Member State or through state resources in any form whatsoever that distorts or threatens to distort competition by favouring certain undertakings, except in particular cases. These exceptions involve limited services of general economic interest (SGEIs) entrusted to the state, which do not affect the development of trade within the EU. Funding for social housing, tax reliefs and low-start subsidised finance are

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on 21 March 2016. Catalonia (ES) already prohibited lenders, through Act 20/2014, from granting mortgages to people who clearly could not repay them.

<sup>367</sup> National Economic & Social Council (2014).

<sup>368</sup> See Resolution of the European Parliament (2013) paragraph 3, which stated that social housing can have a major role in ensuring access to a high level of quality, safety, affordability and equal treatment and the promotion of user rights, in accordance with Articles 16, 30 and 31 of the European Social Charter.

<sup>369</sup> However, as is shown below, some Member States, such as Denmark, operate a very speedy eviction process for social housing tenants in arrears.

<sup>370</sup> CECODHAS (2012), p. 34 for a summary of each Member State's policies and allocation policies.

<sup>371</sup> Scanlon, Whitehead and Fernández Arrigoitia (eds.) (2014).

<sup>372</sup> See Housing Europe (2015).

potential areas for consideration under Article 107 of the Treaty of Lisbon (formerly Article 87).<sup>373</sup>

While there is no common European definition of social housing,<sup>374</sup> four dimensions characterise (and differentiate) social housing models and policies across EU Member States. These are: the nature of the tenure; the provider of the service; the nature of the beneficiaries; and the funding arrangements. The available evidence suggests that the patterns of the European social housing model can be classified as universalistic, targeted, generalist or residual.<sup>375</sup>

Generally, social housing is regarded as encompassing three elements: a mission of general interest; an objective of increasing the supply of affordable housing; and an approach targeted at specific vulnerable socio-economic groups.<sup>376</sup> The Austrian model of social housing provides open access for a broad target group, consisting of low-income households, vulnerable groups, key workers and other categories of people according to local needs and the local situation. In Finland, and to some extent in Denmark, the allocation of social housing is needs-based, but it prioritises some groups of applicants in urgent need. The objective of increasing the supply of affordable housing for the general population has recently been scrutinised by the European Commission in relation to rules on competition and state aid. Consequently, social housing in Member States such as the Netherlands must now target lower-income groups, reflecting the contemporary EU institutional preference for the residualist model of social housing.<sup>377</sup>

Social rental housing has been increasingly privatised in different ways in several EU Member States, by selling off dwellings to individuals and by transforming public rental housing into market-like organisations.<sup>378</sup> A report by the European Parliament in 2013 shows that budgets that are presently dedicated to housing policies have

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<sup>373</sup> See judgments of the ECJ (CJEU) on *Ferring SA* (Case C-53/00), *Altmark Trans GMBH* (Case C-280/00) and the judgment of the Court of First Instance of the EC of 27 February 1997 in Case T-106/95, *Fédération française des sociétés d'assurances e.a. v European Commission*. The *Altmark* judgment of the European Court of Justice held that compensation for the provision of services of general interest does not amount to state aid and is therefore not subject to prior notification and approval by the European Commission, but only if four conditions are met: the beneficiary must be entrusted with a clearly defined public service mission; the parameters for calculating the compensation payments must be established in advance in an objective and transparent manner; compensation must not exceed the cost incurred in the discharge of the public service minus the revenues earned through providing the service (the compensation may, however, include a reasonable profit); the beneficiary is chosen by means of a public tender; or the compensation does not exceed the costs of a well-run undertaking that is adequately equipped with the means to provide the public service.

<sup>374</sup> European Parliament (2013b).

<sup>375</sup> European Parliament (2013b), p. 6. Denmark, The Netherlands and Sweden are considered as countries with a universalist social housing model; Austria, the Czech Republic, Finland, Italy, Luxembourg, Poland and Slovenia have a generalist social housing model; Belgium, France and Germany are classified as targeted social housing model countries; Bulgaria, Estonia, Greece, Hungary, Ireland, Portugal, Spain and the United Kingdom are considered as residual social housing model countries.

<sup>376</sup> Weninger (2014), p. 236.

<sup>377</sup> European Parliament (2013b).

<sup>378</sup> Scanlon, Whitehead and Fernández Arrigoitia (eds.) (2014); Elsinga (2015).



been significantly reduced in a number of Member States.<sup>379</sup> However, since the onset of the financial crisis, Member States using the residualist model have increased their expenditure on social housing support, largely through rent support.<sup>380</sup>

Many Member States are developing new social housing policies. A new social housing concept is under discussion in the Czech Republic, including temporary housing for emergency situations, as well as provision by the municipality of both social housing and affordable housing. In Lithuania, a new Law on Support to Acquire or Rent Housing was adopted, which has introduced new social support measures. Slovakia is finalising a new concept for its state housing policy, which includes strengthening and developing the public rental sector. Portugal has introduced a new Social Rental Market programme. A new housing plan in Italy includes funding for the renovation of public social housing, as well as funding to the regions to increase the social housing supply. The new Spanish State Housing Plan 2013-2016 subsidises the creation of public social rental housing as well as providing support to tenants on a low income. Ireland has announced a six-year strategy to supply 35 000 social housing units. Luxembourg has introduced financial measures to foster the construction of affordable housing and support for new rental housing through planning obligations.<sup>381</sup>

While waiting lists for social housing and long waiting times act as a broad indicator of the sufficiency of social housing, there is no common set of arrangements for these lists across EU Member States. Indeed, the availability of housing by choice of area, property location, rent and size can vary enormously. Even within cities, the desired application location can influence the length of list, as well as different social housing rent levels. Some authorities have a policy of fast-tracking particular categories of applicant for rehousing. Of course, prioritising the housing of some applicants (such as those who become homeless) impacts on the length of time for the remainder of those on waiting lists.<sup>382</sup> Therefore, in terms of statistical comparisons, caution must be exercised.

The Housing Europe – The State of Housing in the EU 2015 report points out that, in many Member States, no comparable or comprehensive data on waiting lists is available. The figures that are available show that, in 2012, there were 186 000 households on these lists in Belgium, 1.7 million in France, 90 000 in Ireland, 650 000 in Italy, 1 916 000 in the UK as a whole, 96 858 in Estonia (2011), 30 484 in Lithuania (2011), 1 149 in Luxembourg (2011), 2 656 in Malta and 500 000 in Poland (2011).<sup>383</sup> Research for this study also reveals long waiting lists (in BG, CZ, DE, EL, FI, HU, LU, LV, MT, PL, RO and SI). Increased social housing as a potentially effective response to evictions was recommended in almost all Member States, and particularly in Greece, Spain, Ireland, Lithuania and the United Kingdom. In Austria, Denmark and Sweden, the pool of social housing is significant, yet it seems

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<sup>379</sup> European Parliament (2013b).

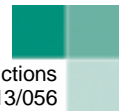
<sup>380</sup> European Parliament (2013b).

<sup>381</sup> Housing Europe (2015).

<sup>382</sup> In Ireland, the Minister for Housing has instructed housing authorities to allocate 50 % of new social housing lettings to homeless households.

<sup>383</sup> Housing Europe (2015). Some 19 % of the population in Latvia were also in need.





insufficient to deal with all the requirements for the re-housing of vulnerable people following evictions. In some Member States, social housing is becoming increasingly targeted at those on low incomes, unemployed people and those with high support needs. This is raising issues around the sustainability of social housing organisations, which rely on rents from poorer people to cover management, maintenance and loan repayment costs. In other Member States (e.g. Sweden), liberalisation of the social housing sector has given more discretion to housing associations to choose their tenants, and applicants with employment and a stable income are often preferred, whereas vulnerable people are disfavoured. There are also examples (e.g. in Denmark) where letting procedures to enhance the social mix can be used to favour people in employment. However, an unintended consequence of these regulations is to raise barriers to access to housing for unemployed and vulnerable people.<sup>384</sup> It should be borne in mind that the nature of this dilemma between targeted allocation and social sustainability may look very different between Member States with a small residual social housing sector which is mainly targeted at poor and vulnerable people and Member States with larger social/public housing sectors, which are aimed at broader segments of the population.

#### **7.4 Market-related measures**

Ensuring access to adequate and secure housing as a primary prevention measure can involve financial, legal and social interventions in housing markets, especially in their mortgage systems. All EU Member States undertake measures to support and develop mortgage lending as well as regulating such lending, primarily for prudential reasons, but sometimes also for reasons of consumer protection. EU institutions are taking on an increasingly significant role in this area, since it can impact on overall economic stability and sustainable lending.

##### **7.4.1 Support and development of mortgage markets**

The purchase price for owner-occupied housing in contemporary housing markets generally amounts to a multiple of the annual income of purchasers. Governments have developed and supported mortgage markets in various ways to ensure the supply of such mortgage finance, involving repayments over two or three decades, or longer in some cases. There is, however, a tension between increased mortgage lending to promote home ownership and preventing credit and house price booms and crashes.

Many methods of supporting and developing mortgage lending are utilised, including mortgage interest subsidy and mortgage guarantees. Mortgage interest subsidy is paid to lower the repayment costs on mortgages for primary residences, thereby encouraging wider access to this tenure among those on lower incomes. This subsidy is paid in Belgium, Cyprus, Denmark, Finland, France, Italy, Latvia,<sup>385</sup> Luxembourg, Spain (in the past) and the United Kingdom.

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<sup>384</sup> On the risk of the 'social mix' discourse for excluding homeless people from affordable housing, see Busch-Geertsema (2007).

<sup>385</sup> Provided in the Law on Assistance on Solving Apartment Matters, although no actual subsidy has yet been paid.

Mortgage guarantees enable those in precarious or low-paid employment to access owner-occupied housing, although there can be major risks in the event of an economic downturn. Unemployment can lead to major levels of arrears, as demonstrated in the cases of Ireland and Spain. There are also major questions as to whether these subsidies actually increase prices, creating enhanced demand, particularly where there is limited housing for sale. In addition, state mortgage guarantees exist in Estonia, Finland, France, Italy, Latvia, Lithuania, Luxembourg, the Netherlands and Slovakia. In Belgium, all three regional Governments have developed a free mortgage insurance scheme. In the Netherlands almost 90 % of those who bought a dwelling costing less than EUR 290 000 in 2013 financed it with a mortgage and a National Housing Guarantee surety. Because of this guarantee, Dutch lenders offer interest rates 0.7 % lower than normal rates.<sup>386</sup> In Estonia, a housing loan guarantee is provided by KredEx, a publicly funded institution, to a number of target groups.<sup>387</sup> Self-financing of at least 10 % of the value of the loan-guaranteed property is required, and the guarantee is limited to 24 % of the value of the property, up to EUR 20 000. In Italy, there is a House Guarantee Fund, offering a guarantee of up to 50 % of the capital lent on mortgages for primary residences which fulfil certain requirements (e.g. concerning energy efficiency).<sup>388</sup> The Lithuanian Law on Support to Acquire or Rent Housing<sup>389</sup> establishes housing loans for specific categories of people.<sup>390</sup> In Latvia, there is a state guarantee covering 10 % of a home loan, up to EUR 20 000, for families with three or more children. In Luxembourg, the state guarantee for home ownership (*Garantie de l'Etat pour l'accès à la propriété*) provides a state-backed mortgage guarantee, absorbing most of the Government's housing budget. In Slovakia, concessionary loans are available, although these are limited to persons aged under 35 years.

#### 7.4.1.1 Responsible mortgage lending

Irresponsible lending and borrowing leads to over-indebtedness. Thus, promoting responsible lending can be viewed as a significant measure for preventing evictions. This is particularly relevant in the context of risks of unemployment or 'accidents of life', which may inhibit repayments and lead to eviction. While a functioning mortgage market is integral to promoting home-ownership, mortgage lending takes place in a

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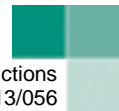
<sup>386</sup> <https://www.eigenhuis.nl/hypotheken-financien/hypotheken/nhg/>, last accessed 6 May 2014: The NHG Conditions and standards can be downloaded via: [https://www.nhg.nl/fileadmin/user\\_upload/Documenten/PDF/Voorwaarden\\_en\\_Normen\\_2014/Voorwaarden\\_en\\_Normen\\_2014-3.pdf](https://www.nhg.nl/fileadmin/user_upload/Documenten/PDF/Voorwaarden_en_Normen_2014/Voorwaarden_en_Normen_2014-3.pdf), last accessed 6 May 2014.

<sup>387</sup> These are young families (a parent or parents raising a child of up to 15 years), young specialists (up to 35 years old); tenants of resituated living premises (resulting from the restitution of property rights violated by the Soviet authorities); and veterans of the Forces or the Defence League.

<sup>388</sup> See more details at the Italian Bank Association site: <https://www.abi.it/Pagine/Mercati/Crediti/Crediti-alle-persone/Mutui/Fondo-di-garanzia-mutui-prima-casa.aspx>, last accessed 28 December 2015.

<sup>389</sup> Lithuania: *Paramos būstui įsigyti ar išsinuomoti įstatymas* (Law on Support to Acquire or Rent Housing) [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=485262](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=485262), accessed on 6 November 2014.

<sup>390</sup> These are orphans or persons who had been deprived of parental care or their families until they reached the age of 35, families raising three or more children, disabled persons or families with disabled persons and other disadvantaged people.



global market context, and is intrinsically linked to the securitisation of mortgages.<sup>391</sup> A series of problems have been identified in mortgage markets within the EU relating to irresponsible lending and borrowing and the potential scope for irresponsible behaviour by market participants, including credit intermediaries and non-credit institutions.<sup>392</sup> Some problems concern foreign currency loans provided without adequate information on the exchange rate risk involved. Other problems include ineffective, inconsistent or non-existent regimes for credit intermediaries and non-credit institutions providing credit for residential property.<sup>393</sup>

In 2013, the Netherlands had the highest proportion of mortgage debt as a percentage of gross disposable household income (217.5 %), followed by Denmark (189.5 %), Sweden (151.6 %), the UK (119.2 %) and Ireland (110.2 %). Member States with the lowest proportions included Hungary, Latvia, Poland and Slovenia.<sup>394</sup> Since the 2007–08 recession, several Member States (BE, DE, DK, IE, IT and UK) are reported to have developed a more conservative approach to mortgage lending as a critical factor in preventing evictions. Obligations to assess the creditworthiness of applicants and limits to loans based on property values and income have also been tightened. In fact, several legal systems, such as those in Belgium, Denmark, Germany and Italy, have developed regulatory frameworks to deal with this.<sup>395</sup> However, it is reported that there is a reluctance to engage these legal approaches due to the potential increase in litigation.<sup>396</sup>

In Belgium, financial institutions restrict loans to situations where repayments do not exceed one-third of the borrower's monthly income (debt-to-income – DTI limit), or where the borrower is required to retain a minimum of EUR 800 per month after mortgage repayments (Belfius Bank). This measure is supplemented by the Central Individual Credit Register managed by the National Bank of Belgium, to which every loan is reported.

Key issues in Germany include a 'conservative assessment' of the value of the mortgaged property. Some 75 % of new mortgage loans have a fixed interest rate period of 10 years or more. There is a 60 % average loan-to-value (LTV) ratio for mortgages. Requiring borrowers to make deposits of 40 % of the purchase price effectively restricts lending and consequent levels of owner occupation.<sup>397</sup> A

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<sup>391</sup> Nasarre-Aznar (2014b), pp. 37-72. See also Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions (the UCITS Directive). Available at:

[http://ec.europa.eu/finance/investment/ucits-directive/index\\_en.htm#maincontentSec2](http://ec.europa.eu/finance/investment/ucits-directive/index_en.htm#maincontentSec2), last accessed 22 April 2015.

<sup>392</sup> Directive 2014/17/EU (the Mortgage Credit Directive), Preamble paragraph 4.

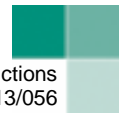
<sup>393</sup> Directive 2014/17/EU at Preamble Art. 4.

<sup>394</sup> Eurostat, *European Social Statistics* (2013 edition), p. 192.

<sup>395</sup> BBVA (2013), p. 19.

<sup>396</sup> *Preliminary EBF position on the Proposal for a Directive on credit agreements relating to residential property*, p. 4. Available at <http://www.ebf-fbe.eu>, last accessed 1 June 2015.

<sup>397</sup> Statistics on owner occupation (2013) in relation to the income of the households concerned show that, while only 17.4 % of households with a net household income below EUR 1 300 per month lived in owner-occupied housing, this was the case for 73.9 % of those with an income of more



conservative banking model in Malta ‘has insulated the local housing market from the crisis.’

Regulations for Responsible Lending (2011) in Lithuania set the maximum LTV ratio at 85 % and the maximum debt-to-income (DTI) ratio at 40 %. In the Netherlands, the LTV ratio on mortgages was limited to 104 % in 2014, which is comparatively high, although by 2018 this ratio will be 100 %. In 2015, the Central Bank of Ireland introduced home-loan lending limits of 80 % LTV, or 90 % for first-time buyers for properties up to EUR 220 000 in value, and home loans are subject to a maximum of 3.5 times gross annual income. Spain has introduced incentives to reduce the LTV ratio to 80 % since 2013. In Finland, the IMF recommended the establishment of a national positive credit register for consumer credit, although this has met with opposition. As in the Netherlands, there are concerns regarding data privacy and costs.

At an EU-wide level, a number of measures have been taken to encourage responsible lending. Article 18 of the Mortgage Credit Directive, which entered into force in March 2016, will require adequate assessment of borrower creditworthiness and prior evaluation of repayment capability. The need for consumer education is also specified in Article 6 of the Mortgage Credit Directive,<sup>398</sup> and there is a requirement for adequate enforcement procedures.

Separately, the European Banking Authority (EBA)<sup>399</sup> suggests that ‘it is good practice to ensure that creditors adopt prudent LTV ratios with an appropriate level of down payment that is substantially drawn from the consumer’s own resources, not from, for example, another provider of finance, to ensure the consumer has an appropriate financial interest in the collateral’. The EBA<sup>400</sup> also recommends that creditors make reasonable inquiries and take reasonable steps to verify a consumer’s underlying income capacity, thereby avoiding potential over-indebtedness.

There is a fine and critical balance between increasing access to home ownership through increased mortgage lending and protecting borrowers, who may experience unemployment, a drop in income or other events leading to unsustainable debt and eviction, especially during recessions. Conservative lending models result in low levels of owner occupation and a reliance on rented housing, as in Germany. In situations of insufficient supply of affordable private or social rental housing to create choice of tenure, pressure for irresponsible lending will be significant. There is also the risk that people with poor credit ratings will be targeted by ‘subprime’ or more expensive lenders.

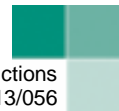
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than EUR 3 600. Statistisches Bundesamt (StaBu), *Einkommens- und Verbrauchsstichprobe. Wohnverhältnisse privater Haushalte* [sample survey of income and expenditure, housing conditions of private households], Wiesbaden, 2013.

<sup>398</sup> Art. 6 states: ‘Member States shall promote measures that support the education of consumers in relation to responsible borrowing and debt management, in particular in relation to mortgage credit agreements’.

<sup>399</sup> European Banking Authority (2013), pp. 12 and 13.

<sup>400</sup> European Banking Authority (2015), p. 8.



#### 7.4.1.2 Mortgage consumer protection

Mortgage consumer protection can promote responsible lending and can avoid over-indebtedness, unfair contract terms and risks of eviction. Ultimately, consumer protection means that borrowers can repay their loans without an undue burden. Proper pre-contractual information enables consumers to make informed and suitable decisions, as well as effectively comparing different mortgage offers. Recent examples of foreign-currency mortgages in some CEE Member States, as well as the striking down of abusive mortgage lending clauses in Spain,<sup>401</sup> illustrate the relevance of this. As well as unsustainably high levels of repayment obligations, mortgage add-ons, such as interest rate swaps or caps, may give rise to unexpected payment increases, thereby increasing the risk of default. Consumer protection measures for mortgages are mentioned as particularly relevant in some Member States (DE, ES, IE, IT, MT, NL and UK).

Practices in relation to mortgage consumer protection vary across Member States. In Germany, consumers receive extensive information before any mortgage is provided.<sup>402</sup> Latvian consumers can refer a contract to the Consumer Rights Protection Centre to check for unfair terms. Maltese creditors have to abide by strict regulations when negotiating credit terms directed at the acquisition of a dwelling, and must act honestly, fairly and professionally in accordance with the best interests of the consumer, refusing credit to anyone with doubtful ability to repay. In Ireland, there is an extensive Consumer Code and pre-contract information obligations. Home loan mortgages have been reclassified in consumer legislation, with procedural advantages. In Spain, Act 1/2013 compels all public notaries to highlight in the mortgage deed that the property is a 'residence'. This limits default interest rates, procedural costs and reduces residual debt if the proceeds of a forced sale are insufficient to repay the loan. In Catalonia (ES), lenders are obligated to include a sentence in every home mortgage loan advertisement warning prospective borrowers of the potential risk of losing their property and some of their other assets. Failure to do so may render the loan contract null and void.

Regulations in Italy deem contracts that do not comply with mandatory forms, terms and conditions as legally void and, as in Catalonia,<sup>403</sup> they permit the termination of eviction procedures on the grounds of incomplete and/or misleading pre-contractual information. Slovakia has amended several laws to test contracts for 'usury' – declaring them void unless certain criteria are met. These reforms also prohibit the sale of housing property by means of a voluntary auction for less than 90 % of its market value.

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<sup>401</sup> See Case C-415/11, 14.3.2013 *Mohamed Aziz v Caixa d'Estalvis de Catalunya, Tarragona i Manresa [Catalunyacaixa]*; Joined cases C-482/13 *Unicaja Banco SA v Manuel Hidalgo Rued and Others*; C-484/13 *Caixabank SA v Manuel María Rueda Ledesma and Rosario Mesa Mesa*; C-485/13 *José Labella Crespo and Others*; C-487/13 *Alberto Galán Luna and Domingo Galán Luna* 21.1.2015.

<sup>402</sup> Based on Directive 2008/48/EC on credit agreements for consumers.

<sup>403</sup> Some of these Catalan measures in Act 20/2014 have been challenged by the Spanish Government before the Spanish Constitutional Court in the last quarter of 2015, and they have been temporary suspended.



In April 2014, the UK Mortgage Market Review introduced more stringent measures limiting future market volatility in lending, essentially by requiring lenders to assess the affordability of mortgages more thoroughly. Consumer advice is now mandatory as part of the sales process. Lenders have full responsibility for assessing whether the customer can afford the loan, and interest-only loans are limited.

In the Netherlands, the civil-law notary who executes the deed of mortgage must ensure that borrowers are aware of the consequences of encumbering their property with a mortgage. There are concerns in Spain and Slovenia about the consumer protection risks arising from the notarial system in drafting the mortgage deed and informing the consumer.<sup>404</sup> Spain introduced a clause in Act 1/2013 stipulating that the borrower must confirm in writing that he or she has understood all of the mortgage terms and conditions. Catalonia has again increased notarial liabilities, as it is now obligatory to make all economic and legal terms understandable for mortgage consumers.

Latvia and Bulgaria insist on the need for consumer training, which takes the form of a mandatory lecture on the risks of accepting loans and mortgage agreements before signing mortgage contracts.

Articles 7 to 9 of the Mortgage Credit Directive (which entered into force in March 2016), focus on pre-contractual information for mortgage consumers, and specify the standard of behaviour of lenders, who must act 'honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumers'. The directive provides a list of minimum pre-contractual information that should be provided to mortgage consumers, and incorporates the European Standardised Information Sheet (ESIS) – a standardised template for pre-contractual information. The EBA guidelines on arrears and foreclosures (2015) suggest that the creditor should take into account the individual circumstances of the consumer, the consumer's interests and rights and his or her ability to repay when deciding on which steps or forbearance measures to take.<sup>405</sup>

#### 7.4.1.3 Codes of practice

Codes of practice form a set of guidelines, principles, values or rules issued by an official body or professional association to its members to help them to comply with its ethical standards or proper practices and to guide their decisions. These are often regarded as consumer protection measures but, in fact, many of them originate from prudential considerations, such as protecting the assets of lenders.

In Ireland, the Code of Conduct for Mortgage Arrears (CCMA) requires lenders to explore a forbearance arrangement before proceeding with possession proceedings.<sup>406</sup> This may involve mortgage restructuring, interest-only payments, reductions in payment amounts, the extension of mortgage time, moratoriums for

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<sup>404</sup> Schmid (coord.) (2007), p. 178.

<sup>405</sup> EBA (2015).

<sup>406</sup> Rule 56 CCMA. A lender may not apply to court to commence legal action for repossession until every reasonable effort has been made to agree an alternative payment arrangement.



short periods, capitalising arrears-related interest, split mortgages and trade-down mortgage. The Supreme Court of Ireland has held that mortgage lenders must delay possession proceedings for a short period to seek to make an arrangement with the borrower before a court grants a possession order.<sup>407</sup>

In Spain, there has been a pre-court semi-compulsory system of debt renegotiation, restructuring and forced *datio in solutum*<sup>408</sup> for people at risk of eviction since 2012. As a last resort (and as a first in Europe), the lender signing the Code of Conduct is under an 'obligation' to accept a *datio in solutum* as payment of the mortgage. This has benefitted 8 000 families up to mid-2014. In the UK, according to the *Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)*,<sup>409</sup> creditors are required to have a written policy and procedures for dealing fairly with customers in arrears. The pre-action protocol for residential mortgage possession cases introduced in 2008 states that courts expect the parties to have taken all reasonable steps to discuss proposals for repayments of the arrears prior to the start of a possession claim.

In Greece, there is a Code of Conduct,<sup>410</sup> which governs the settlement of private debts in default. Civil courts are setting the dates for hearings for this purpose up to 2025. A similar approach has been taken in Cyprus, with the Directive on Arrears Management of 2013, issued by the Central Bank of Cyprus, which aims to make the granting of loans in arrears viable again, especially through debt restructuring. In the Netherlands, the Code of Conduct on Mortgage Credit states that, if a consumer fails to meet their commitments, the lender must enter into consultations with the consumer and examine whether a reasonable, acceptable solution can be found. There is also a duty of care on lenders to take into consideration the circumstances of the borrower, and failure to comply with this duty can result in a finding of abuse of the right to summary judgment.<sup>411</sup>

In Hungary, the Code of Conduct on the Principles of Fair Conduct by Financial Organisations Engaged in Retail Lending (2010) states that the signatory institutions will contact the borrower in the event of payment default and will try to agree on a reasonable solution.<sup>412</sup> A Code of Conduct issued by the Latvian Non-Banking Creditors Association covers 80 % of the market,<sup>413</sup> and requires leniency against debtors of those institutions. A code of conduct for financial institutions is recommended for Bulgaria, bearing in mind the diverse and non-transparent

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<sup>407</sup> See *Irish Life and Permanent v Dunne* [2015] IESC 46. However, courts have no powers to examine the attempts to make an arrangement or the fairness of an agreement made.

<sup>408</sup> *Datio in solutum* allows the mortgage property to be surrendered to the lender in exchange for the cancellation of the entire debt.

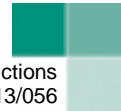
<sup>409</sup> MCOB, available at: <https://fshandbook.info/FS/html/FCA/MCOB>, last accessed 1 June 2015.

<sup>410</sup> FEK 2289/27 August 2014.

<sup>411</sup> Rechtbank Amsterdam, 13.05.2013, ECLI:NL:RBAMS:2013:CA0869 where eviction was refused for failure to comply.

<sup>412</sup> Available at: [http://felugyelet.mnb.hu/data/cms2043084/magatartasi\\_kodex.pdf](http://felugyelet.mnb.hu/data/cms2043084/magatartasi_kodex.pdf), last accessed 20 May 2015. The new regulatory framework on fair banking is based on the modification of Act CLXII. of 2009 along with other regulations by Act LXXVIII. of 2014.

<sup>413</sup> *Latvijas nebanku kredītdevēju asociācijas Labās prakses standarts*. Available at: <http://www.nebankukrediti.lv/standarti/standarti/>, last accessed 15 June 2015.



practices of its bank institutions.<sup>414</sup> At EU level, both the Mortgage Credit Directive and the European Banking Authority have proposed guidelines on arrears and foreclosures,<sup>415</sup> requiring Member States to adopt measures to encourage creditors to exercise reasonable forbearance before commencing eviction proceedings.

#### 7.4.2 Intermediate tenures

The development of intermediate tenures has been promoted across many EU Member States as the price of new homes has increased for first-time buyers.<sup>416</sup>

In the United Kingdom, new concepts such as ‘affordable housing’, ‘shared ownership’, ‘intermediate tenures’, ‘shared equity’ and ‘low-cost home ownership’ have been developed.<sup>417</sup> The United Kingdom has been at the forefront of these developments although, across Europe generally, the main approach has been through the use of land allocations.<sup>418</sup> Intermediate tenures usually involve a sharing of property rights, debt finance and risk, as well as a state subsidy. In some cases, this can involve state provision of a deposit or initial/early payments. This tenure combines affordability, flexibility and accessibility in access to housing.

In the UK, where the concept was developed from the 1980s, most shared-ownership schemes involve supply-side subsidies provided by a developer for the state. Housing associations provide the key partner role, often managing the process and administering the rental part, and indeed the whole staircasing system within the scheme. However, by 2010, intermediate tenures amounted to 150 000 units out of a total housing stock of 27.7 million units (including 3.9 million social rented units).<sup>419</sup>

The Catalan shared ownership approach, enacted in 2015, provides the buyer (the shared owner) with a share of the property, while the other share is owned by the seller (the original owner) – these two shares coexisting. Catalonia has also introduced ‘temporal ownership’, thus making access to housing more affordable.<sup>420</sup> Malta has created a scheme of half-mortgage half-rent, which was offered to 795 households by 2009.

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<sup>414</sup> BG, Commission for Consumer Protection, information on the inspections carried out in relation to the general mortgage lending conditions of the banks, available at: [http://www.kzp.bg/index.php?mode=viewd&group\\_id=1&document\\_id=4809](http://www.kzp.bg/index.php?mode=viewd&group_id=1&document_id=4809), last accessed 19 January 2015.

<sup>415</sup> The term ‘foreclosures’ is widely used in these guidelines and in the Mortgage Credit Directive, even though it has a specific, narrower, meaning in Irish and UK property law.

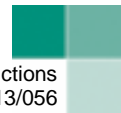
<sup>416</sup> Whitehead and Monk (2010).

<sup>417</sup> Some financial arrangements using these terms were shut down by the Financial Services Authority for involving fraudulent activity – see *Mrs Scott v Southern Pacific Mortgages Limited* [2014] UKSC 52.

<sup>418</sup> Whitehead and Monk (2011). However, the UK Government now plans to abolish land use allocations in England - see <http://www.theguardian.com/society/2015/oct/07/pm-cameron-vows-scrap-rules-forcing-developers-build-affordable-homes-for-rent>.

<sup>419</sup> Whitehead and Monk (2011), p. 327.

<sup>420</sup> These models have been developed through 4 years’ research by the housing chair of Rovira i Virgili University (<http://housing.urv.cat/en/cover/>).



In Ireland, there have been a number of such shared-ownership models, based on the UK scheme, combining elements of ownership and rental. In the Netherlands, intermediate forms of home ownership<sup>421</sup> are offered by social landlords under different names or schemes. For the most popular forms (*Koopgarant*, *Slimmer Kopen*), the seller (social landlord) will offer the buyer a discount on the sale price in exchange for sharing the risk.<sup>422</sup> At times of rising prices, the buyer and future seller will each get only a share of the capital gain, but this will also apply in the case of capital loss.<sup>423</sup>

In Finland, there are two intermediate tenures: partial ownership and right of occupancy. In the latter case, the resident pays 15 % of the price of the apartment, plus a monthly rent. The purchase price is paid back when the purchaser moves out, adjusted according to a building cost index. Together, these two tenures amount to less than 1 % of the total housing stock. In 2015, there were 41 500 right-of-occupancy apartments (with a total housing stock of 2.9 million in 2013). The number of partial ownership apartments is lower, but no statistics exist, as they are considered rental apartments during the lease and normal owner-occupied apartments after purchase. Around 1.5 % of Finnish households live in right-of-occupancy apartments.<sup>424</sup> In Helsinki, the much debated *Hitas* price control system has existed since the 1980s for some owner-occupied housing. Under this system, the municipality offers the land to the developer below market price to guarantee a lower price for home buyers. The resale price is regulated and set by the municipality for 30 years.

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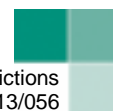
<sup>421</sup> Haffner, Hoekstra Oxley and Van der Heijden (2009); Haffner and Boumeester (2010).

<sup>422</sup> Dol, Hoekstra and Elsinga (2012); Elsinga (2010).

<sup>423</sup> TENLAW Report – the Netherlands –

[http://www.tenlaw.uni-bremen.de/reports/NetherlandsReport\\_09052014.pdf](http://www.tenlaw.uni-bremen.de/reports/NetherlandsReport_09052014.pdf).

<sup>424</sup> See [http://www.ymparisto.fi/en-US/Housing/Rightofoccupancy\\_housing](http://www.ymparisto.fi/en-US/Housing/Rightofoccupancy_housing); [http://www.ymparisto.fi/en-US/Housing/Partownership\\_housing](http://www.ymparisto.fi/en-US/Housing/Partownership_housing).



**Table 7.4.2 Shared-ownership-like intermediate tenures by Member State**

Country	Intermediate Tenures	Features
UK	Shared ownership Shared equity	1980s, housing associations and soft mortgage loans, 5+20+75
NL	a) Shared ownership b) <i>Koopgarant</i> c) <i>Sociale Koop</i> d) Client's Choice	a) 30 % discount when buying; on sale, benefits or losses are shared between homeowner and housing association. b) Minimum mortgage - 50 % property value (without the land); on sale, payment to the housing association of the price of the land, plus increase in the property value. d) This is not an intermediate tenure, but the tenant can opt between a lease, ownership and intermediate tenure.
IE	Shared ownership	1991, housing associations, minimum initial acquisition 40 %, maximum 25 years.
MT	Shared ownership	2005, buy 1/3 or 2/3 of dwelling with subsidised price; 10 years for the rest.
FI	Partial ownership	- Part of the buying price (10 %) is invested in shares → co-owner with the homeowner - Dwelling leased for between 5 and 12 years. During the lease, the seller is the controlling shareholder, but the buyer can continue buying, up to 49 %. At the end of the lease, the tenant can buy the rest of the shares and can become the sole owner.

Source: Sergio Nasarre-Aznar's own elaboration, partially based on TENLAW project reports.

### 7.4.3 Promotion of private rental housing

A well-developed and efficient rental market providing a viable alternative to mortgage-based owner occupation plays an important balancing role by alleviating house price pressures and smoothing housing market dynamics.<sup>425</sup> In the context of rising house prices, which are forcing many more young households to rent rather than purchase their homes, some EU Member States are beginning to accept that more of a balance is needed between home ownership and rental in order to address affordability problems and to dampen housing-market and macroeconomic instability.<sup>426</sup> A comparative OECD study suggests that the existence of a well-functioning rental market can help reduce the volatility of house prices.<sup>427</sup>

Boosting the availability of private rented housing requires policy measures in relation to security of tenure, investment, rent levels, rent subsidies and guarantees, as well as other interventions. However, as the TENLAW report points out:

Private tenancy law is existentially affecting the daily lives of European citizens, as about one third of them depend on rental housing. Whereas tenancy law is generally well researched at national level, it constitutes a nearly blank space in comparative and European private law up until now. This is due to its distinctly national or subnational character, its perceived political nature and its

<sup>425</sup> Cuerpo, Kalantaryan and Pontuch (2014), p. 16.

<sup>426</sup> National Economic and Social Council (Ireland) (2014), p. 62. See also Jordan (2015).

<sup>427</sup> André (2010).

embeddedness in widely diverging national housing policies, which ultimately reflect different social state models or varieties of capitalism.<sup>428</sup>

In the 30 years (early 1980s to late 2000s), housing policies across Europe have resulted in a decline in rented housing overall, especially in Denmark, Spain, Finland and the Netherlands, although there was no decline in Germany, France, Ireland or Sweden. There has been a clear increase in private renting in the UK, which has been attributed to a liberalisation of the market, but this is coterminous with a reduction in social housing in the UK, a decrease in security of tenure and increased market rents.<sup>429</sup> A key question is whether private rented housing should provide a vehicle for investment returns, where those making payments are low-income or unemployed households.

#### 7.4.3.1 Liberalisation of the rental market

There is much debate on the most appropriate approach to promote renting. While Member States with the highest rented property share (AT and DE) also ensure strong protection and rights for tenants, other approaches suggest that rental market liberalisations can facilitate the flexibility of the labour market, enabling short and mid-term moves to areas where temporary work is available without entering into the commitment of owner occupation or long-term social tenancy.<sup>430</sup> Indeed, the 'flexicurity' of short-term tenancies can be very suitable for highly mobile groups such as students. However, flexible regulations for specific groups (such as students) may also be integrated in a strong tenancy protection system for all other tenants, as illustrated by the legal regulations in Germany.

Recent policy proposals at EU level suggest that regulations covering tenancy contracts can be split into three dimensions: their enforcement, the contractual negotiation of quantitative aspects (rent levels and rent increases) and qualitative aspects (deposit requirements and the duration of contracts).<sup>431</sup> These include proposals for an 'efficient, fair and swift judicial system as a necessary step towards unlocking rental markets' full potential' and involve 'a low degree of procedural formalism'. There are proposals for the removal of rent controls and for avoiding market segmentation between sitting and new tenants, while ensuring landlords' property rights. However, an OECD report states that stricter rent regulation and tenant protection are associated with a greater probability of being a renter.<sup>432</sup>

The introduction in the 1980s of the UK's shorthold tenancy (AST) system, with its 6 to 12-month tenancies and its speedy and conclusive termination processes, involved a significant policy and structural change from housing poorer people in social housing to housing them in private rented housing. There has been a major increase in the number of people living in poverty in the private rented sector,<sup>433</sup> and

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<sup>428</sup> Periodic Report Summary 1 - TENLAW (Tenancy Law and Housing Policy in Multi-level Europe) available at: [http://cordis.europa.eu/result/rcn/149485\\_en.html](http://cordis.europa.eu/result/rcn/149485_en.html).

<sup>429</sup> Whitehead (2012), p. 68.

<sup>430</sup> Rugg and Rhodes (2008).

<sup>431</sup> Cuerdo, Kalantaryan and Pontuch (2014), p. 17.

<sup>432</sup> Andrews, Caldera Sánchez and Johansson (2011), p. 53.

<sup>433</sup> MacInnes, Aldridge, Bushe, Tinson and Born (2014).

many households have been pushed into insecure tenancies, without any other choice. Indeed, the increasing number of private rented housing units corresponds with the privatisation of social housing units, which have often become private rented housing units.<sup>434</sup> This 'increase' or switch from social to private renting has not impacted on the structural shortage of homes at affordable prices, particularly in London and the south-east of the country. Data on local authority statutory homelessness acceptances in England (only) for those becoming homeless as a result of ASTs ending rose from 14 % of such acceptances in 2010 to 25 % in 2013.<sup>435</sup>

Some authors contend that strong legal protection of tenancies helps to create a large rented sector.<sup>436</sup> Significantly, even in highly regulated systems with protected tenancies, such as in Austria and Denmark, the level of initiated evictions can be high. It is worth noting that the EU Consumer Policy strategy 2007-2013<sup>437</sup> sought to give EU consumers real choices, enhanced welfare in terms of price, choice, quality, diversity, affordability and safety. Users of housing services such as tenants would benefit from a greater choice between tenures and from improved housing availability. The regulation of housing markets, particularly rented housing, can also promote protection of the right to housing.

#### 7.4.3.2 Individual rent subsidies, guarantees and agencies

The payment of private sector rent subsidies or guarantees was reported as relevant in 23 out of the 28 EU Member States, although these may also come under different descriptions. There have been some reports that the level of subsidy paid was insufficient to cover full market rent costs, requiring tenants to accept lower-quality accommodation or to pay top-ups from benefits. However, in Germany, housing allowances, as part of the means-tested subsistence benefit, are intended to fully cover the 'reasonable' costs of housing (rental and owner-occupied housing, but not mortgage repayments). These were paid to some 3.3 million job-seeker households in 2014, which amounts to more than 6 million people. In Greece, a new 2014 regulation on housing and social inclusion involves subsidising private sector rents by up to EUR 180 or EUR 240 respectively for those one or two-member households who are defined as vulnerable and for those who face the threat of eviction.

In terms of cost effectiveness, rent subsidies can prevent homelessness, which has significant social, economic and personal costs. However, there is a risk of creating 'poverty traps', where unemployed tenants, who are reliant on subsidies to pay high levels of rent, risk losing this subsidy on taking up employment. Another effect may be that rent subsidies are driving up baseline rents, as in Ireland, and subsidy costs

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<sup>434</sup> Some 40 % of ex-council flats are now being rented privately at market rents – See *Inside Housing* 15 August 2015. Some former local authority homes are being advertised for more than four times the average social housing rent.

<sup>435</sup> In London in Q2 2014, the ending of an AST accounted for 38 % of London local authority homelessness acceptances. See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/358184/201406\\_Statutory\\_Homelessness.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/358184/201406_Statutory_Homelessness.pdf), accessed 3 June 2015.

<sup>436</sup> Fitzsimons (2014); Nasarre-Aznar (2014a).

<sup>437</sup> [COM/2007/99](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:COM200799).



can escalate to keep pace with the rising rent levels – a ‘Catch 22’ situation. Where rent subsidies do not keep pace with rents, evictions can occur. In the UK, where rent subsidies are capped, poorer tenants are unable to pay rents, and evictions have increased by 50 % over the past five years.<sup>438</sup>

There are many schemes of rent guarantees paid by state agencies to encourage access to private rental. A rent guarantee fund (*Huurgarantiefonds*) in Flanders reimburses landlords for three months of arrears or EUR 2 700 in order to prevent eviction. In the Czech Republic, a rent guarantee scheme ensuring access to private rented tenancies is seen as more cost-effective than building new municipally owned housing.<sup>439</sup>

Encouraging the availability of sufficient affordable rented housing may also involve establishing agencies, as intermediaries, managing housing leased from private property owners to rent out to those in need (IE and UK), or acting as social lettings agencies (BE, DE, MT and UK).

#### 7.4.3.3 Rent deposits

The ability to find affordable housing for low-income and unemployed households depends not only on the availability and coverage of general welfare and housing benefits, but also on the ability to cover individual rent deposits. These are typically equivalent to one to three months’ rent, payable in advance of taking up the tenancy. Although it may seem marginal, the rent deposit is often an obstacle for low-income households in accessing new rented housing, as well as in rehousing people from evicted households.

Schemes for providing loans to cover rent deposits are found in several EU Member States (BE, DE, DK, FI, FR and IE), and these can be described as good practice. For example, in Denmark, the municipality can issue a means-tested deposit loan for a new lease in some cases, even where a previous loan has not been repaid. In Finland, municipalities can provide grants to pay rent deposits. In France, interest-free deposit loans form part of the ‘*action logement*’ support to renters in difficulties. In Germany, municipalities can cover rent deposits by means of a loan for households in need, which is deducted in monthly instalments of 10 % of the subsistence benefit.<sup>440</sup> Support for covering rent deposits may also be provided by NGOs. For example, Càritas Barcelona helped applicants to pay the deposit for a rented property in 10 % of all the cases it dealt with between 2011 and 2013. In Belgium, the *Woningfonds* (‘housing fund’) organisation, which is supported by the Government of the Brussels Capital Region, provides rent deposits for households with modest incomes.

#### 7.4.3.4 Rent control

The intersection of stock supply and demand for rental housing services regularly

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<sup>438</sup> *The Guardian*, 14 May 2015.

<sup>439</sup> Czech Republic expert report.

<sup>440</sup> Busch-Geertsema et al. (2014), p. 185.

leads to unaffordable and inadequate housing for low-income households. In practice, rental markets are often regulated, and the adjustment of rents is constrained.<sup>441</sup> Rent controls have been in existence across the world for many years to ensure that housing costs are within reach of low-income tenants. Kemeny (1995) argues that genuine market competition can be fostered by encouraging cost rental housing to compete directly with profit renting, thereby dampening rents, raising housing standards and increasing security of tenure. Segregating cost renting into a state-run public rental (or social housing) sector shelters private renting from competition with the cost-rented or social housing sector.<sup>442</sup>

The effects of rent controls on the supply of new rental market housing and on rates of return for investors in such housing are common issues of debate. Arguments range from creating rent certainty and the development of a mature and stable rental market (such as in Germany, Austria and Switzerland) to facilitating the development of private rented housing as a form of tenure for those on lower incomes. Writers have recently suggested that rent controls have a significant destabilising impact on the aggregate housing market, increasing the volatility of house prices when confronted with different shocks.<sup>443</sup> As well as having unintended consequences for housing market stability, rent controls are also seen as having negative effects on labour mobility, and they are not the most effective redistribution measures. However, social justice policy considerations and the rights of tenants also have an impact on policy development. Governments seek to strike a balance between the interests of tenants and landlords, economic efficiency and availability of supply.

There are a number of models of rent control or rent certainty, ranging from independent assessment of rents, annual increases linked to an index of prices or other criteria, rent freezes and rents fixed by legislative or administrative systems. A variety of rent control systems are in place for both social housing and the private rented sector.<sup>444</sup> A report by the International Union of Property Owners<sup>445</sup> showed that there were regulated increases in rent in Austria, Belgium, Germany, France, Ireland and Italy. Some Member States have allowed for annual increases (BE, DE, FR, IE and IT), but there were no controls in others (CZ, EL, ES, SI and UK).<sup>446</sup> Today, many rent control systems for existing tenancies are combined with open market rent levels for new tenancies. New tenancy laws in Spain and Portugal now provide for market rents to be introduced into all new tenancies.<sup>447</sup> Post-1995 leases in Malta are free from statutory rent control.

While landlords are free to set rent for new lettings in Belgium, these are regulated once the contract is agreed, and increases must be index linked. Rent levels for

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<sup>441</sup> Andrews, Caldera Sánchez and Johansson (2011), p. 25.

<sup>442</sup> Kemeny (1995).

<sup>443</sup> Cuerpo, Kalantaryan and Pontuch (2014), p. 17.

<sup>444</sup> See Whitehead (2012); O'Sullivan and De Decker (2007). For an examination of the issue in England, see Cambridge Centre for Housing and Planning Research (2014).

<sup>445</sup> Repelova (2013); See also Cuerpo, Kalantaryan and Pontuch (2014).

<sup>446</sup> Rents in the private sector are not subject to control in the UK, while social housing rents are now set at an 'affordable' level – up to 80 % of private rents.

<sup>447</sup> Act on Flexibilisation and Promotion of Rental Housing Market (2013) (Spain) and Law 31/2012 (Portugal).

social housing are related to the income of the household, the number of children, the number of disabled household members and the market value of the dwelling. In Cyprus, the rent control system established in 1975<sup>448</sup> prescribes annual thresholds for increases, although these have been frozen recently as a result of the economic crisis and downward trends in property values. The Dutch social rental sector is characterised by a rent point system – a maximum chargeable rent, which applies to 95 % of the rental stock. Annual increases for the regulated sector are set by the national Government.

There is a ‘soft’ type of rent regulation for private rented housing in Germany. Landlords may not raise rents in existing contracts by more than 20 % over three years. Recent legislation allows *Länder* Governments to define areas of increased housing needs where rent rises are restricted to 15 % in three years. While rents for new contracts could be set relatively freely in the past, a recent Government decision will lead to restrictions for new contracts, as well as for those in areas of increased housing needs (with the exception of newly constructed and modernised dwellings). In these regions, new rents shall not be more than 10 % above the usual local comparable rent (*ortsübliche Vergleichsmiete*). The local rent level is determined in most large cities nowadays according to a *Mietspiegel* (a rent table mapping the local rent price structure differentiated into dwelling type, size, equipment, state and location). However, only rents raised or agreed upon in the preceding four years are included in the local reference rent, which builds in a constant upward dynamic in the reference system. Rents in urban areas increased by 10.8 % between 2008 and 2012, according to a recent report by the Bundestag,<sup>449</sup> leading to social hardship for many people with low incomes. The recent measures mentioned above are a reaction to this development.

In Sweden, landlords who let out more than two dwellings are obliged to negotiate rent levels with the local tenants organisation and, if necessary, they can be forced to cooperate with a rent tribunal. Rents are set in line with an average price for comparable properties in the area, although the tenant can appeal to the Rent Tribunal. It is considered that a ‘black market’ also exists.

Property owners and landlords often make the challenge that rent controls are an interference with property rights. The ECtHR has considered such cases in the context of Article 1 of Protocol 1 to the ECHR. Legitimate ‘interference’ with property rights must be compatible with the principles of (i) lawfulness, (ii) a legitimate aim in the general interest, and (iii) a ‘fair balance’ (between the demands of the general interest of the community and those of the property owners affected).<sup>450</sup> In *Mellacher v Austria*<sup>451</sup> (1989), the ECtHR held that rent reductions for tenants did not violate the ECHR. The Polish case of *Hutten-Czapska* (2006) established that landlords must be able to recover amounts from rents sufficient to cover maintenance and repair costs.<sup>452</sup> In *Nobel v The Netherlands* (2013), the ECtHR held that Dutch laws on rent

<sup>448</sup> under Law 36/1975 and Law 23/1983.

<sup>449</sup> Deutscher Bundestag (2013), p. 24.

<sup>450</sup> *Hutten-Czapska v Poland*.

<sup>451</sup> *Spadea and Scalabrino v Italy* pp. 26, paragraph 33.

<sup>452</sup> *Hutten-Czapska v Poland* paragraph 239 – changes in legislation concerning the possible level of rent increases were enacted in Poland after this decision. See also *Edwards v Malta*.

control, with caps on rent increases of 2.5 % and 1.2 %, as well as rent reductions, were lawful, and pursued a legitimate social aim, namely the social protection of tenants.<sup>453</sup>

The impact of OECD liberalisation proposals for rent control can conflict with constitutional protections, such as in Poland.<sup>454</sup> Indeed, easing rent controls may in some cases lead to uncontrolled rent rises and to an increasing number of tenants falling into arrears. This could lead to an increased risk of evictions. Private rented housing is increasingly relied on by low-income households, and in many Member States (ES, IE and UK), evictions from this sector are the highest among all tenures.

#### 7.4.3.5 Other measures

Other measures which impact on the equilibrium of tenures include the principle of *emptio non tollit locatum*<sup>455</sup> in Latvia, where the tenant is protected irrespective of a change in landlord. In the Netherlands, tenants are protected through tenancy contracts that are open-ended, even if temporary.<sup>456</sup> The existence of the Dutch Union of Tenants (*Woonbond*), which plays an advisory role for tenants, is an important part of the system of eviction prevention, while the lack of tenants associations has been cited as a weakness in Spain, Ireland and Malta. In Portugal, vulnerable tenant groups<sup>457</sup> have benefited from legislation,<sup>458</sup> and a transitional period of five years was introduced, during which the rent cannot be raised without the agreement of the tenant and the lease cannot be terminated in the case of a disagreement.

### 7.5 Conclusion

Developing a mix of tenures can avoid over-indebtedness and can reduce the risk of eviction. The challenge is to ensure that all options are equally attractive, secure and cost effective, and provide real choice for housing consumers. Currently, the equilibrium is tilted towards owner occupation and mortgage lending in most Member States, although negative externalities have also been linked to the predominant promotion of home ownership. Some of these are related to the financial crisis, such as families' over-indebtedness and related factors such as stress, evictions, etc.<sup>459</sup>

The optimum functioning of rental markets depends on this tenure remaining attractive for tenants, landlords and investors. According to the TENLAW project's preliminary findings, renting is often seen as a second-rate, temporary form of tenure.<sup>460</sup> The TENLAW report found that 'single fields of private tenancy regulation, such as rent control and security of tenure in particular, are thus being evaluated

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<sup>453</sup> *Nobel v Netherlands*, paragraphs 38-40.

<sup>454</sup> OECD Economic Surveys: Poland. Available at: [http://www.oecd-ilibrary.org/economics/oecd-economic-surveys-poland\\_1999060x](http://www.oecd-ilibrary.org/economics/oecd-economic-surveys-poland_1999060x). This is the view of the Polish national expert.

<sup>455</sup> or '*Kauf bricht nicht Miete*' in German. The sale does not eliminate the lease.

<sup>456</sup> Haffner, Hoekstra, Oxley and Van der Heijden (2009), p. 220.

<sup>457</sup> Tenants aged over 65 years, tenants with a level of disability above 60 % and low-income tenants.

<sup>458</sup> Law 31V2012.

<sup>459</sup> Rohe and Linblad (2013).

<sup>460</sup> TENLAW report quoted in Pittini, Ghekière, Dijol and Kiss (2015), p. 26.



based on their potential to achieve an effective socio-economic balance between providing tenants with affordable and stable housing and imposing only acceptable burdens on landlords and investors, so as not to act as disincentives.<sup>461</sup>

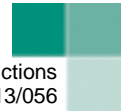
Overall, this research study identified a consistent inadequacy of locally available, affordable or social housing across EU Member States, even among those with a large social housing stock. This increases the risk of homelessness for those who are evicted, and in some cases places more vulnerable and low-income households in precarious tenures, with a greater risk of eviction – a situation which can disproportionately impact on migrants and people with disabilities.

The liberalisation of rental markets, in the absence of adequate supply, can lead to higher levels of evictions. In relation to the role of social housing, the ECSR has emphasised that Member States should ensure an appropriate spatial distribution so as to avoid ‘ghettoising’ poverty and social exclusion.<sup>462</sup> A complicated dilemma exists between targeting social housing at vulnerable people in housing need and maintaining the sustainability of social housing providers. In particular, mechanisms aimed at enhancing the social mix in social housing estates by favouring tenants in a stronger position (e.g. people in employment) often have the unintended consequence of raising the barriers to access to housing for vulnerable and homeless people.

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<sup>461</sup> TENLAW report quoted in Pittini, Ghekière, Dijol and Kiss (2015), p. 26.

<sup>462</sup> ECSR Conclusions, France (2003) Article 31(2).



## **8 Secondary prevention measures**

### **8.1 Introduction**

Secondary prevention measures focus on people at high risk of eviction due to arrears, support needs etc. Since the eviction process encompasses a number of different stages, some preventative measures are relevant at different points in time, such as prior to default, after default (but prior to the initiation of a judicial claim), once a judicial claim has been made and the legal process has begun, and after the court decision to evict has been taken. There are other measures which can apply at more than one phase, such as interventions to assist with finances and general advice.

This chapter examines the range of measures within each stage, evaluating – where evidence exists – the effectiveness and cost-effectiveness of each. In some cases such as social advice and assistance, there are particular types of interventions which are effective at all stages. For instance, different approaches are required for interventions at the pre-court, court and post-court stages, yet all of them broadly amount to advice and assistance. Similarly, mediating on arrears and debt at the pre-court stage can avoid the eviction process altogether, whereas such interventions at a later stage may only lead to outstanding debt reduction but not eviction.

The first section of the chapter considers secondary prevention measures prior to default, when the whole process of eviction can still be avoided. Obviously, effective measures in this period are likely to have the most beneficial outcomes. Support from family and friends, state assistance with arrears, advice and counselling can all be highly effective.

The second section examines the situation once a default, such as arrears of rent or mortgage, has occurred, but before a legal claim has been initiated, when there is still scope for further secondary preventative action. This can involve loan or arrears rescheduling by lenders and landlords, mortgage-to-rent and other mortgage debt reduction schemes. Other valuable measures involve the provision of a range of advice and assistance services such as counselling, advice, social work intervention, visits to the home of the person at risk and assisted mediation with landlords.

The third section addresses the period after the claim for possession has been made in court, when the legal system has become involved. Key issues here include the obligation of the court to inform social service agencies of the imminent eviction, access to legal aid and representation, the opportunity for a defence and appeal, and the application of legislative or other limitations on the eviction process. There may also be an option at this stage for the court to adjust the debt to allow for a sustainable solution. Where the eviction arises from family-related issues or disputes or from public regeneration measures, there may be opportunities to advance legislative or other provisions to resolve the issue and avoid eviction, although generally in household disputes one party may be required to leave the accommodation (while not necessarily becoming homeless as a result).



The fourth section explores measures taken after the court decision to evict, which can prevent the actual eviction from taking place, thus avoiding homelessness. Such measures include moratoria on evictions, either generally or during particular times, and suspension of the execution of the eviction by the court for specific reasons. The eviction may also be avoided through appropriate assistance, which may involve social work support, direct payments of rent or mortgage by state agencies and money management support.

## **8.2 Prior to default**

Effective secondary prevention measures prior to default include housing support from family and friends to alleviate the situation, public assistance to cover rent arrears/mortgage instalments and the provision of housing counselling and advice.

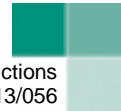
### **8.2.1 Support by friends and relatives**

Households at risk of eviction, whether arising from mortgage or rent arrears, conflict, neighbour dispute or any other reason, will firstly utilise any available self-help resources. They often seek informal help from friends or relatives before turning to more formal state or NGO support. Informal support may take different forms. It may be provided as advice, a private loan or a subsidy from family members to defray outstanding rent or mortgage arrears. While national experts have rarely mentioned self-help and support by friends and relatives as a specific measure to prevent or tackle evictions, this type of support may be assumed to be widespread in all EU Member States. It appears to be particularly significant in Member States with relatively weak welfare state institutions and limited legal or administrative protection from eviction.

For instance, there is evidence that, in 2012, some 40 % of retired people in Spain used part of their pension to help relatives and friends.<sup>463</sup> Similar reports of relatives providing aid are noted in reports from other Mediterranean Member States, which are characterised *inter alia* by the prominent role of the family as a 'social bumper' (EL and PT). Of course, family solidarity, involving social and moral obligations to support family and extended family members in need, is a common phenomenon across Europe. For national and local Governments, informal support by relatives (and friends) is attractive, as it reduces state obligations and expenditure, and is often associated with the principle of subsidiarity. Yet, for households in crisis, it can be particularly problematic, especially where this is the only type of support available. Family members might not be in a financial position to provide support at all. Some of those in a housing crisis may not have any family members to rely on and, ultimately, such support is largely dependent on goodwill rather than on any legal right. Therefore, the effectiveness of this type of support may depend on people's willingness to assist and on the levels of resources of family members or friends.

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<sup>463</sup> Fundación Encuentro (2013), p. 227. In 2009 the rate was only 15.1 %.



## 8.2.2 Public and third sector housing aid (to pay rent and mortgage arrears)

Secondary support measures targeted at those at risk of eviction often involves some form of social or financial support, and this is not restricted to the phase prior to default. It is generally accepted that the earlier this support is provided, the less severe the costs involved and the greater the chances of preventing an eviction.

A number of Member States (AT, CZ, ES, FI, FR and PL) provide municipal, regional or national funds to cover rent arrears. Similar provisions of public funds were mentioned as relevant in the Czech Republic, Poland and Sweden. In Germany, there are two regulations, one allowing an option ('may') for covering arrears, and another much stricter obligation ('should' but not 'must') in cases of imminent threat of homelessness.<sup>464</sup> Arrears may either be assumed by a loan, which will be deducted from subsistence benefits in instalments in the following months, or be paid as a non-repayable subsidy. A repayable loan is most common, and non-repayable loans are restricted to extraordinary cases involving recipients who are unable to work and are in receipt of subsistence benefits. Rent and deposit arrears can be covered, as well as mortgage interest payments, where that is necessary and justified for securing owner-occupied accommodation. Practice varies, however, between the German regions, despite the relatively strict character of the legislation, and rent arrears are covered only in a minority of prevention cases. However, this legislative prevention measure, involving repayment of rent arrears through public funds (even if this is through a repayable loan) costs less than providing temporary accommodation to homeless people. Potential misuse of this measure is prevented by the obligation to repay by instalments and regulations impeding repeated use.

In Austria, a subsistence benefit system exists called 'help for those with particular needs', which can be used to cover rent arrears. However, only in two regions is there a legal claim to fund rent arrears, while in the other seven regions, funding covers only a small part of the arrears and must be supplemented by private donations and charitable funds to fully cover existing arrears.

Danish municipalities may cover rent arrears for a short period, for people threatened with eviction, where certain criteria are fulfilled.<sup>465</sup> The target group for this intervention includes those with social vulnerabilities and families with children. However, the criteria also include the future sustainability of the citizen's financial situation, and high housing costs may disqualify tenants from receiving this assistance.

In Finland, municipal preventive social assistance can be granted for measures to alleviate difficulties as a result of over-indebtedness or a sudden deterioration of the person's financial situation, or to secure housing. There are flexible criteria and income limits, and this assistance is often granted in urgent situations to prevent a

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<sup>464</sup> According to Sections 22.5 SGB II and 36 SGB XII, local authorities *may* cover arrears if that is justified in order to secure accommodation at risk or to prevent a similar risk from materialising. Local authorities *should* cover arrears if that is justified and necessary in order to prevent homelessness.

<sup>465</sup> Act on Active Social Policy, s. 81.a.

crisis. Special emergency measures in Catalonia (ES) involve arranging payment of rent for those at risk of eviction, up to a maximum of EUR 3 000 or 12 months' rent.<sup>466</sup>

Measures specifically to help households in arrears with mortgage payments have been mentioned as particularly relevant in several Member States (ES, FR and PT). In France, the DAAP (*Dispositif d'accompagnement pour les accédants à la propriété* – support for first-time home buyers) in the Department of Loire (2014) is available to households in difficulty with incomes less than EUR 1 500 per month. This support offers a loan without interest, for a maximum of 60 months, or a non-repayable grant.

In some Member States (AT, ES and IE), NGOs and charitable organisations provide substantial financial help to households in arrears. For instance, Càritas Barcelona provided EUR 2 million in 2013 as housing aid to tenants and owner-occupiers.<sup>467</sup>

The effectiveness of this measure depends on the situation of the households concerned. For those in a time-limited crisis, who are temporarily unemployed or who need additional resources to increase their housing stability, covering rent arrears may be a very effective and efficient measure compared with the costs of homelessness after eviction. In a number of Member States (AT, DE, DK and SE), a notice to quit or an eviction case in court may even become void automatically if arrears are settled in time. In others, the consent of landlords or lenders is always required to avoid eviction.

However, where these measures exist, there are reports of non-take-up, such as in Poland and Sweden. In Austria, a specific problem is that one third of regions (*Bundesländer*) have no such prevention services at all.

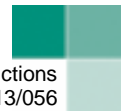
The assumption of rent arrears by an agency takes time. Contacts to the households concerned have to be established, and documents about the tenancy, the costs of the dwelling, the household income and details of benefit claims etc. need to be verified before a decision is made. However, the respite time<sup>468</sup> for bringing the eviction process to a halt is rather short in many Member States. In Sweden, it is three weeks after a notice to quit is sent by the landlord; it is two weeks in Denmark (after a recent extension from only three days); and two months after the initiation of court proceedings in Germany (after an extension from only one month some years ago).

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<sup>466</sup> See also Decree 10/2014 of 4 February 2014, Order MAH/559/2009 and TES/526/2014.

<sup>467</sup> Càritas Diocesana de Barcelona (2013), p. 73. An increase from EUR 1.1 million in 2010.

<sup>468</sup> This respite time, which may also be called a 'protection period', 'grace period', 'salvation period' or a similar term, during which an arrangement to pay arrears can suspend or nullify the eviction proceedings, is an important legal provision facilitating the successful prevention of evictions. Gerull (2014) also mentions periods of 30 days in Poland and 2 weeks in the Netherlands. The extension of this period from one to two months in Germany has not led to serious complaints by landlord organisations, but obviously the interests of landlords have to be taken into account when discussing an extension of such a period in order to facilitate effective prevention efforts. This measure should only be available once within a specified period to avoid misuse.



In conclusion, financial means and adequate legislation to assume rent or mortgage arrears are essential instruments to intervene effectively in a crisis situation. This intervention can be useful to prevent evictions, although additional, more long-term measures are often necessary.

### **8.2.3 Housing advice and counselling**

A key secondary preventative measure for evictions can be the availability of timely and informed housing advice and counselling.<sup>469</sup> This needs to be complex and accessible, as it is generally well established that many households at risk of eviction have multiple debts. Indeed, a significant proportion of people do not open 'official' letters any more, and many have lost the confidence and initiative to help themselves, because they are indebted to a variety of creditors, are steadily confronted with reminders and lack the knowledge and resources to cope with their situation. Section 8.3.5 below describes proactive measures such as home visits.

Counselling and advice for households in a housing crisis is provided in a majority of EU Member States. Housing advice and other interventions, which in some cases include the paying of arrears, are provided by municipalities/regional Governments to prevent homelessness in Austria, the Czech Republic, Denmark, Finland, Germany, Ireland, the Netherlands, Slovakia, Sweden and the United Kingdom.

However, the provision of such advice varies greatly in its extent, nature and intensity. It ranges from specific individual advice to households in arrears or in a housing crisis to more general information about rights and measures to prevent evictions. It is important to distinguish between advice provided by central and local state agencies on the one hand, and that provided by NGOs, advocacy organisations and pressure groups on the other. Some agencies focus on owner-occupiers in crisis, although generally the priority tends to be with households in rented accommodation, since they are more likely to be at risk of eviction and subsequent homelessness.

In Austria, preventative services are mainly provided by NGOs, except in Vienna, where the municipal authorities are responsible for the prevention of eviction from public housing. In other regions, where discretionary prevention services are established (which is not the case for all regions of Austria), these are provided by NGOs and funded by regional social budgets. Social workers contact households in crisis as early as possible and check the affordability of the dwelling, the legal basis for the notice to quit and the household budgets. There are significant issues relating to some evictions and access to local alternative housing in rural areas. In some cases, the notification is provided too late to be effective. The social workers provide advice on additional income sources (e.g. from housing benefit or other welfare claims) and mediate with landlords on the repayment of arrears in instalments.

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<sup>469</sup> Holl, van den Dries and Wolf (2015), in their international review of the most effective means of preventing evictions, suggest that debt advice and legal assistance seem to be the most effective measures.

Advice services for households at risk of eviction in Finland are most developed in Helsinki, with 14 full-time advisors in the city's social services. Some 12 to 14 % of clients were private sector tenants in 2012–13.<sup>470</sup> German prevention services are mainly provided by municipalities, and are strongly focused on the regulation of rent arrears. Frequently, they also mediate between landlords and tenants to reach an agreement on repaying arrears. A similar prevention situation is reported from the Czech Republic, although it seems that many of those at risk unduly delay making contact with agencies. In the UK, housing advice services are provided and funded by local authorities for those at risk of eviction, and there is a statutory obligation to provide such services for those at risk of homelessness. Housing advice is also offered by the Money Advice Service, an independent debt and money management advice service supported by central Government.<sup>471</sup> There are a number of other NGOs in the UK, such as Shelter, which provides advice and assistance for occupiers of all tenures at risk of eviction. Some housing associations establish their own benefits and money advice services.<sup>472</sup> My Home Finance<sup>473</sup> was set up by the National Housing Federation in 2010 as a social enterprise to help those who cannot access high street lending and who have to rely on loans from doorstep/payday lenders or loan sharks, who charge extortionate interest rates. The organisation helps people to access credit at a more affordable rate, opens a bank account for them and helps them save for the future.

In Ireland, there are a number of advice and advocacy agencies for home loan borrowers in arrears, including Threshold and the Money Advice and Budgeting Service – a state-provided service, which provides information and advice on dealing with mortgage debt and 'keeping your home'.<sup>474</sup> The state-run Citizens Information Board also provides information and advice for those in mortgage arrears, through its website and a network of citizens information centres.<sup>475</sup> Free Legal Advice Centres (FLAC) operates a free telephone information and referral line, and a countrywide network of legal advice centres.<sup>476</sup>

Social movements in some jurisdictions, such as Spain (through the Platform for People Affected by Mortgages – PAH) and Croatia (through *Živi zid* (Living wall) and *Udruga Franak* (the Franak Association)) offer advocacy and support for those being evicted. In Spain, consumer associations, social movements, charities and public administrations have developed brochures and webpages to inform people what to do if they are at risk of eviction.<sup>477</sup>

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<sup>470</sup> Kinni (2013), p. 41.

<sup>471</sup> See <https://www.moneyadviceservice.org.uk/en>, last accessed 15 June 2015.

<sup>472</sup> See <https://www.moneyadviceservice.org.uk/en>; <http://www.aragon-housing.co.uk/need-support/money-advice/>; [https://www.qcha.org.uk/tenants/financial\\_inclusion/money\\_advice/](https://www.qcha.org.uk/tenants/financial_inclusion/money_advice/); <http://www.gha.org.uk/content/default.asp?page=s86>.

<sup>473</sup> See <http://myhomefinance.org.uk/about-us/>.

<sup>474</sup> [www.keepingyourhome.ie](http://www.keepingyourhome.ie) is provided by the Citizens Information Board and the Money Advice and Budgeting Service (MABS) See <https://www.mabs.ie/self-help-guide/dealing-with-mortgage-debt/>; <http://www.keepingyourhome.ie/>, last accessed 15 June 2015.

<sup>475</sup> See [http://www.citizensinformation.ie/en/housing/owning\\_a\\_home/mortgage\\_arrears/](http://www.citizensinformation.ie/en/housing/owning_a_home/mortgage_arrears/), last accessed 15 June 2015.

<sup>476</sup> See <http://www.flac.ie/>, last accessed 15 June 2015.

<sup>477</sup> See, for example, the brochures issued by the Catalan Government 'Quèferquan' at <http://www.agenciahabitatge.cat/wps/wcm/connect/22021f004228ff41997ab951d296de51/Queferqan>



In some Member States, the self-reported results of the activities of the municipal prevention services point to a relatively high rate of success. For example, prevention services in the German state of North Rhine-Westphalia claim to have prevented eviction in more than two thirds of all their cases.<sup>478</sup> The results of the FAWOS prevention service in Vienna were more modest. In 2013, the service was informed about 8 277 tenancy terminations and eviction proceedings. It became involved in 35 % of all cases, but only 262 tenancy contracts were sustained. This relatively low proportion must be viewed in the context of a significant number of tenants exercising self-help, judging from the information received from FAWOS.

Overall, the activities of housing counselling and advice agencies vary across EU Member States. Some just provide information and advice on repossession proceedings. Others will also represent impecunious borrowers in court or will facilitate an arrangement for writing off or deferring some outstanding mortgages. Some agencies will mediate between landlords and tenants in an attempt to develop a repayment plan for rent arrears or to find other solutions to tenancy problems. There are significant challenges in carrying out advice work to overcome major over-indebtedness and serious social and health problems. However, some agencies can make the necessary link to general debt counselling and to social services providing floating support in housing, if such services exist. Few studies exist about the effectiveness and efficiency of such services, which are financed from different sources and with many different forms of governance. However, it is legitimate to conclude that this is a highly relevant measure in order to prevent evictions from occurring.

### 8.3 Prior to start of judicial claim after default

Secondary prevention measures prior to the start of a judicial claim, but after a default has occurred, can play a key role in avoiding the instigation of a lengthy, costly and harrowing process of evictions. In this phase interventions can involve partly legal and partly social measures. These include loan rescheduling by banks and mortgage creditors, mortgage-to-rent schemes, the availability of alternative dispute resolution (ADR) or specialised institutions, *datio in solutum* (voluntary or semi-compulsory), *datio pro solvendo*, creating awareness about default or risk among social services, proactive contacts with households at risk (e.g. by home visits), social advice and intermediation between landlords/banks and households regarding debt and debt restructuring (e.g. by the relevant administration or NGOs).

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<sup>478</sup> According to the information provided by 37 municipalities for 5 408 prevention cases in 2012, more than two thirds (67.8 %) of all prevention cases were successfully concluded, preventing homelessness, although most of the 212 municipalities covered by the survey could not provide data on outcomes. In 15.4 % of cases, households lost their former home despite preventive action, and in 16.8 % of cases no such action was undertaken. See Busch-Geertsema et al. (2014), p. 57.



The following table summarises the most common mortgage-related eviction prevention measures from a legal perspective in EU Member States, and compares these with the standard actual mortgage enforcement process.

**Table 8.3 General synopsis of impacts of approaches to mortgage default**

	<i>Must the mortgagor leave the property?</i>	<i>Does mortgagor lose ownership of the property?</i>	<i>Must the mortgagor continue paying?</i>	<i>Does the lender take a loss?</i>	<i>Does the Public Administration take a loss?</i>	<i>Does the financial system take a loss?</i>
Traditional enforcement for mortgage default	Yes	Yes	Yes	Yes. If auction takes place it usually does not reach property's full value.	No	Usually no. But yes if defaults are widespread.
<i>Datio in solutum</i>	Yes	Yes	No	Yes	No	Yes where loans are written off.
<i>Datio pro solvendo</i>	Yes	Yes	Yes	Usually, yes. Depends on the sale price.	No	No
'Fresh start' (after personal insolvency process)	Yes	Yes	No	Yes	No	Usually no. But yes if 'fresh starts' are massive.
Mortgage-to-rent schemes	No	Yes	Yes, but less.	Yes: usually the lender takes possession of an unwanted property.	Usually yes, if it has to subsidise the rent or buy the property	No, if not widespread.
Mortgage-to-equity schemes	No	Only partially (e.g. 50 % of equity)	Yes, but less.	Yes, but partial	No	No

### 8.3.1 Loan rescheduling by lenders

One key method of preventing evictions in mortgage-related cases is to reschedule loan repayments, thereby lessening the burden on the indebted household. Some Member States have utilised this approach as a potential alternative to evictions and repossessions.<sup>479</sup> Loan rescheduling seeks to reduce households' monthly mortgage costs, which may prevent mortgage enforcements and evictions. This can be applied

<sup>479</sup> Measures on debt cancellation are considered below.

to mortgage arrears at an individual level in several Member States (BE, BG, CZ, DK, ES, FI, HU, IE, IT, LU, LV, MT, SE, SK and UK), although sometimes it is not regarded as sufficiently transparent an approach to be always fair (IE) or effective (CY). In France, Greece and the Netherlands, the national experts recommend its introduction or expansion.

Loan rescheduling can take place either through mortgage refinancing with the same or another lender or through debt restructuring, which often involves lengthening the repayment period and reducing instalment payments. Loan rescheduling measures can be either voluntary, based on agreement (with or without an intermediary), or forced. Forced loan rescheduling involves compulsory legislative or administrative measures imposed on a lender, often to protect vulnerable consumers. For example, in France a judge can grant an extension of the time limit in the enforcement procedure for reorganising the payment plan or for arranging a deferment of debt. A debtor can also apply to the Over-indebtedness Commission (*Commission de surendettement*) and, in both cases, the enforcements procedure is suspended. In Portugal, legislation<sup>480</sup> sets out principles and rules for credit institutions in monitoring pre-arrears situations and arranging out-of-court settlement procedures (PERSI), which may include a restructuring plan for the settlement of outstanding housing debts.<sup>481</sup> A semi-forced rescheduling may arise in relation to compliance with a 'voluntary' code of conduct, such as the Spanish *Good Practices Code*,<sup>482</sup> which obliges lenders to renegotiate debts with vulnerable people. The Government of Spain claims to have avoided 8 000 evictions through this approach between March 2012 and April 2014. This involved 3 800 debt restructurings and 1 300 *datio in solutum* outcomes.<sup>483</sup>

In Finland, it is normal for banks to help with regulating the debtor's economic situation, granting repayment-free months, during which the debtor pays only interest. In the Netherlands, lenders can voluntarily initiate debt restructuring. In Belgium, banks initially try to find an agreement with borrowers in arrears. Bulgarian debtors can request a rescheduling of monthly instalments or a renegotiation of mortgage loan terms.

Debt restructuring can play an important role where over-indebtedness arises not just from mortgage arrears but from other borrowing. In the Czech Republic, the judicial executioner must observe the rule of adequacy/proportionality when collecting a debt. This means that there must first be an attempt to collect the debt using the 'primary resources' of execution (attachment of earnings order, order to pay the debt, an executioner's right of lien or the administration of real property).

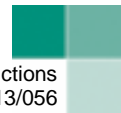
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<sup>480</sup> Law 227/2012.

<sup>481</sup> However, only 297 applications for 124 000 contracts in arrears were approved by September 2014.

<sup>482</sup> RDL 6/2012.

<sup>483</sup> However, voluntary debt restructuring/refinancing (delays, suspension of instalment payments, prolonging the duration of the mortgage, modification of interest rates, alternative forms of repayment and voluntary *datio in solutum* conclusions) seems to have been more successful, and 8.4 % of outstanding housing mortgages (EUR 50 billion) were refinanced/restructured by late 2012. This amounted to 400 000 restructured/refinanced mortgages.



Loan rescheduling can be a useful measure to prevent eviction, especially where the household can meet revised payments or expects to return to a higher income, employment etc. However, loan restructuring techniques have been criticised for prolonging the agony and suffering of borrowers. Long-term unemployment or household breakdown can often diminish its effect and, unless the measure is forced, lenders/landlords will have discretion to refuse this option, leaving vulnerable and poor people open to eviction as a result of debt. There have been no available studies on the impacts of debt rescheduling.

### 8.3.2 Mortgage-to-rent schemes

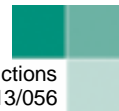
Another method of preventing evictions among distressed mortgagees can involve mortgage-to-rent schemes. These offer an interim solution between debt restructuring, *datio in solutum* or personal insolvency. The mortgage is transferred to a third party (or written off), and the borrower is allowed to remain in the home as a tenant, thus being spared from eviction. This mechanism can be arranged with *datio in solutum*, but the ownership of the property must be voluntarily surrendered by the borrower.

Some Member States (BG, FR occasionally, HU, IE, LV and UK) have identified the mortgage-to-rent mechanism as an appropriate alternative to evictions for indebted mortgagors at risk.

In Finland, the creation of a state mortgage bank has been proposed. The bank would buy mortgaged apartments in arrears and allow the borrowers to remain as tenants. The Hungarian National Asset Management Company (NAMC), a 100 % public company established in 2011, is in the process of purchasing 25 000 homes facing foreclosure and renting these out to the occupants under a mortgage-to-rent scheme. This enables indebted households to have security of tenure and avoids evictions. It can also be viewed as attractive for lenders in cases where they are unable to sell/auction the foreclosed properties at a reasonable price. However, in Ireland, lenders of distressed mortgages have shown little interest in advancing mortgage-to-rent schemes despite the establishment of a process.

In Latvia, banks and their subsidiaries often encourage a mortgage-to-rent solution. The refinancing of the mortgage enables mortgage holders who cannot pay their mortgage loan to remain in the dwelling as tenants, with the lender as landlord. However, there is no national data and very few examples are available on the implementation of this mechanism. In 2009, England introduced a mortgage-to-rescue scheme (similar measures exist in Scotland and Wales but not in Northern Ireland), which includes 'mortgage-to-rent' and 'mortgage-to-shared equity' mechanisms.

An alternative to mortgage-to-rent is provided by mortgage-to-equity schemes, by which indebted borrowers can retain a share of the property for which they pay, and the other share is taken by lending institutions (Catalonia (ES)) or by public bodies or housing associations (UK). Intermediate tenures are needed to implement this mechanism.



### 8.3.3 Availability of ADR or specialised institutions

Alternative dispute resolution (ADR) methods can be used to avoid or divert eviction proceedings, avoiding delays, costs and uncertainty of outcome. ADR mainly involves mediation between the parties to the dispute, but can also involve arbitration.<sup>484</sup> Mediation is defined in EU law as ‘a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator.’<sup>485</sup> This process may be initiated by the parties, suggested or ordered by a court or prescribed by the law of a Member State. EU law provides that a Member State can make mediation compulsory ‘provided that such legislation does not prevent the parties from exercising their right of access to the judicial system’.<sup>486</sup>

However, mediation has been observed as having mixed results in relation to evictions. In one case, Italian<sup>487</sup> law imposed a mandatory pre-trial court settlement as a requirement for accessing the courts. The CJEU held that the right to an effective remedy requires compliance with Article 6.1 ECHR and Article 47.1 EUCFR, which recognise the right to an effective legal remedy and the principle of effectiveness. Therefore, compulsory mediation procedures may be regulated by Member States, subject to compliance with the aforementioned requirements. Specialised institutions or courts are occasionally established to deal with conflicts related to leases. The advantages include specialised knowledge and faster decisions than in ordinary courts. In some jurisdictions, such as Bulgaria, the Ombudsman may also act as a mediator. Overall, it can be assumed that the mediation process is much more cost efficient than court procedures.

While no formal mandatory mediation or ADR systems on evictions were reported in Croatia, Denmark, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland or Sweden, some Member States are using mediation to avoid evictions. In Catalonia (ES), a forced mediation process has been in existence since 1 April 2015 (Act 20/2014).<sup>488</sup> A similar process exists in Belgium, where the judge tries to find an amicable settlement, e.g. by spreading repayments over time. This attempt at reconciliation is compulsory and must precede any attachment of property.<sup>489</sup>

In Cyprus, mediation procedures on loan restructuring instigated by the Financial Ombudsman have been implemented since the end of 2014.<sup>490</sup> Bulgarian mortgagors

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<sup>484</sup> In arbitration, an arbitrator chosen by the parties issues the parties with a binding resolution to the dispute. Mediation aims to empower the parties to find their own solution.

<sup>485</sup> Art. 3 of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.

<sup>486</sup> Art. 1 of Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR).

<sup>487</sup> Case C-317/08 *Rosalba Alassini v Telecom Italia SpA* 18-3-2010.

<sup>488</sup> However, this process has been suspended by the Spanish Constitutional Court since October 2015, as Act 20/2014 was partially challenged by the Spanish Government.

<sup>489</sup> (BE) *Wet op het hypothecair krediet*, Art. 59.

<sup>490</sup> Interview with the Association of Cyprus Banks, 13 March 2015.

and tenants can avail themselves of mediation as an alternative method of resolving their legal and non-legal disputes.<sup>491</sup> Once it has been acknowledged by both parties, the court with the appropriate jurisdiction approves the agreement, provided it is both legal and ethical.<sup>492</sup> In Slovenia, the use of court-annexed mediation is increasing for tenancy law disputes.<sup>493</sup>

There are some potential issues with the use of ADR in relation to evictions, such as the lack of equality between the parties. This is particularly significant where there are vulnerable, disabled, illiterate or immigrant persons involved. A high degree of skill and specialist knowledge is necessary for ethical, effective and independent mediation in eviction-related cases. Constitutional, statute and international law normally requires a judicial decision in order to evict someone from a dwelling. This is also a requirement under the ECHR, which means that arbitration/mediation alone cannot result in an eviction order. However, an agreement can be reached as part of the mediation process to leave the property, with loan write-off. The costs, or half the costs, of arbitration/mediation are usually beyond the means of an indebted borrower/tenant, and if the landlord/lender pays the mediator/arbitrator, there can be a conflict of interest. Mediation prior to commencement of the court eviction process delays the enforcement procedure, which could increase the costs.

Aside from mediation, some EU Member States have established quasi-judicial dispute resolution bodies to deal with disputes relating to or leading to evictions. In Ireland, the Private Residential Tenancies Board (PRTB)<sup>494</sup> provides mediation, adjudication and ultimately a legal enforcement mechanism for disputes or illegal action by landlords. Its aim is to 'allow disputes between parties to be resolved cheaply and speedily', and it offers an inexpensive structured and independent dispute resolution process to both landlord and tenant.

A rent tribunal exists in the Netherlands. It is an independent body, which deals with disputes between landlords/social housing associations and tenants in relation to rent, services, maintenance and improvements. It issues legally binding rulings, but cannot authorise evictions. A similar service operates in parts of Estonia, and also in Sweden, where the body can authorise evictions.

Despite its limitations, ADR can be an effective means of preventing evictions, although it is rarely used across Europe. Article 39 of the Mortgage Credit Directive (in force since March 2016) suggests that ADR could be applied to mortgage disputes.

#### **8.3.4 *Datio in solutum* and similar mechanisms of debt cancellation**

The London Economics study on means to protect consumers in financial difficulty stated that 'Only a handful of [European] countries still preserve the concept of *pacta sunt servanda* and attach absolute primacy to ensuring that consumers honour their

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<sup>491</sup> (BG) Law on Mediation (2004), Art. 1.

<sup>492</sup> (BG) Law on Mediation (2004), Art. 18.

<sup>493</sup> Mežnar and Petrovič (2014), p. 161.

<sup>494</sup> See <http://www.prtb.ie>, last accessed 6 November 2014.

contractual obligations. This is reflected in the degree of stigmatisation countries deploy in their systems, and how highly they value the moral hazard of allowing someone to negate some or all of their debts without paying.<sup>495</sup> However, in some cases, eviction can be prevented by the cancellation of the outstanding loan, although this may require the borrower to sell and vacate the property, thus requiring an alternative housing option to prevent homelessness. Measures of debt cancellation or limitation of repayment of debt include *datio in solutum*, non-recourse mortgages and protected minimum incomes (see 9.2 and Annex 3).

*Datio in solutum* is a well-known civil law method of discharging a debt other than by payment or debt forgiveness. It is reported to have been established as a possible solution for mortgage borrowers in law in France, Italy, Portugal and Spain, and is being discussed at EU level.<sup>496</sup> *Datio in solutum* allows the mortgaged property to be surrendered to the lender in exchange for the cancellation of the entire debt, either imposed unilaterally by the debtor or with the agreement of the lender. However, the borrowers are usually evicted unless the *datio in solutum* is combined with a mortgage-to-rent scheme.

The application of *datio in solutum* has been contentious in the field of mortgage loans, where it involves the appropriation of a mortgaged property on minor payment defaults. The purpose of a mortgage is to arrange security for a loan against a property, rather than facilitating appropriation/transfer of the property, especially where the value of the property is higher than the outstanding mortgage. For this reason, *pactum commissorium* (the option for the lender to automatically appropriate property in the case of default by the debtor) is prohibited in many EU Member States.<sup>497</sup> Equally, it can be important for the mortgagor to ensure that the auction price is optimised and that the auction is widely publicised.<sup>498</sup>

The Spanish eligibility criteria<sup>499</sup> for *datio in solutum* are: the debt cannot be restructured; annual household income is less than EUR 22 365.42; the household has increased its efforts to access housing; and the mortgage instalment represents more than 50 % of the household's net income. It can be accessed by large families (with three or more children); single-parent families with two children; households with a minor aged under three years; a household member with a disability that is equal to a 33 % reduction in capacity; a mortgage borrower aged over 60 years; and households with special vulnerability. However, a recent report suggests that this

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<sup>495</sup> London Economics (2012) p. x. 'Moral hazard is an event which, by its existence changes the incentives on individuals, and makes people more likely to commit an action which society views negatively; in this case, if the debt solution is too generous then people may be more likely to risk falling into over-indebtedness. Debt cancellation is the most obvious example of a process which opens the threat of moral hazard. Obviously for those countries, which do not have debt cancellation, the view is that the moral hazard of annulling all debts and putting the cost of this onto the creditor is so high that it is not permitted at all. Other countries can impose significant entry criteria.'

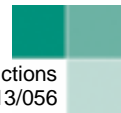
<sup>496</sup> London Economics (2012).

<sup>497</sup> For example, in Italy, '*patto di riscatto*' (Art. 1.500 IT Civil Code) contravenes a general principle of Italian private law, established by Art. 2744 of the Civil Code, which denies any transfer of ownership from the debtor to the creditor as a consequence of non-performance.

<sup>498</sup> Nasarre-Aznar (2011).

<sup>499</sup> See Art. 2 RLD 1/2015.





could potentially incentivise ‘strategic defaults’ for some vulnerable households that were still able to service their mortgages, but whose property value pledged as collateral had significantly decreased’.<sup>500</sup> This could undermine the full recourse recovery framework for Spain’s mortgage market and covered bonds.

Another method of debt cancellation involves non-recourse mortgages, where the lender has no claim on the assets or income of the debtor beyond the sale value of the mortgaged property. However, the widespread use of non-recourse mortgages has implications for mortgage markets in terms of security of loans, particularly in recessionary periods involving large-scale mortgage surrenders.

Non-recourse mortgages limit the borrower’s liability to the sale value of a repossessed property, therefore achieving a similar effect to the *datio in solutum*. These are established in 11 out of 50 US states,<sup>501</sup> although some studies claim a higher risk of default compared with non-recourse mortgages.<sup>502</sup>

The advantages of these approaches are that a borrower is cleared of outstanding debt and can make a ‘fresh start’, although the risks include increasing the number of ‘strategic defaults’.

A protected minimum income which cannot be attached to pay debts or mortgage or rent arrears offers another mechanism to protect indebted borrowers or tenants and limits debt repayments, although it may not prevent eviction. It does, however, facilitate rent payments for rehousing and ensures an adequate or minimum standard of living. The amounts must be compared with the cost of living in each Member State, including the costs of housing. As such, these are generally set at a low level of income (see 9.2 and Annex 3).

The EU Financial Services User Group/London Economics report examined several debt cancellation methods and proposed a best practice model which could be adopted and introduced into national legislation by EU Member States.<sup>503</sup> The report stated that, while *datio in solutum* delivers greater benefits to consumers than a no-debt cancellation system, the best practice debt cancellation model developed in the report (a form of ‘fresh start’), along with mortgage forbearance, appears to deliver greater benefits to consumers.

The best practice debt cancellation model developed in the report does not create an absolute right to debt cancellation, but should be available unless bad faith is shown on the part of the borrower. However, creditors must accept responsibility where inappropriate lending has helped to cause over-indebtedness. ‘Best practice requires a compromise between the debtor and creditor; the debtor must pay what he can and the creditor must accept that as the best resolution they can receive, so it is better for

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<sup>500</sup> Directorate-General for Economic and Financial Affairs staff’s Occasional Paper on ‘Post-Programme Surveillance – Spain’, p. 18.  
[http://ec.europa.eu/economy\\_finance/publications/occasional\\_paper/2015/pdf/ocp211\\_en.pdf](http://ec.europa.eu/economy_finance/publications/occasional_paper/2015/pdf/ocp211_en.pdf),  
last accessed 4 August 2015.

<sup>501</sup> Luckow (2014).

<sup>502</sup> Ghent and Kudlyak (2011), p. 29. See also: Kreitzer (2012), p. 47.

<sup>503</sup> London Economics, (2012).

them to cut their losses, stop paying legal fees and allow a rapid discharge of unpayable debts.<sup>504</sup>

The London Economics report also suggests that the use of stigmatising labels should be ended, and the term 'bankruptcy' should be replaced with the more neutral 'debt adjustment'. It proposes that debt cancellation should be delivered by an administrative body without recourse to a judicially-led court-based process, except for appeals against the misapplication of due process, as exists in Sweden and France, where clear rules are applied transparently, quickly and efficiently. Creditors and consumers should have the right to appeal to a court on the grounds of compliance with the process. The debt counsellor who leads the administrative process should determine the solution applicable to the case, rather than the consumer or the debtor, and they should have the power to attach earnings. There should be transparent rules on exempt income based on social benefit levels, taking account of the number of children and/or a partner, and the impact these have on social allowances. The debt counsellor should only have the right to liquidate assets worth over a substantial threshold, although they have the right to impose a 'cram-down' on creditors. The debt counsellor should have the power to impose a 'zero-plan' where there is no chance of the consumer being able to make payments, with immediate discharge if a consumer cannot, over three years, repay either 10 % of their total debt or EUR 10 000, whichever is lower, in line with recent practice in the Netherlands. As in Denmark and the UK, discharge should occur one year into a three-year payment plan, aligning discharge at the lowest common denominator whilst still ensuring that creditors have access to excess earnings for three years.<sup>505</sup>

Article 28(4) of the Mortgage Credit Directive<sup>506</sup> states that 'Member States shall not prevent the parties to a credit agreement from expressly agreeing that return or transfer to the creditor of the security or proceeds from the sale of the security is sufficient to repay the credit'. This will prevent a universal veto against the creation of non-recourse mortgages across Member States as they transpose the directive. It remains questionable whether the directive will lead to any obligation on a lender to act sympathetically towards a borrower with unsustainable debt.

### **8.3.5 Social assistance, advice and support**

The early intervention of social assistance, advice and support is a major factor in preventing eviction. The advantages of having social services receiving early information on households at risk of eviction are many, and this can lead to effective interventions to prevent evictions as a very cost-effective measure. It also makes prevention work more efficient, as support at an early stage is less expensive, has a better chance of supporting households to help themselves, and provides better opportunities for the households at risk to remain in their current dwellings.<sup>507</sup> For these measures, the costs are largely personnel related, although qualified staff are

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<sup>504</sup> London Economics (2012), p. xiv.

<sup>505</sup> London Economics (2012), p. xii/xiii.

<sup>506</sup> Directive 2014/17/EU, which entered into force in March 2016.

<sup>507</sup> See section 8.4.1 below on the duty of courts and other agencies to inform social support agencies.

essential to support households in crisis and to facilitate agreements between banks/landlords and households at risk of eviction and homelessness.

Some national experts (FI, PT and SI) report that early cooperation between social housing landlords and municipal prevention services is more frequent and more effective than cooperation with private landlords or mortgage providers. Often, the proportion of households at risk is higher in social housing than in other tenures. In this case, the easiest approach to communicating about a household in difficulty takes place where preventive services are an integral part of housing providers' services. Many Dutch housing associations accept that preventing evictions begins with preventing and tackling rent arrears at an early stage. Letters and texts are sent to tenants in arrears, along with brochures on social aid organisations offering advice and assistance.

In Portugal, some municipalities have mechanisms to monitor and prevent eviction from their public housing stock, such as: automatic notification letters to tenants at one, two or three missed payment stages; home visits; debt settlement agreements; and cooperation with NGOs, bailiffs and social services case managers.

In Germany, there are agreements with private landlords and larger housing companies to inform prevention services as early as possible about housing problems that could lead to an eviction. In some municipalities, this practice has been disrupted by data protection issues, although elsewhere it remains quite extensive. A recent study in North Rhine-Westphalia showed that 43 % of 210 municipal prevention services get such information from housing companies and landlords, although most have to wait for information from courts or bailiffs on eviction or the enforcement of eviction.<sup>508</sup>

There are issues relating to the collection of information on households at risk of eviction at a very early stage. Some feel that many households can overcome a housing crisis by self-help, or by returning to the informal support of relatives and friends. The issue of potential breaches of data protection rules was mentioned in a number of reports (CZ and DE) as a major barrier.

#### 8.3.5.1 Proactive contacts with households at risk (e.g. by home visits)

Effective engagement to prevent evictions may require active personal contact. As practitioners consistently point out, many households with rent or mortgage arrears have other debts as well (consumer debts, debts from fines, energy bills etc.). In these cases, an official invitation letter from a local preventative/advice agency will rarely induce a request for assistance. Several national experts (AT, CZ, DE, FI, NL, and SI) emphasise the importance of visiting people in these households at their homes.

A recent study in North Rhine-Westphalia (NRW) in Germany shows that, while almost all prevention services (more than 90 %) send written invitations offering their services to households threatened with eviction on a regular basis, 28 % also make

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<sup>508</sup> Busch-Geertsema et al. (2014), p. 47.



home visits on a regular basis, 43 % do so only in extraordinary cases (in case studies, old people are mentioned and households with children are contacted more often than single people) and 29 % never make home visits.<sup>509</sup> The main reasons for not paying home visits more often are staff shortages and, in some places, frustration after unsuccessful visits (when households were not at home or did not open the door). Positive examples are also reported from Lier in Belgium, involving regular visits to households in rent arrears.

One of the potential disadvantages of home visits is that they require time and effort. Engaging successfully may require several visits, some outside normal working hours. Households may also reject home visits as a kind of 'soft debt collection' and an intrusion into their private sphere. However, pilot projects in Germany with active visiting services for the prevention of homelessness and in-depth studies of administrative prevention services show that, with home visits, a very high proportion of successful contacts is possible. This approach may be very effective in preventing homelessness even in 'difficult' cases (households with language problems because of migration background, illiterate persons etc.).<sup>510</sup>

Balancing the advantages and disadvantages, it may be concluded that proactive contacts with households increase the effectiveness of secondary prevention efforts and help to reach those households in crisis who are particularly difficult to reach and whose situations may give rise to high costs if they become homeless. Staffing requirements and a number of unsuccessful home visits may always be an issue, but effective prevention work will rely heavily on successful approaches to get in contact with households at risk.

#### 8.3.5.2 Support to tenants in arrears

Evictions can be prevented or suspended through measures which support tenants in dealing with arrears and debt, as well as by developing realistic repayment options for arrears. Holl et al. (2015) present recent research suggesting that debt advice and legal assistance seem to be the most effective ways of preventing evictions.<sup>511</sup> Mediation between landlords and tenants with significant arrears can be a very effective measure in the period before a judicial claim has begun, as was reported by national experts for this research study.

In Germany, the recent NRW study has shown that almost half (48.8 %), of all successful prevention activities involved direct agreements between landlord and tenants (usually leading to repayment of arrears in instalments).<sup>512</sup> Different studies in Germany have shown that about a third of all households threatened with homelessness require only a short crisis intervention, while others need additional longer-term support to ensure the sustainability of prevention efforts. For many, debt

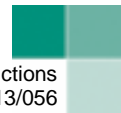
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<sup>509</sup> Busch-Geertsema et al. (2014), p. 50.

<sup>510</sup> Busch-Geertsema and Ruhstrat (2012); See also Gerull (2003), p. 224 ff.

<sup>511</sup> Holl, van den, Dries and Wolf (2015) examined all existing international (English language) published research on preventing tenant evictions and concluded that '[A] scientific foundation of knowledge for the development and implementation of preventative practices and policies regarding tenant evictions is almost absent and more research is needed'.

<sup>512</sup> Busch-Geertsema et al. (2014), p. 56.



counselling was the main measure needed. The NRW study found that some 40 % of all prevention cases were in need of additional personal support to overcome social difficulties, addiction problems and other mental health problems.<sup>513</sup> While the provision of debt counselling is widespread and access to mental health support and addiction services may be organised relatively easily, the provision of proactive personal support in relation to housing has been increasing in recent years in some of the German regional states. However, it remains insufficient, particularly for people who have not lost their homes but remain in need of such support after a crisis intervention.<sup>514</sup> The provision of social support in housing is still more frequently used in Germany as a rehousing measure.

Austrian prevention services will seek contact with the landlord and will try to reach a mutual agreement to prevent termination of the tenancy. Mediation is suggested. Prevention services usually remain in contact with households after a successful crisis intervention for at least for a short period of follow-up care, so as to ensure a sustainable effect from the consultation and to prevent a backslide into rent arrears and an eviction order.<sup>515</sup>

A number of local initiatives were reported from the Netherlands to mediate between landlords and tenants (predominantly in the social rented sector). In Amsterdam, the municipality, housing associations and social work organisations work together in the 'Quickly On Top of It' (*Vroeg EropAf*) project.<sup>516</sup> Social workers visit housing association tenants with two months' arrears, and provide the appropriate support to prevent court procedures and evictions. A pilot project in the city also involved private sector landlords under the *Vroeg EropAf* approach.<sup>517</sup> Since 2008, 39 Dutch municipalities and other stakeholders, including housing associations, have drafted plans of action for social care called 'Urban Compass' (*Stedelijk Kompas*), which aim to prevent and significantly reduce homelessness. In Rotterdam, the municipality and all 11 housing associations signed an agreement with the purpose of preventing evictions on account of rent arrears.<sup>518</sup> As part of this agreement, a protocol was developed, describing the roles and responsibilities of all parties involved. Housing associations are expected to actively seek contact with tenants with rent arrears and, where this does not lead to a solution, the association refers its tenants to the Eviction Prevention Registration Point. Professionals from the Eviction Prevention Registration Point then visit the tenant at home, begin budget management services and refer the tenant to other care providers if necessary. Where this is not successful, the housing association resumes the debt collection activities and court procedures. Stakeholders in Utrecht have developed a 'last chance policy' (*Laatste kans beleid*), which is able to deal with cases of serious nuisance. Tenants engaging in antisocial behaviour are offered psychosocial help, and those who cooperate with

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<sup>513</sup> Busch-Geertsema et al. (2005), p. 30 ff; Busch-Geertsema et al. (2014), p. 59.

<sup>514</sup> Busch-Geertsema et al. (2014), pp. 84-85.

<sup>515</sup> Volkshilfe (2014).

<sup>516</sup> See: <http://www.afwc.nl/templates/afwc/images/Convenant%20Vroeg%20Eropaf%202012%20-%202013.pdf>, last accessed 5 May 2014.

<sup>517</sup> <http://www.amsterdam.nl/@694678/pagina/>, last accessed 5 May 2014.

<sup>518</sup> See: [http://eropaf.org/lib/publicaties///Convenant\\_preventie\\_huisuitzetting\\_Rotterdam\\_2011\\_tm\\_2014.pdf](http://eropaf.org/lib/publicaties///Convenant_preventie_huisuitzetting_Rotterdam_2011_tm_2014.pdf), last accessed 5 May 2014.





the association are offered a customised tenancy contract, including a care and/or supervision contract for at least two years. Participation in this arrangement is mandatory in order to avoid eviction, and there is an 85 % success rate.

Several Spanish autonomous regions now provide intermediate services as a preventive measure. These include *Ofidute* in Catalonia,<sup>519</sup> the *Programa Andaluz en Defensa de la Vivienda*,<sup>520</sup> and the Service of Mortgage Intermediation in the Basque Country.<sup>521</sup>

## 8.4 Once a judicial claim takes place

Secondary prevention measures after the judicial claim for repossession/eviction has been initiated assume a more critical function, as they are now framed within the legal process. Measures which take place to prevent evictions in this phase include a timely obligation on courts to inform housing/social services of the imminent eviction, the availability of legal aid and advice, legal limitations for enforcement of the claim and debt adjustment in court.

### 8.4.1 Obligation of courts to inform housing/social agencies

Early intervention by means of providing assistance and personal support can avoid the damaging and costly process of eviction. One key observation by national experts concerned the absolute importance of timely referrals for assistance and support agencies (AT, CZ, DE, DK, FI, NL, PL and SE). Naturally, it is much easier to repay low levels of arrears and solve neighbourhood disputes at an early stage.

In this context, a duty to inform the relevant housing and social agencies can act as an effective preventative measure. A prospective or imminent eviction order must be reported by the court or bailiff to housing/social and welfare/child protection agencies in many Member States (BE, DE, DK, FI, FR, HR, HU (but only if children are involved), EE, LT, PL (municipalities), PT and UK (Scotland only)). Courts must inform the Orphans Court within three days when there is a child in the property that is subject to proceedings (HU and LV). In a number of Member States (AT, BG, CY, CZ, EL, ES, IE, IT, LU, MT, NL, RO and SK), where only some protocols exist in particular regions/courts, there is no obligation to inform any support agency about eviction proceedings.

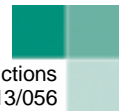
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<sup>519</sup> *Ofidute* began in 2010, and established an agreement in May 2014 with 430 municipalities in Catalonia. By 2014, it had received 7 471 applications, of which 1 760 were counselling cases and 1 826 intermediation cases, with a ratio of 59 % accepted proposals by banks and mortgagors.

<sup>520</sup> See [http://www.juntadeandalucia.es/fomentoyvivienda/portal-web/web/areas/vivienda/programa\\_defensa\\_vivienda](http://www.juntadeandalucia.es/fomentoyvivienda/portal-web/web/areas/vivienda/programa_defensa_vivienda), last accessed 15 June 2015. The service began in October 2012. By January 2014, it had agreements with 251 municipalities in Andalusia and, up to the end of 2013, had acted in 810 prevention cases, 4 313 intermediation cases and 615 protection cases.

<sup>521</sup> The service was created in May 2012 and received 141 applications up to December 2012, of which 87 ended in a proposal for the parties (bank and mortgagors).





The arrangements across EU Member States vary according to their national and local practices and arrangements. In Austria, courts in six out of nine regions must notify local authorities/social services of imminent eviction, although local authorities are not obliged to ensure effective prevention services. The NGO *Fachstelle für Wohnungssicherung* (FAWOS), or Specialist Office for Housing Assurance, acts as a central contact office for those who are threatened with eviction from private rented or housing association accommodation in Vienna. There is a legal obligation on district courts to notify FAWOS of enforcement orders and eviction dates.

Belgian legislation<sup>522</sup> on evictions prescribes that the Public Centre for Social Welfare (PCSW) must be informed by a court when an eviction procedure is taking place. The PCSW is then legally obliged to investigate how it can support the household,<sup>523</sup> although there is not a formal process of assigning responsibility to a particular post-holder for the household's welfare. Every household being threatened with eviction is assisted but, in practice, resource constraints limit the level of such assistance. Of course, the household may refuse such assistance, or it may discontinue the relationship with PCSW. In cases where a Flemish social housing organisation wishes to start a judicial procedure to terminate the rental contract for renters with a prescribed yearly income,<sup>524</sup> it can only do so if it can prove that it has already made an appeal to the PCSW for mediation.

In Denmark, a duty was introduced for public housing associations to inform municipalities about eviction cases sent to the bailiff's court.<sup>525</sup> The municipality must act upon this information when there are children or people with known support needs in the household.<sup>526</sup> The municipality must ensure that social and personal needs are assessed and addressed. However, there can be challenges in developing and maintaining contact with the person or household since, in Denmark, many of those at risk of eviction have severe psychosocial or addiction problems, often accompanied by unstable personal circumstances.

Estonian law<sup>527</sup> states that every person is required to immediately notify the social services department, police or some other suitable body if the person knows of a child who is in need of protection or assistance. The social services department have the right and are required to act immediately, regardless of the region or group to which the child belongs. However, the obligation to inform does not regularly result in adequate responses, due to resource limitations.

In Finland, the bailiff has a duty to inform the municipal social and housing authorities if children or persons in need of immediate care are known to reside in a property being repossessed or will be present at an eviction. However, the obligation does not extend beyond the duty to inform and does not require the bailiff to examine the circumstances of the household.

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<sup>522</sup> Law on the humanisation of judicial eviction (1998) (*Wet op de humanisering van de gerechtelijke uithuiszetting*).

<sup>523</sup> Judicial Code of Belgium, Article 1344 paragraph 5.

<sup>524</sup> In 2014 the limit was EUR 18 621 per annum.

<sup>525</sup> The Rent Act in Public Housing, s. 92.2.

<sup>526</sup> The Act of Justice and Administration in Social Affairs, s. 5. a.

<sup>527</sup> Article 59 of the Child Protection Act.

There is an obligation in French law<sup>528</sup> to inform the *Commission de coordination des actions de prévention des expulsions* (CCAPEX) of any arrears of rent two months before the summons to attend a hearing at the court. Otherwise, the application is declared inadmissible. From January 2015, this law provides that landlords must report all notices of arrears sent to tenants to CCAPEX in order to find alternative solutions before going to court. In cases where the tenant receives housing benefit, or where the housing benefit is paid directly to the landlord, the landlord has to inform the housing benefits departmental commission within three months of the first arrears arising. Providers of housing benefits may also apply to CCAPEX as soon as the household is at risk of eviction. Bailiffs must inform the administration (*Préfet*) two months before the eviction hearing date in order to proceed. The *Préfet* must propose that CCAPEX and the household apply to the DALO mediation commission. CCAPEX may ask a judge to suspend the process of evicting households, declaring 'a situation of priority'.

In Germany, there are legal obligations on courts to inform social services agencies in cases of evictions for arrears. There is no obligation on the court to inform housing or social services of an eviction in Ireland, although childcare legislation requires notification of social housing evictions. Before starting a legal procedure, Italian landlords must inform the housing benefits departmental commission or the social service that pays housing benefits<sup>529</sup> about any non-payment problem on the part of a tenant, in order to attempt to clear the debt. In the Netherlands, before an eviction may take place, the judicial officer reports the eviction's date and time to the municipality's mayor and alderman.<sup>530</sup> The eviction must be authorised by the (assistant) public prosecutor,<sup>531</sup> who must be present. Legislation requires lenders to notify the local authority upon serving notices seeking to repossess a property.<sup>532</sup> Protocols also require that those being evicted be informed of the risk of homelessness, and that they seek advice from the local authority. There is no obligation to inform social agencies in the UK.

In Sweden, for cases involving rented housing, there is an obligation on the bailiff to inform the social welfare board about the date and time of eviction. The board has to confirm receipt of this notification, record who is responsible for the case and forward a copy of this to the tenant. There is no obligation to inform in cases of a homeowner being evicted.

The duty to notify third parties is not normally part of the court process in eviction cases, although it is one of the recommendations of this research report. Courts often have a very large bureaucratic workload, and in some Member States, evictions of residential properties are not separated from general repossessions for mortgage default. Thus, where a legal notification obligation does not exist, specific court rules or legislation will be required to ensure that these agencies are informed of the possibility of eviction.

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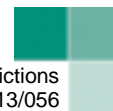
<sup>528</sup> Law n° 2014-366 (2014).

<sup>529</sup> *Caisse d'allocations familiales* (family allowance fund) and *Mutualité sociale agricole* (for farmers).

<sup>530</sup> Art. 14 Judicial Officers Act (*Gerechtdewarderswet*).

<sup>531</sup> Arts. 557 and 444 Civil Procedure, in conjunction with Arts. 2 and 3 of the General Act on Entry into Dwellings (*Algemene wet op het binnentreden*).

<sup>532</sup> Section 11 of the Homelessness etc. (Scotland) Act 2003.



In terms of effectiveness, there are enormous benefits from avoiding the breakdown of a household, including court and legal costs, the provision of emergency accommodation and child protection measures (which are obligatory in all EU Member States). Of course, households may refuse or discontinue engaging in these procedures. However, in terms of cost effectiveness, there is very little outlay, as only a notification procedure is involved. The issue of the resources available to the support agency is also significant, but the obligation of the courts to inform housing/social services agencies promptly represents a very cost-effective measure. This somewhat balances the interests of tenants and borrowers without resources or social support with those of lenders, landlords etc., and it should have no appreciable effect on the market. If anything, it may lead to more efficiently resolved repossession procedures with less lengthy and less harrowing actual evictions, involving minimal public resources.

#### 8.4.2 Legal aid and representation

The protection of housing rights and the prevention of homelessness require that lawful evictions take place under appropriate legal and procedural rules. Ultimately, they must be subject to the supervision of a court. Access to justice is a core fundamental right according to the EUCFR and ECHR,<sup>533</sup> and it requires that those being evicted be in a position to defend their rights. Article 6 of the ECHR, which has been accepted by all EU Member States, provides that everyone is entitled to a fair hearing,<sup>534</sup> and this applies to civil matters, such as evictions, where the issues and procedures are complex.<sup>535</sup> Defending evictions proceedings almost always requires legal expertise and advocacy. There may be important questions of fact, such as the details of amounts owing, records of payments, records of any informal agreement made, compliance with relevant codes of practice, previous representations by the household being evicted, issues of health, children's needs, unemployment, relationship breakdown and other factors, of which the court must be made aware. Many people who are in debt are alienated from the official administrative system of the state, including the courts. For those without sufficient resources to engage a lawyer, legal aid is crucial to ensure that there is a fair hearing and equality between the parties.

Legal aid for those being evicted is available in many Member States, although in some cases budgets are insufficient to meet demand. Legal aid and assistance is also often subject to a 'merits test' (IE) and a means test.<sup>536</sup> National reports specifically highlight the significance of legal aid for evictions cases in Belgium, Bulgaria, Denmark, Finland, France, Latvia, Germany, the Netherlands, Slovenia, Spain and the United Kingdom, and it has been identified as one of the most effective

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<sup>533</sup> The right to legal aid is guaranteed by the ECHR and the EUCFR. Article 6(3)(c) of the ECHR guarantees the right to legal assistance where the defendant 'does not have sufficient means to pay for legal assistance' and is 'to be given it free when the interest of justice so requires.' Article 47 of the EUCFR stipulates that 'Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.'

<sup>534</sup> See [http://ec.europa.eu/civiljustice/legal\\_aid/legal\\_aid\\_int\\_en.htm](http://ec.europa.eu/civiljustice/legal_aid/legal_aid_int_en.htm), last accessed 30 May 2015.

<sup>535</sup> *Airey v Ireland*.

<sup>536</sup> For details of legal aid entitlements across most EU Member States, see [http://ec.europa.eu/civiljustice/legal\\_aid/legal\\_aid\\_gen\\_en.htm](http://ec.europa.eu/civiljustice/legal_aid/legal_aid_gen_en.htm), last accessed 20 May 2015.



measures to prevent evictions from rented housing in a review of international literature.<sup>537</sup>

There is no statutory right to access legal aid for property or eviction-related issues in some Member States (CY, CZ, HR and IE – there are exceptions when the issue relates to a debt), although some NGOs provide legal assistance on a charitable basis, such as the Civic Counselling Centres in the Czech Republic.

In Belgium, Article 23.2 of the Constitution provides that everyone has a right to legal aid, although it is means tested. The Bulgarian system enables persons at risk of eviction to apply for free legal aid, for a free initial consultation or for assistance with the paperwork for filing a lawsuit if they are receiving social allowances or are institutionalised.<sup>538</sup>

In Estonia, state legal aid is granted by legislation<sup>539</sup> to insolvent natural or legal persons who meet an eligibility test. A tenant in France may request legal aid (*aide juridictionnelle*) if they cannot afford a lawyer. Legal costs are covered by the state, at different rates according to the household's incomes.

People of proven low income in Greece have the right to request free legal aid during an eviction case, with the lawyer's fees being covered by the Greek state.<sup>540</sup> In Ireland, legal aid and advice is available in principle to those on low incomes and is subject to a merits test. However, property disputes are excluded, and while there is some discretion, many people have no legal representation in eviction cases.<sup>541</sup> Legal aid in Latvia is ensured by the state for people on a low income or in need, with full support from the national Government or local authority.<sup>542</sup> However, no obligation to grant legal aid exists in Poland, and many people are unrepresented in eviction cases.

In Slovenia, the state ensures the provision of free legal aid.<sup>543</sup> Citizens in material need in Slovakia may obtain free legal advice from the Centre for Legal Aid, which has branches across the country. Legal aid is conditional on the income of the applicant being less than 1.4 times the subsistence minimum income, and there is a detailed application procedure, which can act as a barrier. In the Netherlands, those who cannot afford legal services due to low financial capacity can receive legal aid from the state.<sup>544</sup>

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<sup>537</sup> Holl, van den Dries and Wolf (2015).

<sup>538</sup> BG, Law on Legal Aid (2006).

<sup>539</sup> State Legal Aid Act - *Riigi õigusabi seadus*, RT I 2004, 56, 403.

<sup>540</sup> FEK 200/B/16-2-2007.

<sup>541</sup> The Civil Legal Aid Act 1995 precludes legal aid from being granted in proceedings which are 'disputes concerning rights and interests in or over land,' with some exceptions, such as family law-type disputes around the household's main residence.

<sup>542</sup> Latvia: *Valsts nodrošinātās juridiskās palīdzības likums*. State Ensured Legal Aid Law 2005.

<sup>543</sup> Free Legal Aid Act OG96/04.

<sup>544</sup> Art. 18 Constitution, in conjunction with the Legal Aid Act (*Wet op de rechtsbijstand*), 1 January 1994.

In the United Kingdom, access to justice for those on lower incomes is maintained through the state, despite significant cuts to the legal aid budget. Furthermore, duty desks providing 'on the day' advice in courts have been established and have been found to be successful. However, despite these policy interventions, engagement by those being evicted in possession proceedings in the UK is low.

Legal aid can ensure that courts are aware of unfair processes being used or the use of unfair duress to achieve payments by tenants or owners in arrears. Supervision of the eviction process by the courts, ensured through adequate legal aid representation, can prevent violence and harassment that may lead to physical or psychological harm, ensuring that vulnerable debtors are treated appropriately and in ways that neither exploit nor exacerbate their vulnerability.<sup>545</sup>

In civil proceedings, such as evictions, the right to legal aid is not absolute and may be subject to legitimate and proportional limitations. Determining factors are: the interests at stake, the complexity of the procedures, the issues of law and fact, and the emotional involvement of the applicant.<sup>546</sup> However, the minimum requirements to satisfy Article 6 of ECHR, on guaranteeing access to justice, can also be met by a simplification of procedures, through help by social workers and paralegals, by using simplified court forms and through court directions and guidance from judges during the proceedings.<sup>547</sup> When legal proceedings require representation from a lawyer, a lawyer must be made available by the state (if the applicant cannot afford one and if the case has sufficient merit). Of course, accessing legal aid or self-representation requires a level of ability, literacy and access to services. It is generally accepted that many people who experience poverty and social exclusion do not take up opportunities for representation because of a lack of information, poor literacy, alienation from society and language barriers.

In almost all situations, the costs of a forced sale, action by debt collection agencies or repossession are high, and these are normally charged to the debtor/tenant. Since civil legal aid budgets are limited in all Member States, one option would be to legally guarantee such representation, and then to recoup the legal and court costs of the household being evicted, in cases where they are unable to pay, from the sale price of the property.

Overall, the cost effectiveness of legal aid and representation is a key issue, since there may often be no valid defence, such as in relation to AST terminations in England and Wales.<sup>548</sup> The benefit brought by legal aid may allow for proper court consideration for those being evicted and for the implementation of ECHR 'respect for home' provisions. Furthermore, where legal representation prevents immediate homelessness, with its associated economic, social and personal costs, it is cost effective. At a wider policy level, the availability of legal aid and representation

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<sup>545</sup> In this context the application of the provisions of the UN Convention on the Rights of Persons with Disabilities, which has been ratified by the EU and many Member States, may be relevant.

<sup>546</sup> *Airey v Ireland*.

<sup>547</sup> Barendrecht, Kistemaker, Scholten, Schrader and Wrzesinka (2014).

<sup>548</sup> See [http://england.shelter.org.uk/get\\_advice/private\\_renting/private\\_renting\\_agreements/assured\\_short\\_hold\\_tenancies](http://england.shelter.org.uk/get_advice/private_renting/private_renting_agreements/assured_short_hold_tenancies).





enables lawyers and advocates to ensure that statutory human and consumer rights standards are applied at local level, preventing arbitrary or illegal eviction and thus ensuring public confidence in the rule of law.

### **8.4.3 Defences to eviction/repossession proceedings/appeals**

The opportunity to make a defence in repossession proceedings is a fundamental issue in the prevention of evictions and homelessness. Generally, there is an opportunity to appeal evictions at the court of first instance in most EU Member States (BE, BG and CY (mortgages), CZ, DE, DK, EL, ES, FI, FR, HR, HU, IE and IT (leases), LU (leases and domestic violence), LT, MT and PL (mortgages and leases), LV and NL (leases), PT and RO (leases), SI and SK (mortgages and leases) and UK). A person can file a complaint against a bailiff's decision (BG, EE, LT and LV). However, in many situations, the available defences are limited in law.

Eligible defences to eviction vary, from constitutional law provisions on the inviolability of the home (requiring legal justification and procedural protections for evictions) to situations where questions of compliance with EU or ECHR law can be effective. Many defences are based on disputes over payment requirements, amounts paid, arrears or extinction of the debt. The most common opposition to evictions relates to breaches of legal procedures or documentary requirements.

Of course, all evictions must comply with constitutional and legislative provisions regarding constitutional and other rights, as well as fair procedures. Thus, the eviction can be challenged on grounds of violation of these legal obligations, which courts must uphold. ECHR Article 6 and Article 8 standards on whether the eviction is lawful, necessary in a democratic society and proportionate are also reported causes of opposition/defence in many Member States. For instance, an Estonian court held that an inappropriately documented eviction would violate rights provided for in Article 8 ECHR and Article 33 of the Estonian Constitution (inviolability of home).<sup>549</sup> In relation to social housing tenancies where the landlord is a 'public authority', the ECHR obligations of respect for home (Art. 8) and fair procedures (Art. 6) must be respected, and non-compliance have been held to nullify the eviction process, for example, in Ireland and the United Kingdom (social housing only) and in Spain (squatters).

### **8.4.4 Limitations on granting of eviction orders**

In eviction cases, courts must comply with well-established limitations, principles and procedures of constitutional, legislative, general or public interest law. Limitations on the granting of eviction orders have been examined by the ECtHR, which assesses whether 'a fair balance' has been struck between the general interest and the individual interests at stake (such as property rights).<sup>550</sup>

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<sup>549</sup> Order of the Tallinn Circuit Court in civil case no. 2-13-38211 of 13 January 2014.

<sup>550</sup> See Part 2 above and *Hutten-Cpaska v Poland*.



Some examples across Europe illustrate the complexity of approaches. The Dutch and Irish courts may refuse a possession order in cases of non-compliance with parts of the codes of conduct for mortgage loans.

Courts have also placed limitations on repossession/eviction where the terms of the mortgage agreement do not comply with EU law on unfair contract terms in consumer contracts.<sup>551</sup> The obligation of the court to examine such agreements for unfair contract terms has been established in EU law, and this has enabled courts to consider other aspects of compliance with EU law in the eviction itself.<sup>552</sup> In *Aziz v Caixa d'Estalvis de Catalunya*,<sup>553</sup> eviction was prohibited where the CJEU found that Spanish mortgage law was not compatible with these EU law obligations. The borrower had only limited defence against a lawsuit for mortgage default and could even be evicted while challenging its incompatibility with EU law, despite having a valid claim. Courts in Spain<sup>554</sup> have applied limitations prohibiting the eviction of a defaulting tenant until her son's school year ended,<sup>555</sup> cancelling the remaining debts of an unfruitful insolvency process to two retirees<sup>556</sup> and declaring void a loan contract, the mortgage that secured it and the procedure itself, on the sole basis that the agreed default interest rate was too high (19 %).<sup>557</sup>

In the case of *Kušionová v SMART Capital a.s.*,<sup>558</sup> the CJEU established very clear limitations on eviction in relation to situations where there may be unfair contract terms. The CJEU stated that the loss of a family home not only seriously undermines consumer rights, but also places the family of the consumer concerned in a particularly vulnerable position. Under EU law, the right to accommodation is a fundamental right guaranteed under Article 7 of the EUCFR, and the referring national court must take this into consideration when implementing Directive 93/13/EEC on unfair terms in consumer contracts. In cases of family home evictions, the national court 'must provide for interim measures by which unlawful mortgage enforcement proceedings may be suspended or terminated where the grant of such measures proves necessary in order to ensure the effectiveness of the protection intended by Directive 93/13/EEC.'<sup>559</sup>

In Bulgaria, the Civil Code prohibits the seizure of the only dwelling of a debtor when he or she or any of the family members of the household have no other dwelling unit, regardless of whether the debtor resides therein.<sup>560</sup> However, the ban does not apply in cases of mortgage or pledge when the mortgagee/pledgee is the execution

<sup>551</sup> Council Directive [93/13/EEC](#) of 5 April 1993 on unfair terms in consumer contracts.

<sup>552</sup> *Pannon GSM Zrt v Erzsébet Sustikné Győrfi*.

<sup>553</sup> *Mohamed Aziz v Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)* [2013]. This was followed by a similar situation in *Sánchez Morcillo and Abril García v BBVA*, [2014].

<sup>554</sup> See more case commentaries at Nasarre-Aznar (2015).

<sup>555</sup> AC 2013\726. Order JPI no. 39 Madrid 6 March 2013.

<sup>556</sup> AC 2010\1828. Commercial Court resolution (SJM) no. 3 Barcelona 26 October 2010.

<sup>557</sup> *Cendoj* (Database of court resolutions of the Government body for Spanish Judges) 35004420042013200001. AJPI no. 4 Arrecife 8 April 2013. See also Joined Cases C-482/13, C-484/13, C-485/13 and C-487/13, request for a preliminary ruling from the *Juzgado de Primera Instancia e Instrucción de Marchena* (Spain).

<sup>558</sup> Case C-34/13.

<sup>559</sup> Case C-34/13, paragraphs 63-66.

<sup>560</sup> BG, Civil Procedure Code (2008), Art. 444.

creditor in the judicial sale of the property. Debtors on obligations for maintenance or damages sustained as a result of a tort or delict or because of embezzlement of assets cannot avail themselves of this limitation.<sup>561</sup>

A Maltese purchaser of a property following a sale by auction must request a warrant of execution within four months, or must then institute ordinary civil proceedings in order to challenge the occupier's prior title (Article 357 Maltese Code of Civil Procedure).<sup>562</sup> A landlord who wishes to repossess a property for their relatives needs a legitimate reason and must prove that he is 'acting in good faith', and the tenant must have access to alternative accommodation in order for the landlord to secure an eviction.

Limitations on the enforcement of repossession or eviction orders can arise from human rights, constitutional, legislative and public policy reasons, as well as the inherent lengthy and complex legal process itself. Limitations on eviction may give rise to moral hazard in relation to mortgage repayments, and can result in restrictions to mortgage lending. Of course, legal claims by property owners who cannot repossess their property can be costly, and these are examined below.

#### **8.4.5 Debt adjustment in court**

Debt adjustment can provide one solution to ensure that occupants, particularly mortgagors in debt, can remain in their homes after a judicial decision to evict has taken place. This enables indebted households at risk of eviction to continue to work, to make repayments in line with their incomes and, in some cases, to have part or all of the unpayable debt written off.<sup>563</sup>

In terms of debt adjustment in the course of possession proceedings, Finland provides one interesting example. Legislation from 1993<sup>564</sup> has enabled people to be released from their debts in a district court. For the purpose of remedying the financial situation of an insolvent private individual, the court may issue an order on the adjustment of the debts of the individual, and may confirm a payment schedule that corresponds with the ability of the debtor to pay. The legislation affords homeowners strong protection in keeping their homes once the debt adjustment has been accepted. This regards the owner-occupied home as part of a person's basic necessities, to be liquidated only in limited situations. The capital amount of the debt cannot be changed, but the repayment scheme may be prolonged, with repayments ordered to amortise the capital first – and only after that are the lending costs and interest rate reduced. In addition to secured debts, the debtor has to be able to pay ordinary debts up to the amount corresponding to the mathematical minimum

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<sup>561</sup> BG, Civil Procedure Code (2008), Art. 445.

<sup>562</sup> This was confirmed by the Court of Appeal of Malta, which elucidated that through this article the law offered the purchaser an expedient means by which to evict the previous occupant of the premises, without having to file new proceedings (*HSBC Bank Malta v Doris Conchin*, decided by the Court of Appeal on the 25 November 2011 (App. Civ. Nr. 633/2011/1)).

<sup>563</sup> London Economics (2012).

<sup>564</sup> *Laki yksityishenkilön velkajärjestelyistä 57/(1993)* – the Act on the Adjustment of the Debts of a Private Individual.

aggregate provided. For ordinary debts (other than secured debts), the sum may also be reduced or the liability to pay abolished totally.

The Finnish legislation provides a system whereby a court can adjust or write off the debt (subject to conditions) and suspend the eviction in the process. In *Bäck v Finland*,<sup>565</sup> a creditor argued that the act violated his right to property under Article 1 of Protocol 1 to the ECHR, since it allowed the local Finnish district court to reduce or irrevocably extinguish the debt. The ECtHR held that there was no violation, as the measure was justified by a legitimate aim in the general public interest. This was not nullified by the fact that the community at large were not the beneficiaries.

Of course, the risk of moral hazard is often cited, whereby there may be encouragement for debtors to avoid payments. On the other hand, where debtors must endure 'social misery' for many years, engaging in futile attempts to repay loans, as outlined in *Bäck v Finland*,<sup>566</sup> then the general interest requires that a system for cancelling or reducing such debts be established.<sup>567</sup>

#### **8.4.6 Other secondary prevention measures**

Other secondary prevention measures can be invoked at all stages of the process, but particularly relevant at the court stage are those which address family-related dispossessions and evictions caused by renovation, urban regeneration or unfitness for habitation.

##### **8.4.6.1 Family-related dispossessions and counter-measures (divorce, domestic violence)**

Household/family-related disputes can result in home dispossessions either as a direct consequence of – or, more commonly, as part of – a mortgage or rent default. Often, the final arrangement for a divorce/split involves one party leaving the accommodation. Although this is not always regarded as a standard eviction situation, there will nevertheless be a formal instruction to leave at some point, and there is often a risk of homelessness.<sup>568</sup>

Several national reports have identified divorce/separation as a significant cause of evictions – 20 % in Austria and 15 % in Spain. Some 42 % of homeless people in Denmark reported that they had been through a divorce before an eviction.<sup>569</sup> Unemployment and divorce are major causes for mortgage arrears in Finland and in Luxembourg, while some 65 % of mortgagors reported home loss in the Netherlands related to a borrower's divorce. Upon divorce/separation, one partner is often granted exclusive use of the home, usually based on the primary child-care and custody role, while the other must leave and find alternative housing. In 75 % of cases in Spain,

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<sup>565</sup> ECtHR Application no. 37598/97 Judgment 20 July 2004.

<sup>566</sup> ECtHR Application no. 37598/97 Judgment 20 July 2004.

<sup>567</sup> This was also proposed in London Economics (2012).

<sup>568</sup> Härkönen (2013) suggests that increases in divorce rates have been among the most visible features of the recent decades of family change and 'despite the variation in the economic consequences of divorce, it is among the main life events that can lead to poverty'.

<sup>569</sup> Høst et al. (2012).

the mother remains in the home, and the father must pay maintenance and a share of the mortgage costs (the lender/borrower relationship is independent of marital status). Some 21 % of homelessness cases in Spain are related to divorce, and most of them concern middle-aged males.

Mediation can play a key role in preventing homelessness arising from a non-violent relationship breakdown. Essentially, these services facilitate negotiation between the individuals in the dispute and either prevent someone leaving their existing home or, in some instances, delay their departure until a pathway to alternative accommodation can be found. Mediation services have been successful in preventing youth homelessness, for example when a young person is expected to leave home at age 16 (generally culturally regarded as 'adulthood' in the UK), or because a lone parent expects them to leave because of a new relationship.<sup>570</sup>

Domestic violence occurs to a greater or lesser degree in all regions, countries, societies and cultures, and can affect women irrespective of income, class or ethnicity.<sup>571</sup> It can lead to dispossession and homelessness, although this is not strictly defined as an eviction, except where the perpetrator is barred from the dwelling.<sup>572</sup> Several Member States (ES, FI, LT, LU and LV) refer to domestic violence as a cause of forced moving from one's home. An estimated 50-60 % of all homeless women report that they are fleeing domestic violence. In Spain, domestic violence accounts for 25 000 barring orders per year against perpetrators. There are also specific alternative mechanisms that allow for the temporary relocation of the victim to supervised accommodation, shelters or emergency dwellings. In Sweden, some 4 000 women and 2 700 children spent one night or more in such sheltered housing in 2011. Up to six months of temporary accommodation is granted to victims of domestic violence in Bulgaria, while in Latvia, as elsewhere in Europe, a special 'temporary protection against domestic violence' scheme allows victims of domestic violence to stay in their homes in cases where they would otherwise be forced to flee.<sup>573</sup> According to the Polish Law on Combating Domestic Violence, the perpetrator of domestic violence can be evicted by a bailiff into a shelter, and there is no obligation to offer such a person social housing or temporary accommodation. 'Sanctuary schemes' in the UK effectively 'lock out' a perpetrator of domestic/gender-based violence or abuse, so that those at risk from that person do not lose access to their home, although the perpetrator does.

#### 8.4.6.2 Rehabilitation/urban regeneration-related counter-measures

Where evictions arise from rehabilitation or a declaration of ruin, or from unfitness for habitation, it is important that legislative limitations on evictions are invoked. Buildings and homes require regular renovation; and urban regeneration and gentrification<sup>574</sup> is a ubiquitous feature of modern European cities and towns. This may entail the dispossession of homeowners and tenants, either temporarily or

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<sup>570</sup> Quilgars et al. (2008).

<sup>571</sup> Kucs et al. (2008), p. 111.

<sup>572</sup> European Union Agency for Fundamental Rights (2014), p. 90.

<sup>573</sup> Article 250<sup>47</sup> of the Civil Procedure Law.

<sup>574</sup> Orji and Sparkes (2014); Thomas (2009); Butler and Lees (2006).

permanently. Ideally, there should be a rehousing obligation, but this is not universal. In Germany,<sup>575</sup> the municipality has a right to terminate tenancies subject to six months' notice, but only where suitable alternative accommodation is available for the tenant household at reasonable terms.<sup>576</sup> Sometimes compensation is also payable. Austrian landlords and tenants must be compensated for appropriation in the public interest.<sup>577</sup> Spanish<sup>578</sup> and Maltese<sup>579</sup> tenants have rehousing or compensation rights where homes are appropriated for rehabilitation or for regeneration works. Belgian households can be evicted due to a declaration that the property is uninhabitable, based on an administrative procedure in all three regions. A commitment to rehouse is required in Wallonia and Brussels, although the rehousing solutions are not always adequate. In Latvia, social tenants are provided with alternative social housing where the residence is scheduled to be demolished, rebuilt or completely refurbished, or if there is risk of collapse.

Temporary and permanent rehousing solutions in cases of renovation, regeneration or gentrification are not always obligatory. Of course, the costs of such rehousing must be balanced with the costs of any resulting homelessness, and as such developing and enforcing such obligations could be a cost-effective measure.

## 8.5 After court decision on eviction

Secondary prevention measures that have been taken following a court decision for eviction include a general moratorium on evictions, winter bans, suspension of the eviction (e.g. for social/humanitarian reasons, until reallocation, etc.), allowing time to find alternative housing and ensuring the availability of advocacy agencies and social work support.

### 8.5.1 General moratorium on evictions

A systematic or selective state legal moratorium on evictions can represent significant state intervention in the enforcement of property-related contracts, especially where a court has already decreed that repossessions/eviction orders are justified and proportionate. Such actions can avoid large-scale evictions within a particular area of housing stress, can mitigate personal harm or poverty, or can ensure the provision of alternative housing. Moratoria can prevent social upheaval, protect children and vulnerable people and, of course, avoid major disruption of the housing system arising from vacant repossessed properties flooding the market. On the other hand, there are claims that such moratoria introduce moral hazard among compliant borrowers, which could lead to a collapse of the mortgage market. In terms of efficiency and cost effectiveness, wider factors must be considered, such as the effect of a collapse in the housing system and widespread evictions on the economic

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<sup>575</sup> Cornelius and Rzeznik (2014), p. 172.

<sup>576</sup> Orji and Sparkes (2014), p. 193.

<sup>577</sup> Hofmann (2014), p. 156.

<sup>578</sup> (ES). Ley 8/2013. Available at: [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2013-6938](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2013-6938), last accessed 1 June 2015.

<sup>579</sup> Article 20 of the Land Acquisition (Public Purposes) Ordinance entitles the tenant to compensation where the public authority fails to allocate within a year of vacation by the tenant. Constitutional Court, case of *B. Tagliaferro & Sons Ltd v Kummissarju tal-Artijiet*, 18.10.2013.



and social fabric of the country, including the implications on social order. In any case, where countries experience a financial crisis, this is an option which can be used to create space for the development of more long-term and sustainable solutions.

Moratoria have been instigated at a general home-loan repossession level in Cyprus, Greece and Spain, at a targeted level in Hungary, and in Italy for rented housing. However, the Parliament of Cyprus voted in favour of a new law on foreclosures in 2014, following proposals from the IMF and the ECB. This ended a moratorium on evictions, reducing the repossession process from the previous average of 10 years to a period of months.<sup>580</sup>

In Greece, a moratorium preventing evictions from mortgaged residences was established by Law 3869/2010, known as the 'Katseli Law.' The EU, IMF and ECB have since urged the Greek Government to eliminate protective measures for borrowers, even abolishing the measure of securing the debtors' primary residences.<sup>581</sup> However, the moratorium was extended by Law 4161/2013, pending the establishment of a new organisation acting as an intermediary between the banks and their debtors.<sup>582</sup>

In Spain, there have been legal reforms to protect specific vulnerable families from evictions, including a forced *datio in solutum* or a moratorium on evictions, which has now been extended to 2017.<sup>583</sup> The vulnerability criteria include large families, single-parent families with children under three years of age, those who are without unemployment benefits and people with disabilities. There is an income eligibility limit of EUR 1 600 per month (2014), with higher levels for households with children.

In Hungary, legislation from 2010, extended in 2014, created a moratorium on the evictions of hundreds of thousands of foreign-currency mortgagors in debt. These loans have now been converted to Hungarian forints, but the moratorium continues to apply to those at risk of eviction who have no other accommodation.

Clearly, the advantage of a moratorium has been that, in a period of serious economic crisis, it suspended foreclosures and avoided large-scale evictions and consequent social unrest.<sup>584</sup> On the other hand, it is evident that this specific legal framework is particularly disadvantageous to lenders. Yet, general and targeted moratoria on evictions have a role to play in maintaining stability in housing markets and social order at times of economic or social crisis.

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<sup>580</sup> Law 142(I)/2014.

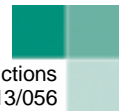
<sup>581</sup> European Commission Directorate-General for Economic and Financial Affairs (2012), p. 46.

<sup>582</sup> This protective framework only relates to property valued over EUR 200 000, a relatively high threshold for vulnerable households in Greece.

<sup>583</sup> Law 1/2013 and Law 1/2015.

<sup>584</sup> Some 61 300 households in Greece had applied for a resolution of their debts in court by June 2014.





## 8.5.2 Winter bans

Evictions from the home in inclement weather can cause irreparable harm and health risks through exposure. Many Member States recognise this risk and legislate for winter bans on evictions. While these bans exist in Austria, Belgium (in the Brussels Capital and Wallonia Regions only), Bulgaria (discretionary for courts), France, Hungary, Poland and Romania, they are not always uniformly applied. Indeed, there is a strong argument that such bans could be extended throughout EU Member States, alongside a ban on evening or night-time evictions, in situations where those evicted have no immediate alternative accommodation or may be subject to exposure.<sup>585</sup> The ECSR of the Council of Europe has consistently reiterated that legal protection for persons threatened by eviction must be prescribed by law, and must include a prohibition against carrying out evictions at night or during winter.<sup>586</sup> Imposing unnecessary or undue hardship on those being evicted cannot be justified, even though it restricts property owners from repossessing property in the event of arrears or breach of contract. In terms of cost effectiveness, the same arguments apply as they do for evictions generally, so as to avoid considerable personal, social and societal costs arising from evictions and associated homelessness.

## 8.5.3 Court suspension of execution of eviction

Suspending the execution of an eviction order granted by a court is a key measure in effectively preventing evictions leading to homelessness. This enables the occupier to remain in the home – sometimes indefinitely. Such suspensions are often granted at the discretion of the court for humanitarian or personal reasons, although in some cases there are prescribed criteria. These can relate to the characteristics of the household and to other factors such as the availability of alternative housing.<sup>587</sup> Generally, suspensions seek to ensure that children are protected and that vulnerable households can access social or financial assistance and alternative accommodation.

In many Member States, such suspensions are prescribed in law (ES, FI, FR, HU, IT, LT, LV, PL, PT and SI). In general, suspension of the decision to evict is not possible or is limited (BE and DK), and in some Member States it is limited to certain reasons (DE, EE, ES, IE, IT, LT, LV, PT and UK) due to such factors as ability to repay, children, people with a disability or the housing being in a municipality with 'significant housing problems'. Periods of suspension vary. Suspension can last for three months (ES – in households where there are children); up to six months (FI, HU, LU and PT); up to one year (DE); up to three years (SI); until the state provides alternative housing for protected persons (BG,<sup>588</sup> LT,<sup>589</sup> LV and PL); until the landlord

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<sup>585</sup> This raises important questions of compensation for private property owners who are unable to recover possession.

<sup>586</sup> See ECSR Conclusions 2011, Belgium, Article 16. This Article of the ESC has been ratified by all EU Member States (except Cyprus) and could be adopted as part of EU social inclusion policies on evictions. See: [http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Belgium2011\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Belgium2011_en.pdf), last accessed 20 July 2015.

<sup>587</sup> See also the section above on limitations to evictions.

<sup>588</sup> See *Yordanova and others v Bulgaria*.

provides alternative housing (CZ – up to 2014 only, and SK); or at the discretion of the Prefect, (parts of ES, FR and IT). There may also be matters related to the health or circumstances of children (FI). In some Member States, where a tenant can show that an eviction would cause irrevocable harm, it may be suspended indefinitely (DE, PT and SI). Where the tenancy is in a care dwelling, it can be terminated only if the resident is referred to another appropriate dwelling (DK and LV).

Some examples illustrate the diverse patterns of suspensions of evictions across Member States. In Austria, where the legal right to evict has been granted by a court, but prevention services have suspended the eviction, the order can remain in force for up to 30 years. The slowness of judicial proceedings in Bulgaria is viewed as effectively suspending eviction. The effect of the ECtHR decision in *Yordanova and Others v Bulgaria*<sup>590</sup> has led to the suspension of evictions of Roma families without the provision of alternative housing.<sup>591</sup> According to the ECtHR, ‘the underprivileged status of the applicants’ group must be a weighty factor in considering approaches to dealing with their unlawful settlement and, if their removal is necessary, in deciding on its timing, modalities and, if possible, arrangements for alternative shelter’. Arising from this judgment, the Sofia municipality does not execute eviction orders where there is no alternative accommodation available. In one case, referring to the principle of proportionality, a court repealed the eviction order by the municipality to evict a single parent with a child suffering from a severe illness.<sup>592</sup>

Postponement of eviction is possible in Estonia in exceptional circumstances such as the death of relatives.<sup>593</sup> In Finland, eviction by a bailiff may be suspended for important reasons, such as allowing the persons concerned time to move to other accommodation, or in relation to matters concerning health. Where children or persons in need of immediate care are present, the eviction is not to be carried out before the housing and social welfare authorities have had the opportunity to arrange for housing or to determine the need for social welfare services. The eviction can thus be postponed to secure the continuation of housing for vulnerable people.<sup>594</sup>

Legislation in France permits a judge to grant extensions of eviction enforcement, including suspensions for two years for indebted owners, to facilitate restructuring of a payment plan or debt deferral.<sup>595</sup> Likewise, if a borrower experiencing repayment difficulties applies to the Over-indebtedness Commission (*Commission de surendettement*), the eviction procedure is suspended. The execution of court-authorized eviction orders requires the authorisation of the *Préfet*, and any delay in this action amounts to a *de facto* suspension of eviction.<sup>596</sup>

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<sup>589</sup> Civil Case No 2A-55-264/2010.

<sup>590</sup> Application no. 25446/06, Judgment 24 April 2012.

<sup>591</sup> Similarly, in *Winterstein v France*, the ECtHR held that there must be appropriate consideration of the needs of families being evicted who had requested alternative accommodation, even when an eviction is justified in the public interest.

<sup>592</sup> BG, Administrative Court, Sofia (2013).

<sup>593</sup> Article 46(1) of the Code of Enforcement Procedure.

<sup>594</sup> Linna (2004), pp. 65-67.

<sup>595</sup> Law no. 2013/672.

<sup>596</sup> The administration, e.g. the *Préfet*, has two months to answer the request to execute the eviction - silence is deemed to signal refusal (Law no. 91-650: art. 17).

In Germany, a court may reserve, prohibit or temporarily stay the enforcement of a court eviction order if it would entail 'immoral hardship' for a tenant. Immoral hardship is assumed where the eviction puts the tenant's life or health at risk, such as in situations of severe physical or mental illness, old-age-related health restrictions or imminent childbirth.<sup>597</sup> However, a stay of eviction has to be balanced with the interests of the property owner, and there is no data on the extent of these suspensions. Courts in Ireland regularly suspend eviction proceedings on a discretionary basis, often with a final date of execution up to two years later.

Italian legislation suspends court-authorized evictions, sometimes indefinitely, for social reasons,<sup>598</sup> which is viewed as a response to the shortage of affordable rental housing and the inadequacy of the housing market. Thus, it is possible to have up to four suspensions of evictions in rented housing – up to 90 days, up to 18 months, or almost indefinitely – in situations of housing difficulty.<sup>599</sup> The criteria for the suspension of evictions, as set out in Italian legislation in 2007,<sup>600</sup> require the tenancy to satisfy a number of conditions: it is a private residential tenancy contract; evictions are related to the expiry of the contract (i.e. not for non-payment of rent); the residence is in a provincial capital municipality, in a neighbouring municipality with more than 10 000 inhabitants or in a municipality with 'significant housing problems';<sup>601</sup> the overall annual family income is lower than EUR 27 000; the family includes a person over 65, a terminally-ill person, a person with a disability of over 66 % or dependent children; or there is a lack of alternative suitable dwellings for the family in the region. The intervention of the state or of the police is also necessary to carry out actual evictions, and since some municipalities do not prioritise this role, this effectively acts as a suspension of evictions.

Legislation in Luxembourg from 2006 facilitated requests made in court for a stay of execution of eviction of up to nine months, but the applicant being evicted must demonstrate that they have taken meaningful steps to find a new home. In Lithuania, the Supreme Court<sup>602</sup> has held that courts must examine the fairness of terms in credit and mortgage agreements in cases regarding the termination of these agreements. Even where there are strong legal grounds, the eviction can be postponed for 6 to 12 months, until a child has reached 18 years or to allow the persons concerned sufficient time to find a new dwelling – or the eviction may be cancelled entirely.<sup>603</sup> In every situation the court must strike a fair balance between the interests of both parties in the eviction process, incorporating considerations

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<sup>597</sup> Section 765a ZPO.

<sup>598</sup> See Law no. 431/1998.

<sup>599</sup> The difficult situations indicated by Art. 6, subs. 5 of Law no. 392/1978 are: the tenant is over 65, has five or more dependent children, is unemployed and registered on the 'list of mobility', receives an indemnity for unemployment or as a supplement to his income, is formally the assignee of a public dwelling, of a dwelling from an insurance or social security entity or of a cooperative, or is the owner of a dwelling under construction or of a dwelling from which he is to be evicted.

<sup>600</sup> Law of 8 February 2007, no. 9.

<sup>601</sup> These latter municipalities are indicated by the decision of a specific commission: CIPE, Resolution 13 November 2003, no. 87/2003.

<sup>602</sup> Supreme Court of Lithuania, decision of 15 June 2011, civil case No 3K-7-272/2011.

<sup>603</sup> Supreme Court of Lithuania, order of 28 March 2011, civil case *G.S. and F.S. v I.S. and V.S.*, No 3K-3-128/2011.

regarding the institutions of the state, the public interest and the interest of the citizen.

Similarly, in Latvia, Article 36<sup>3</sup>(1) of the Law on Residential Tenancy enables the suspension of the execution of the court-approved eviction for prescribed categories of tenants until the local authority provides alternative residential space fit for living. It is reported that these provisions are effectively implemented. Again, property owners (with the exception of local government or the state) have the right to request compensation for losses arising from the suspension of the eviction order.

The Polish Constitution of 1997 and its guarantees of inviolability of human dignity have led to the suspension of evictions after court orders were granted. According to the judgments of the Constitutional Court<sup>604</sup> and the common opinion of Polish legal literature,<sup>605</sup> the so-called 'eviction to nowhere' (*eksmisja na bruk* in Polish) is prohibited. The enforcement of a court-authorized eviction without alternative housing being arranged by the municipality, for prescribed categories of people,<sup>606</sup> was held by the Constitutional Court to be unconstitutional. Of course, municipalities have limited access to alternative housing and are often unable to implement this obligation, which results in the occupants remaining *in situ*. This represents a legally defined suspension of eviction for vulnerable people as recognised by the courts. Polish courts have juxtaposed property rights with those of persons being evicted. Two Supreme Court judgments upheld landlords' claims for loss of profits from the municipalities arising from these suspensions of authorised evictions.<sup>607</sup> The right to claim full compensation in such situations is also established clearly in article 18, section 5 of the Act on Tenants Rights and Municipal Housing Stock.

Article 756 of the Portuguese Civil Procedure Code provides for suspension of the authorised eviction upon medical proof that it endangers the life of the person being evicted. Suspension for up to five months can be authorised for relevant social reasons, such as legal protection for people aged over 65, for those on low incomes, or for those with over 60 % disability.<sup>608</sup> New legislation provides for suspensions of up to 13 months in cases involving children or students.

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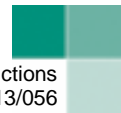
<sup>604</sup> Judgment of the Constitutional Court of 4 April 2001, K 11/00, OTK-ZU 2001, No 3, item 54; Judgment of the Constitutional Court of 4 November 2010, K 19/06, OTK-ZU 2010, No 9, item 96.

<sup>605</sup> Garlicki (2003), article 30, p. 23; Knypl (2012), pp. 176-177; Dzięczek (2012), pp. 21-24; Bończak-Kucharczyk (2013), pp. 24-26.

<sup>606</sup> Article 14 section 4 of the Act on Tenants Rights and Municipal Housing Stock sets out the protected categories: Pregnant women; Minors; Disabled people and their carers who live jointly with them; Incapacitated people and their carers who live jointly with them; Bedridden patients; Pensioners who meet the criteria to receive social assistance benefits; the Unemployed; Persons who meet the conditions designated by a resolution of a municipal council.

<sup>607</sup> Two judgments of the Supreme Court of 21 January 2011, III CZP 116/10 and III CZP 120/10, OSNC-ZD [Official Journal of the Polish Supreme Court – Civil Chamber. Supplementary Collection]; Polish: *Orzecznictwo Sądu Najwyższego w Sprawach Cywilnych – Zbiór Dodatkowy* 2011, No C, item 54; OSNC-ZD 2011, No C, item. 55. In practice, the damage is calculated to be equivalent to the rent that the landlord/owner would receive from another tenant but cannot receive without possession.

<sup>608</sup> Article 930 of the Civil Procedure Code of Portugal.



Article 31(1) of the Romanian Law on Preventing and Combating Social Exclusion<sup>609</sup> obliges the state to establish measures to prevent the eviction of disadvantaged people with debts to tenants/owners associations. Local authorities are obliged to ensure that marginalised individuals and families have access to alternative housing or shelter, although this was reported as being ineffective, especially for Roma.

The Slovakian Civil Code requires that substitute housing be provided for some evicted people – mainly in cases where there are children. This accommodation can be a substitute flat, substitute accommodation or shelter, although this system does not appear to be working effectively, especially for Roma. In Slovenia, there is an option to suspend evictions in certain cases for up to three years, with the occupier/debtor exercising the right to rent the repossessed property. The law can suspend evictions for three months in specific circumstances where the tenant can demonstrate that he or she would suffer irreparable damage due to immediate enforcement.<sup>610</sup> The courts in Slovakia have examined debt agreements for compliance with EU law on unfair contract terms, taking into account the rights to housing under the EUCFR.<sup>611</sup>

In Spain, it is possible to suspend an order for eviction for up to two months. One recent ECtHR case on Article 8 ECHR requested the Spanish state to provide details to the court of the alternative housing and social care being arranged for persons being evicted.<sup>612</sup>

In conclusion, suspending court-authorized eviction orders can offer critical intermediate protection for those being evicted, particularly where there is no alternative accommodation available. However, there can be significant impacts on property rights and the housing market, which raises issues around the cost-effectiveness and efficiency of this measure.

The arguments for the suspension of an eviction after a court decision to evict highlight the need to protect children and vulnerable people from homelessness, with the potential result of long-term or irreparable harm. Property law rights can make this an expensive option, with compensation payable, although ECHR standards can be applied across EU Member States. In some cases, prolonging repossession times can erode the social housing's general legitimacy and management systems, as well as exacerbating the uncertainty and stress of those at risk. Improved access to affordable adequate housing following a speedy eviction (as in Denmark) may often give rise to a more advantageous outcome than protracted eviction processes.

#### **8.5.4 Advocacy agencies and social work support**

In the aftermath of eviction, timely intervention by advocacy and support services is crucial to avoid homelessness. Indeed, the protection of children in this situation has exercised the jurisdictions of the courts in Lithuania and Spain, and has been

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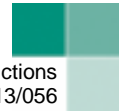
<sup>609</sup> Law on Preventing and Combating Social Exclusion 116/2002.

<sup>610</sup> Article 71, Enforcement and Securing of Civil Claims Act.

<sup>611</sup> Case C-34/13 *Monika Kušionová v SMART Capital, a.s.*

<sup>612</sup> *Ceesay and Others v Spain; AMB v Spain.*





examined by the ECtHR,<sup>613</sup> requiring the state to provide details of social work support being provided to evicted households to prevent a violation of Articles 3 and 8 ECHR.

Timely social work, care and support can provide the essential links to health and social and personal support services as well as emergency rehousing. Indeed, there would appear to be a direct link between the extent of homelessness arising from evictions and the timely intervention of these support, assistance and advocacy agencies. Across EU Member States, a range of state, solidarity and charitable support agencies provide assistance to those being evicted (in DE, DK, EE, ES, FI, FR, HU, IE, LV, NL, PL, SI and UK). However, there are no reports of such agencies existing in some other Member States (LT and SK).

In Austria, 'emergency' dwellings are provided to mitigate the effects of eviction in some regions (although not in all), and most people have to rely on accessing private rented housing. In Belgium, the PCSW provides a limited number of halfway or 'passage' houses, providing temporary solutions for those in housing need, while in the Czech Republic, there is a legal entitlement to free basic social counselling.

In Portugal, there is a national social emergency line (144), which provides people with emergency accommodation for a short period of time after an eviction has taken place, as well as economic support for one month's rent, payment for a private room or guesthouse, emergency shelter (depending on availability), emergency housing support (in some urban municipalities) and support in securing access to social housing.

In Ireland, there are many homelessness and advocacy agencies to assist those who are evicted. In Spain, Cáritas and other organisations provide social work support to those who have been evicted, while in the UK there are many housing advice services, including those provided by Shelter, a national housing advice charity. Legislation in Luxembourg created a new 'Over-indebtedness Information and Advice Service (*Service d'Information et de Conseil en matière de surendettement*)'.<sup>614</sup>

In Finland, in cases where an eviction cannot be prevented, housing advice recommends a controlled eviction, where the evicted person is supported through the process. Housing advice seeks to guide the evicted person to crisis accommodation or to services for the homeless, utilising networks of social housing and private landlords, with the ultimate aim of organising permanent housing. Emotional support for the evicted person is an important part of the work. Where unpaid rent arrears prohibit a new municipal tenancy, a payment scheme and fixed-term lease can be arranged.

In relation to this post-eviction support, there is of course no guarantee that evicted persons will come into contact with or receive assistance from relevant support agencies unless a duty of notification exists, and this is not universal. Cost effectiveness in terms of emergency services, emergency housing, the safety and

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<sup>613</sup> *Ceesay and Others v Spain*.

<sup>614</sup> Law of 8 January 2013 on over-indebtedness.





welfare of children and associated costs has been outlined above. It is unquestionably cost effective to provide social work support after eviction.

#### 8.5.4.1 Direct transfer of mortgage/rent/utility payments

Through social work support, arrangements can be made for the direct transfer of mortgage, rent or utility payments from the state to the lender, landlord or provider and can prevent eviction, even at a late stage in the process. The payments can be deducted directly from benefits, and the creditor is guaranteed repayments.

However, there are some disadvantages to this approach. The creditor recipients are informed about the fact that the household is in receipt of benefit (a fact which they might not have been aware of before), and an element of autonomy and normality (such that the households pay their bills like everybody else) is restricted. Nevertheless, this may be a very effective and cost-efficient measure, as some examples demonstrate.

In Germany, direct payment of rent allowance to the landlord is legally possible.<sup>615</sup> This regulation was reformulated in 2011 to clarify that direct transfers to landlords or providers of household energy should be the rule for households with arrears or energy debts, or where there is legitimate doubt that benefits are being spent appropriately. There are some indicators (but no direct proof) showing that the option of direct payment of rent and heating expenses to landlords and energy providers has helped to reduce evictions, especially after the introduction of substantial social reforms in 2005. This is despite the introduction of new sanctions and a reduction of benefits for many households.<sup>616</sup> Danish municipalities can also administer the payment of rent for tenants where the tenant agrees.<sup>617</sup> In many cases, however, municipalities are reluctant to offer this option, as it requires resources for administration and is sometimes seen as a limitation of the citizen's autonomy, or as presenting a conflict with the principle of empowerment. However, the Danish national expert suggests that such an understanding represents a distortion of the concept of empowerment, if the alternative is that the citizen is evicted and eventually becomes homeless. Viewed from the perspective of recovery and rehabilitation, assisting the citizen to administer their income could free up resources to deal with other pressing issues in their life situation.

Direct transfers of payments from social welfare benefits are also possible in a number of other EU Member States.

#### 8.5.4.2 Supported bank account, money management

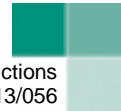
Money management and supported bank accounts have occasionally been mentioned as relevant and effective measures, perhaps because they apply only to a relatively small proportion of households at risk. Yet, for a small number of households with serious and continuous problems with managing financial affairs,

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<sup>615</sup> § 22.7 SGB II.

<sup>616</sup> Busch-Geertsema et al. (2011).

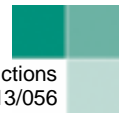
<sup>617</sup> Act on Active Social Policy (*Lov om aktiv social politik*), s. 90.



this measure may be a very useful support. These measures were mentioned as relevant and helpful for Austria and the UK, but they could be used in a number of other Member States where they were not particularly emphasised.

## 8.6 Conclusion

Secondary prevention measures focus on those at high risk of eviction, encompassing all three stages of the eviction process. Some of these measures, such as the provision of social services support, counselling and advice, can be applied at any stage. Key issues in relation to secondary prevention include support from family and friends in situations of arrears or dispute, and public assistance with housing costs. Even after default – but before the beginning of a judicial action – there are measures such as loan rescheduling, debt reduction or write-off by banks and mortgage creditors, mortgage-to-rent schemes, alternative dispute resolution (ADR) and mediation procedures, the active involvement of social services and advice. Indeed, recent studies in Germany show that home visits by social support agencies are very effective in preventing homelessness, even in ‘difficult’ cases. In the court phase, measures such as informing housing/social services of the imminent eviction, the provision of legal aid and advice, adequate defence and appeal systems, legal limitations for enforcement of the claim and debt adjustment in court can be effective. A key observation from national experts was the absolute importance of timely referrals for assistance and to support agencies (AT, CZ, DE, DK, FI, NL, PL and SE). After the eviction order has been granted, effective secondary prevention measures include a general moratorium on evictions, winter bans, suspension of evictions on humanitarian grounds, the availability of advocacy and social work support. The Polish courts’ enforcement of the statutory ban on ‘evictions to nowhere’ (*eksmisja na bruk*) for households with children or vulnerable people until alternative accommodation is arranged resonates with developing ECHR jurisprudence. Indeed, such suspensions are prescribed in Finland, France, Hungary, Italy, Lithuania, Poland, Portugal, Slovenia and Spain and, where the tenancy is in a care dwelling, in Denmark and Latvia. Finally, practical measures such as direct payments from social welfare benefits of mortgage, rent or utility costs and arrears, as well as active support with money management, can be very cost-effective secondary eviction prevention measures.



## 9 Tertiary prevention measures

### 9.1 Introduction

Tertiary prevention measures are aimed at reducing the consequences of evictions. Such measures are targeted at people who have already been evicted, and aim to reduce the potential harm caused. The primary focus in this section is on measures to avoid homelessness following an eviction, but measures may also be aimed at alleviating family, social, health, child-related or other problems. Various measures are examined, aimed at providing access to rehousing after an eviction, access to other welfare, support and services when needed, and access to homeless services and other support when rehousing is not immediately achieved. Tertiary prevention measures should generally be focused on the particular characteristics and needs of the evicted person or household. Key issues include household composition, support needs, income, access to rehousing and residual levels of debt. Sometimes the members of the evicted household may move in temporarily with family or friends, but this can erode social ties that may already be weak or vulnerable. Many people with severe psychosocial problems have insufficient family or social relations to provide support or temporary housing after eviction. If no solution is found, evicted families and individuals will depend on emergency or temporary accommodation, such as homeless shelters, and services aiming to provide a sustainable crisis intervention and to prevent long-term homelessness.

Tertiary prevention measures include providing minimum income protection, access to affordable private rented and targeted social housing allocations, support for social letting agencies to secure rented housing and access to homelessness services – particularly those which work to prevent further evictions.

### 9.2 Minimum protected income and debt relief schemes

Tertiary prevention of homelessness for those who have been evicted mainly involves securing immediate rehousing. Besides emergency homeless services the private rented sector is the most common source of such alternative housing. However, access to rented housing requires resources for a deposit, sometimes rent in advance, passing a credit check, or producing a reference. In all these cases, any unsustainable debt and the lack of a minimum income to cover subsistence and basic housing costs will prohibit rehousing and could lead to homelessness. Repossessed mortgage borrowers and tenants may be saddled with outstanding arrears, even after eviction, and they will have poor credit ratings. Measures to address these barriers to rehousing are a key part of tertiary prevention.

In almost all EU Member States, a minimum level of income is protected from these repayment obligations (or attachments), even if they have been imposed by a court order. This acts as a shield against the enforcement of claims for debt repayment, protecting a minimal household income.<sup>618</sup> National regulations on minimum protected income generally mean that evicted households still have an income to pay

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<sup>618</sup> Whether the levels of minimum income for EU Member States equate with the ‘decent existence’ standard set out in Article 34(3) EUCFR has not been examined.



rent for their new accommodation and to support modest living expenditure. Whether these amounts are sufficient will depend on the conditions of the local housing market and the availability of affordable housing.

The level of minimum protected income specified in national laws is generally set close to the level of subsistence and housing benefits, or according to minimum wage levels. Nominal amounts tend to be higher in high-cost Member States, but purchasing power must be considered, as well as rent levels, which can vary between and within Member States. Some Member States have an amount fixed in law, while in others, courts exercise discretion as to the protected amount (CY and UK). In Slovenia, social transfers, scholarships, child support and other similar sources of income cannot be attached, i.e. they are protected against the enforcement of debt repayments. Private creditors in Denmark have no right to an attachment of wages or income transfers. Unpaid debts to private creditors can only be claimed through bailiffs' courts for the attachment of assets, and a court protection of necessary modest living costs applies.

The highest nominal protected incomes are found in Belgium and Germany, at slightly above EUR 1 000 per month for a single person, and they are slightly below that amount in Spain.<sup>619</sup> The lowest amount applies in Hungary, where 66 % of the salary can be attached, with a minimum protected amount set at only about EUR 95 per month. Often, the minimum income schemes are linked to insolvency or debt relief arrangements.

Legislation in Ireland enables the Insolvency Service of Ireland to issue guidelines as to what constitutes a 'reasonable standard of living and reasonable living expenses' for those seeking debt relief.<sup>620</sup> These guidelines are intended to safeguard a minimum standard of living so as to protect debtors, while facilitating creditors in recovering all, or at least a portion of, the debts due to them under the insolvency and bankruptcy laws.<sup>621</sup> There are no reports on the cost effectiveness of these new insolvency arrangements. In Lithuania, there is no minimum protected income, but there is a maximum share of income that can be attached. The Lithuanian Civil Procedure Code<sup>622</sup> sets the maximum extent of income attachment for recovery of debt during the working life of the debtor, and thereafter of attachment from their pensions. The evicted debtor is entitled to retain 80 % of his or her income, up to the

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<sup>619</sup> See Annex 3 for the complete list for EU Member States.

<sup>620</sup> Personal Insolvency Act 2012. See

[http://www.isi.gov.ie/en/ISI/Guidelines\\_under\\_section%2023\\_June\\_13.pdf/Files/Guidelines\\_under\\_section%2023\\_June\\_13.pdf](http://www.isi.gov.ie/en/ISI/Guidelines_under_section%2023_June_13.pdf/Files/Guidelines_under_section%2023_June_13.pdf), last accessed 6 November 2014. These cover 15 categories, comprising food, clothing, personal care, health, household goods, household services, communications, education, transport, household energy, savings and contingencies, social inclusion and participation, housing and childcare. The monthly estimate for a single person is EUR 898 (without a car) plus housing and childcare costs, while the equivalent figure for a single person who needs a car is EUR 1 028 per month.

<sup>621</sup> ISI (2013), p. 6.

<sup>622</sup> Art. 736.

level of the minimum monthly wage.<sup>623</sup> This is increased in households where there are disabled family members.

In Spain, the protected income after mortgage default has been higher than that protected after rent default since 2012. For mortgage debt, the amount for a single adult is EUR 962 per month; for a family of four (two adults and two minors, where only one adult works), it is EUR 1 539 per month.<sup>624</sup> The minimum income that the tenant is entitled to retain is less than EUR 645 per month (the equivalent to the minimum wage in 2014). Debt relief and debt cancellation is an integral part of this process, too – which is often described as a ‘fresh start’ approach.

### **9.3 Access to private rented housing and targeted housing allocation systems**

Following eviction, access to affordable (or subsidised) private or social rented housing is critical to prevent homelessness. Such access depends on the characteristics of the housing system and the overall availability of private and social rented housing, as well as on the local housing market (rent levels, rent control etc.). It can also depend on whether targeted social housing allocation mechanisms exist for people in acute housing need, especially vulnerable people with special needs. These factors vary across and within Member States.

In relation to private rented housing, the issues of availability of sufficient supply and rent levels are considered in chapter 7 above. The key factor is the income level of the evicted person; rent subsidy and support, a minimum income guarantee, the rent deposit and other guarantees are also critical. In Member States with relatively small social rental sectors, access to affordable rented housing following an eviction is often difficult due to high rent levels in the private rented sector and excess demand for social housing. Often, access depends on informal contacts and networks, with landlord discretion on allocation. There can be a reluctance to rent to people with support needs or low incomes, due to the perceived higher risk of tenancy breaches.

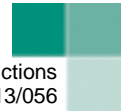
Many Northern and Western Member States have relatively large private and social rented sectors compared with many Eastern and Southern Member States – at least in the formal housing market. In some Member States, such as Denmark, Finland and Sweden, access to the social rented sector is open to the general population, rather than just to those who are homeless or who have support needs. However, even in Member States with a relatively large social housing sector and broad eligibility criteria, targeted allocation systems for those in acute housing need after eviction and for vulnerable people with support needs may be necessary.<sup>625</sup> Generally, however, in Member States with a small social housing sector, this is reserved for those on low incomes and/or with special needs – a residualised approach to social housing.

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<sup>623</sup> Since 1 February 2013 the minimum monthly wage has been approximately EUR 325. Lithuania: *Vyriausybės nutarimas „Dėl minimaliojo darbo užmokesčio didinimo“* (Government decision on the increase of the minimum wage), 17.06.2015, No 615.

<sup>624</sup> Art. 607, Spanish Civil Procedural Act (*Ley de Enjuiciamiento Civil*) 2000.

<sup>625</sup> Fitzpatrick and Stephens (2007).



### 9.3.1 Social rental agencies and social letting agencies

Landlords often require guarantees that rent will be paid and other tenancy conditions observed in order to rent accommodation to people with low income or significant support needs. Social rental agencies (SRAs) are non-profit housing institutions that provide housing for poor and vulnerable people by acting as an intermediate landlord for private rented housing. These agencies can assist evicted people, although the target group is generally vulnerable homeless people, many of whom have experienced a previous eviction. The SRA effectively acts as the tenant to the private property owner, and simultaneously as the landlord to the tenant. In this way, the private owner gets an 'official tenant', which ensures the payment of rent, and the practicalities of letting are undertaken by the SRA without any risk to the owner. SRAs choose the tenant and deal with any tenancy issues, such as rent collection, arranging insurance and maintenance. The SRA provides support and, if necessary, creates links to other welfare organisations and service providers for help in other areas, such as in the case of mental illness, substance abuse problems or physical illness needing treatment.<sup>626</sup>

Depending on the context of the local housing market, SRAs require a subsidy, usually to cover the difference between the actual rent charged by the property owner and that which the SRA tenant is able to pay, although property owners may agree to receive a lower-than-market rent in return for SRA guarantees. In addition, it is necessary to fund the provision of social support, which may for instance follow a case-management-based support scheme.

SRAs are well established in Belgium, and are supported by the regional Governments.<sup>627</sup> In 2012, they rented 6 402 dwellings, although this was insufficient to meet the housing needs of vulnerable applicants. In Germany, SRAs exist in a number of localities, but they must cover their management costs without subsidy.

Good practice in developing new models for access to the private rental sector can also be found in Finland, where the Helsinki housing advice service has developed a cooperative model with some private landlords and with investors with apartments. These owners and landlords agree to offer their apartments for rent to housing advice clients, who guarantee personal support for the tenant. Social work income support provides the rental deposit.<sup>628</sup>

In the UK, local lettings agencies are designed to facilitate access to the private rented sector for households at risk of homelessness. Many provide a housing management service for private landlords, which includes finding a suitable tenant, guaranteeing payment of rent and providing support if any housing management problems arise. The model is designed to be self-financing, recovering operating costs by charging landlords for the housing management service.<sup>629</sup> Thus, a local

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<sup>626</sup> De Decker (2009).

<sup>627</sup> De Decker (2009); Silkens (2006).

<sup>628</sup> Information from the leader of the programme to reduce long-term homelessness (2012-2015).

<sup>629</sup> [http://www.crisis.org.uk/data/files/3xe\\_locallettings\\_agency\\_guide\\_final.pdf](http://www.crisis.org.uk/data/files/3xe_locallettings_agency_guide_final.pdf), last accessed 15 June 2015.



lettings agency can place poorer, more vulnerable households into the private rented sector, reassuring the landlord and ensuring that those households have a reasonable home with a reasonable rent and a reasonable security of tenure. This is particularly important in situations where vulnerable tenants must regularly secure new rented housing following the expiry of assured shorthold tenancies. Housing advice services in the UK also facilitate access to the private rented sector for people who are currently, formerly or potentially homeless, as well as for other vulnerable groups.<sup>630</sup> In particular, they can help in situations of unfair or discriminatory practice, although legal protection against discrimination does not apply to some groups who are in great need, such as single low-income adults with support needs.

### 9.3.2 Targeted social housing allocations

The targeted allocation of social housing for those who have been evicted is a key part of tertiary prevention measures.<sup>631</sup> It depends, of course, on the extent of such housing, but also on the system of allocation. In some Member States, social housing sectors are relatively small and are almost solely targeted at special needs groups. In other Member States, social or public housing sectors are broader, and the existence of targeted mechanisms to allocate parts of the social housing stock to people with special needs is crucial to provide vulnerable and evicted people with housing.

In Denmark, where social housing accounts for 20 % of total housing, municipalities can make a priority allocation of a quarter of their vacancies to people in acute housing need and homeless people. Most municipalities, and particularly urban municipalities with long general waiting lists, use this referral mechanism to its maximum extent.<sup>632</sup> However, even this is insufficient to meet all such needs, and high rents curtail access for those on low incomes. Despite these limitations, the combination of a large public housing sector and such a targeted allocation system is an important reason for the comparatively low overall level of homelessness in Denmark.

The UK statutory local authority-operated homelessness system guarantees access to temporary accommodation for homeless households. Assistance is provided when a household is within 28 days of losing their existing home. However, there are eligibility criteria, including those for priority need groups, and in most cases a local connection to the municipality is required – although in Scotland the priority need criterion is absent.<sup>633</sup> Priority groups include those defined as ‘vulnerable’, those living with dependent children, and those who are homeless due to the destruction of housing. There is evidence that, for households with high support needs, access can be inconsistent.<sup>634</sup> While, technically, the law gives access to temporary accommodation, most local councils seek to secure permanent social housing for

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<sup>630</sup> [http://england.shelter.org.uk/get\\_advice/how\\_we\\_can\\_help/housing\\_advice\\_helpline](http://england.shelter.org.uk/get_advice/how_we_can_help/housing_advice_helpline), last accessed 15 June 2015.

<sup>631</sup> The definition of social housing varies across EU Member States, and almost all allocations policies target those on low incomes. See Housing Europe <http://www.housingeurope.eu/section-14/research?topic=&type=country-profile&order=datedesc>.

<sup>632</sup> Høst et al. (2011).

<sup>633</sup> The local connection criterion is not applicable where the applicant is at risk of violence.

<sup>634</sup> Pleace and Bretherton (2013).

people who are accepted as statutorily homeless. The social housing stock that is available for supporting the statutory system is in limited supply, particularly in London and the south-east.<sup>635</sup> However, local authorities in England can now end their duty to households that they have accepted as statutorily homeless by offering a private rented AST contract; with the applicant's consent, so, too, can Scottish local authorities.

Aside from allocation policy issues, some social housing organisations have taken innovative approaches to rehousing evicted persons. For instance, the Swedish Association of Public Housing Companies (SABO),<sup>636</sup> in its Concept Programme, defines itself partly as an enterprise with social responsibilities, i.e. 'providing housing for homeless people. This includes providing trial and training apartments in cooperation with the municipality' and 'taking preventative measures in order to decrease rental arrears and consequently risk of eviction.' Moreover, local social welfare boards can judge that, given their specific needs, some families require help to avoid homelessness because the children have to be protected. Although there is no legally binding obligation to rehouse children and their parents immediately after an eviction, the legislation<sup>637</sup> states that the social welfare board shall promote the outcome of children growing up in secure and favourable conditions. This is often interpreted as an obligation to rehouse children, which can be in hotels etc. In Sweden, too, secondary housing contracts are often used, where local authorities rent dwellings from social housing associations and sublet them to tenants, ensuring access for vulnerable people.<sup>638</sup>

In Germany, a shrinking stock of social housing and massive sales of municipal housing have greatly reduced the ability of local authorities to influence the allocation of rented housing and to facilitate smooth transfers to alternative permanent housing for households threatened with eviction and homelessness. Priority access is reserved for households with children. Some municipalities also provide additional guarantees to landlords if they are willing to allocate housing to tenants seen as potentially risky, but this practice is not very common.<sup>639</sup>

Research for this study in Portugal shows that the alternatives available for households which have been evicted are scarce. Either the members of the household have the financial means to find alternative accommodation on their own and can get support from relatives or friends, or they risk ending up in homelessness. In spite of the willingness of municipalities, as well as the setting up of support mechanisms, these do not have the capacity to permanently rehouse those who are at risk.

In Greece, there are reports of a severe scarcity of social housing options for people who have been evicted and for vulnerable homeless people in general. In May 2014, the Municipality of Athens inaugurated the operation of a 'social block of flats' which

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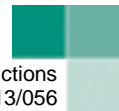
<sup>635</sup> Pleace et al. (2008).

<sup>636</sup> SABO represents almost all of the approximately 300 municipal public housing companies in Sweden and manages some 725 000 dwellings altogether. Boverket (2014).

<sup>637</sup> Social Services Act - SFS (2001), Chapter 5, section 1.

<sup>638</sup> Boverket (2014).

<sup>639</sup> Busch-Geertsema et al. (2014), p. 185.



is expected to cater for the housing needs of the 'new homeless', i.e. people who lost their homes as a result of the economic crisis. This involved a public-private partnership (PPP) agreement between the Municipality of Athens and private companies.

In the Czech Republic, a lack of legislation covering social housing and the extensive privatisation of municipal flats has led to a deficiency in municipally owned housing that may be rented to those who have been evicted, although the Ministry of Labour and Social Affairs is preparing a Social Housing Act aimed at tackling the situation.

#### **9.4 Access to homelessness services**

The pathway from eviction to homelessness may not be linear for those who do not secure new housing following an eviction. As previously mentioned, some evicted families and individuals resort to staying temporarily with relatives or friends, where possible. This form of 'couch surfing' can be stressful and can erode social relationships. As recounted earlier, studies from Denmark and Finland have indicated that one in four people evicted from rented housing are either staying with family or friends or are living in homeless shelters one year after eviction. For the majority, however, access to homeless services is critical.

The form, availability and quality of such homeless services vary substantially across the European Union.<sup>640</sup> For example, in Germany there is a strict duty on all municipalities to provide temporary accommodation for those at risk of becoming roofless, as set out in the regional police laws. Municipalities can even be forced by the courts to open up the city hall if they claim to have no buildings to provide shelter for roofless people. On the other hand, the standards of such temporary accommodation are often low, and there is no duty to provide permanent housing. However, the strict duty to provide temporary accommodation serves to foster adequate prevention efforts, even if these are only motivated by cost savings.<sup>641</sup> In Denmark, municipalities are obliged to provide temporary accommodation to homeless people, and about 70 homeless shelters operate throughout the country. Municipalities are also obliged to provide temporary or long-term supported accommodation for people with complex support needs.<sup>642</sup>

In some other Member States, homelessness services are often underdeveloped or under development. For example, in Latvia, there is no legal or constitutional duty to provide shelter or housing for people who are homeless. However, local authorities have discretion to ensure social assistance to their residents, including overnight shelters for the homeless.<sup>643</sup> In 2013, a total of 34 shelters and night shelters provided social services to homeless people, but there were no shelters in 95

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<sup>640</sup> Edgar, Doherty and Mina-Coull (1999); Anderson (2010) in O'Sullivan, Busch-Geertsema, Quilgars, and Pleace. The ECSR established human rights standards for homeless shelters in *FEANTSA v France*.

<sup>641</sup> MASSKS (1999), p. 50; Stadt Bielefeld (2011), p. 5.

<sup>642</sup> The Social Assistance Act, Arts. 107 (temporary supported accommodation), 108 (long-term supported accommodation), and 110 (homeless shelters).

<sup>643</sup> Law on Local Governments, Art. 15(17).



municipalities, although official statistics show that no person was refused a place in a shelter.<sup>644</sup>

In Bulgaria, short-term accommodation is provided in shelters for homeless people and other facilities such as centres for family-type accommodation, temporary, protected and supervised housing facilities and crisis centres accessible to victims of trafficking or domestic violence.<sup>645</sup> Accommodation in short-term services is available only for a limited time period (between three and six months). Throughout Bulgaria, there are 13 centres for temporary accommodation, which can accommodate 600 persons, and 6 hospices for 130 persons, both offering accommodation for up to 3 months per person per annum.

Recent initiatives in Greece aimed at rehousing homeless people have been undertaken by central Government and local authorities. The Ministry of Labour of the previous administration had agreed to organise support programmes with the municipalities of Athens and Thessaloniki, as well as with the Church of Greece. The National Centre for Social Solidarity (EKKA) has undertaken to operate the Drakopouleio Institution in central Athens as a specially equipped shelter for 80 homeless people.

In Sweden, subcontracted housing is used as training flats with conditions attached, such as adherence to treatment programmes or behavioural requirements. This is known as the traditional 'staircase' model of rehousing.<sup>646</sup> In some cases, this form of subletting from social housing bodies may also be used as a secondary prevention measure for households at risk of eviction, where the local authority takes over the rental contract to prevent the eviction from taking place.

## 9.5 A paradigm shift in models of rehousing homeless people

There has been a paradigm shift in good practice associated with understanding and providing the most effective interventions for rehousing vulnerable homeless people with support needs. This is focused largely on one-person households. It involves a change from a treatment first philosophy to a Housing First approach. According to the treatment first approach, people with complex support needs should first undergo treatment and stabilisation before securing permanent housing. This approach has also been named a 'housing ready' or 'staircase' approach, with permanent housing at the top of a housing ladder, following on from sequential stays in temporary and transitional accommodation and training flats. However, the behavioural requirements attached to the model are often difficult for people with complex problems.<sup>647</sup>

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<sup>644</sup> *Labklājības ministrija, Pārskati par sociālajiem pakalpojumiem un sociālo palīdzību novada/republikas pilsētas pašvaldībā 2013.gadā* (Ministry of Welfare, Overview of social services and social assistance in local governments of cities/municipality towns in 2013), Tab. 2.3., [http://www.lm.gov.lv/upload/sociala\\_aizsardziba/sociala\\_palidziba\\_pakalpojumi/parskati/1\\_spp\\_pas\\_valdibas\\_2013\\_euro.xls](http://www.lm.gov.lv/upload/sociala_aizsardziba/sociala_palidziba_pakalpojumi/parskati/1_spp_pas_valdibas_2013_euro.xls).

<sup>645</sup> BG, Regulation for Implementation of the Social Assistance Act (1998), Art. 36, paragraph 2.

<sup>646</sup> Sahlin (2005).

<sup>647</sup> Sahlin (2005).

In contrast, the Housing First approach is based on rapid rehousing with intensive social support. The unstable housing situation is itself seen as a major barrier to stabilisation and recovery for the individual. Instead, homeless people should be able to secure early access to permanent housing, with mobile/floating support methods giving tailor-made, highly intensive wraparound support for the individual. In particular, assertive community treatment (ACT) and intensive case management (ICM) approaches have been used as part of the Housing First model.<sup>648</sup> ACT is a multidisciplinary form of floating support, where a team of social support workers, a psychiatrist, an addiction counsellor, a nurse and a job centre worker (employment specialist) deliver support services directly in a person's own home. This method is used for individuals with complex support needs such as severe addiction problems or for those who have a dual diagnosis of addiction and mental ill health. Individuals who need multidisciplinary support often have great difficulties in utilising existing services.<sup>649</sup> ICM includes the provision of a case manager, who gives both social and practical support and coordinates the individual's use of other support and treatment services. ICM is given for a longer time period, in principle as long as the individual has a need for this support. In contrast to the ACT method, the target group for the ICM method comprises individuals who are capable of using other support services, but who need support in this process.

In addition to ACT and ICM, critical time intervention (CTI) has also been used among rehousing strategies based on early access to permanent housing. This method provides time-limited support in critical phases of transition such as when people are moving into ordinary housing after a stay in a shelter. It involves a case manager offering support for up to nine months in the critical transition period from shelter to own housing. Other support services take over after the nine months if there are still support needs.

These three intervention methods have been shown to have a much higher success rate in securing a stable housing situation and in retaining housing, compared with those involving either standard care or care following a staircase approach. However, the Housing First model is widely debated, especially in relation to its merits in rehousing people with the most severe addiction problems.<sup>650</sup>

Growing numbers of Housing First projects have emerged in the European Union. A study in 2013 compared European Housing First projects from five Member States (DK, HU, NL, PL, and UK (Scotland)) and concluded that the same high housing retention rates could be observed in these projects, as was the case in the North American studies.<sup>651</sup> However, most cases of European Housing First projects have been rather small, and this is recognised as a barrier to wider effectiveness (e.g. in SE and UK). In Denmark, Finland, France and the Netherlands, relatively large national programmes have been established based on the Housing First approach. In Denmark, a large-scale national homelessness strategy was adopted in 2008 for the

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<sup>648</sup> Tsemberis (2010).

<sup>649</sup> Nelson et al. (2007); Coldwell and Bendner (2007).

<sup>650</sup> Kertesz et al. (2009).

<sup>651</sup> Busch-Geertsema (2014a and b).





period 2009 to 2013.<sup>652</sup> The existence of Denmark's general municipal priority allocation system for public housing made it possible to provide housing on a relatively large scale for the programme. The evaluation research showed that the interventions were highly effective. Homeless people who were rehoused and received support following these interventions had a very high housing retention rate, as about 9 out of 10 stayed housed during the observation period.<sup>653</sup>

A cost analysis in Denmark showed a significant reduction in the use of a range of other services for people who went through the programme. The use of homeless shelters and hospitals was significantly reduced. Cost calculations showed that the social investment had a very high economic return, as the first-year benefit for individual case management (aimed at people with medium support needs) showed a 60 % cost offset, while critical time intervention (aimed at people with somewhat lighter support needs) had a cost offset even higher than 100 %, thus giving an overall surplus for total public expenditure.<sup>654</sup>

In Finland, a large-scale Housing First-driven strategic approach to rehousing homeless people has been implemented. This is based on rehousing homeless people in permanent supported housing in congregated housing facilities and rehousing people in ordinary housing with floating support, using CTI-type intensively supported housing models of floating support.

A large-scale experimental project is currently testing Housing First in France, examining the support methods of ACT and ICM in larger French cities. Initial results show the same high housing retention rates in France as in other Member States. However, the experience from the French programme shows that, especially in the Paris region, with its highly expensive housing market and severe housing shortage, it is generally very difficult to provide housing.

The UK Supporting People programme created a dedicated funding stream and a requirement for local authorities to adopt a Supporting People strategy. This provided revenue funding for preventative services, tenancy sustainment (mobile support) services, homeless hostels, supported housing and many other forms of housing-related support designed to assist vulnerable people in living as independently as possible, including, where practical, in ordinary housing in all three main tenures as part of the community. However, in England and Scotland, the programme has effectively been abolished.<sup>655</sup>

## 9.6 Conclusion

Tertiary prevention measures apply after evictions have taken place, with the aim of preventing homelessness. These measures can be highly cost effective. Of course, many evicted households are able to secure accommodation with family and friends,

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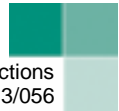
<sup>652</sup> The Danish national homelessness strategy programme is described in detail in Benjaminsen and Lauritzen (2013).

<sup>653</sup> Rambøll and SFI (2013); Benjaminsen and Lauritzen (2013).

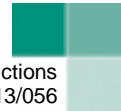
<sup>654</sup> Rambøll and SFI (2013).

<sup>655</sup> Homeless Link (2014).





but some become homeless immediately, or at a later time. In this context, rapid rehousing is critical. Tertiary prevention measures may also include protecting a minimum income for evicted households, to ensure that they can pay rent on a new dwelling and enjoy a basic standard of living. Allocation policies for access to social housing can have a critical impact on rehousing options. Assistance by social rental agencies or advice agencies can be pivotal in securing private rented housing, and there are some good models of these. However, for those who become homeless, the availability of supported accommodation can make the difference between repeated evictions and sustainable housing.



## 10 Recommendations

The central task of this study was to investigate the nature and extent of evictions from principal primary residences within EU Member States, discerning trends, risk factors and links with homelessness. The research is framed in the context of promoting protection of the right to housing, EU law and policy and homelessness prevention.<sup>656</sup> The following recommendations are drawn by researchers from the findings and main conclusions of the report as a whole, rather than any individual sections. Some recommendations will be relevant only for some Member States, and many could be usefully addressed at European level.

The recommendations have been grouped into four sections: promotion of housing rights; housing and housing policy; responsible lending and fresh start; and research related.

### Promotion of housing rights

#### Recommendation no. 1

#### **Promoting protection of the right to housing through defining eviction-related standards from the internationally accepted housing rights instruments, and integrating these into national and EU social protection and human rights policies**

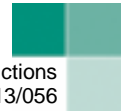
Evictions engage human and housing rights obligations. In some cases, forced eviction is regarded in ECHR and human rights instruments as a violation of the right to housing. All EU Member States have ratified the ECHR, ESC and ICECSR, accepting obligations to develop appropriate policies and laws, which recognise, respect, protect, promote and fulfil housing rights obligations. Most Member States (see Annex 2) have effective constitutional and consumer law provisions on the inviolability of and respect for home, which offer protection from arbitrary or illegal evictions.

The CJEU and ECtHR have examined the legal basis and procedural adequacy of evictions in a number of Member States. More recently, evictions in the context of agreements complying with EU consumer law have enabled the courts to consider how the fundamental rights in the EUCFR and other instruments are applicable. However, it has become clear that the protection arising from EU and international instruments is applied in a fragmentary and often inconsistent manner, thus denying EU citizens equal access to their rights.

At present there are no common EU-wide housing rights standards in relation to evictions. Although disparate reports have been made to various human rights monitoring agencies, there have been no coordinated measures to develop an EU-wide approach. Key standards and obligations derived from instruments that have already been accepted by Member States could provide an effective code for evaluating the human rights compliance of eviction policies, procedures and

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<sup>656</sup> See <http://ec.europa.eu/social/main.jsp?catId=624&langId=en&callId=387&furtherCalls=yes>.



practices. These can be drawn from, and build upon, standards and obligations clarified by EU, Council of Europe and UN instruments and monitoring bodies, as well as the developing jurisprudence in relation to the EUCFR, which integrates these international instruments into EU law.

It is suggested to formally adopt and define eviction-related standards at EU level from the housing rights that have already been accepted by Member States within the range of international human rights instruments and treaties, integrating these into EU social protection and human rights policies.

## **Recommendation no. 2**

### **Creating a legal obligation on courts and other agencies involved in evictions to promptly inform housing and social care agencies**

Early intervention by housing and social care agencies can prevent household breakdown, as well as limiting legal and emergency accommodation costs in eviction cases. This can protect children and vulnerable people from harm arising from eviction/homelessness. While obligations to inform housing and care agencies exist in some Member States, many apply only where there are children, and in some Member States (AT, BG, CY, EL, ES, IE, IT, LU, MT, NL and RO) there is no such obligation. Existing duties variously apply to tenants and homeowners, but resource limitations and levels of engagement vary widely. Introducing a universal obligation to notify housing and social care agencies in all imminent eviction cases, together with obligations to address the needs of the household, would constitute a highly cost-effective preventative measure.

Introducing a scheme to oblige all actors involved in every eviction – landlords, lenders, courts and bailiffs and others – to inform housing and social care agencies of imminent evictions as early as possible in the eviction process is a recommended first step in the process. There may be scope for legal measures to allow courts to require proof of such notification before granting an eviction order. Based on good practices, a designated person could be appointed who is legally responsible for responding to these notifications, overseeing the process and producing an annual report on the extent and outcomes of notifications and interventions, including prevention of homelessness, while respecting privacy and data protection rules.

## **Recommendation no. 3**

### **Ensuring respect of the right to legal aid, advocacy and representation in cases of evictions**

Evictions involve a determination of civil rights. Lawful evictions must respect legal and procedural rules, and should ultimately be subject to the supervision of a court. In this context, access to justice is a core fundamental right, and those at risk of eviction should be able to assert and defend their rights. This principle has been accepted by all EU Member States, as part of the EUCFR as well as separately in their acceptance of the ECHR. Defending evictions proceedings almost always requires legal expertise and advocacy. This research has uncovered several



instances of inadequate legal aid, representation and advocacy for those at risk of eviction.

Supervision of the eviction process by the courts, with proper legal representation ensured through adequate legal aid, can prevent violence and harassment, avoiding physical or psychological harm. It can ensure that vulnerable debtors are treated appropriately in ways that neither exploit nor exacerbate their vulnerability.<sup>657</sup> In some Member States where 'black market' private rental systems exist, many households are evicted without access to legal representation or court protection. Many people who are in debt are alienated from the official administrative system of the state, including the courts. In Member States without a sufficient welfare support network, representation and legal aid are crucial to allow people without sufficient resources to engage a lawyer and to ensure that there is a fair hearing and equality between the parties. Legal aid can ensure that the courts become aware of any unfair processes being used to harass, confuse or cause unfair duress to tenants or indebted owners in arrears.

At a wider policy level, however, the availability of legal aid and representation enables lawyers and advocates to ensure that the legal standards for human and consumer rights are applied at local level, preventing arbitrary or illegal eviction and thus restoring public confidence in the rule of law.

It is suggested that Member States enable appropriate advocacy, support, representation and legal aid for those being evicted, so as to respect the fundamental right of access to justice.

#### **Recommendation no. 4**

##### **Better integrating housing consumers into national and EU consumer protection policy**

There is an unequal and asymmetric relationship between home-loan lenders and borrowers, between landlords and tenants, and between providers and consumers of housing and housing services.<sup>658</sup> Articles 4 and 169 TFEU create shared competencies between the EU and the Member States to promote the interests of consumers and to ensure a high level of consumer protection. This includes promoting their right to receive information and education and to organise themselves in order to safeguard their interests. The EU Consumer Policy Strategy to 2013 promoted the empowering of consumers, giving real choices and accurate information and enhancing EU consumers' welfare in terms of price, choice, quality, diversity, affordability and safety, as well as protecting consumers effectively from the serious risks and threats that they cannot tackle as individuals.

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<sup>657</sup> In this context the application of provisions of the UN Convention on the Rights of Persons with Disabilities, which has been ratified by the EU and many EU Member States, may be relevant.

<sup>658</sup> See Law Commission (England & Wales) (2006) *Renting Homes: The Final Report*, Vols. 1 & 2. Law Com 297. Available online at: <http://lawcommission.justice.gov.uk/areas/renting-homes.htm>.



It is suggested that the EU Consumer Policy Strategy include the interests of housing consumers, whether as renters, as users or purchasers of homes or housing services, or as borrowers of housing finance. The regulation of rental markets can also promote the protection of tenants' housing and consumer rights.

While the CJEU obliges courts to examine tenancy and mortgage contracts for compliance with Directive 93/13/EEC on unfair terms in consumer contracts,<sup>659</sup> it is suggested that compliance by Member State courts with this obligation be monitored in cases of evictions.<sup>660</sup> It is also suggested to examine, at EU level, whether current mechanisms to protect consumers at national level will sufficiently guarantee the consumer protection obligations of the Mortgage Credit Directive (2014/17/EU).

### **Recommendation no. 5**

#### **Promoting and disseminating information on eviction-related housing rights and putting into place enforcement procedures**

It has become evident in this research that there is limited awareness, knowledge or application of EU-wide case law developments among NGOs, lawyers and courts across Member States. It is also clear that, in most Member States, there is minimal scrutiny by the courts of compliance with housing rights in the eviction process.

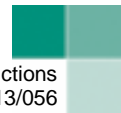
In order to address this limited awareness, knowledge or application of housing rights in the context of evictions across Member State courts, some capacity-building measures on housing rights would seem useful. These could involve and greatly assist lawyers, national courts, NGOs, the EU Agency for Fundamental Rights, the European Network of National Human Rights Institutions, consumer protection agencies, ombudsman offices and other relevant organisations. Key actions could include awareness raising, training and dissemination of information, including the creation of an up-to-date website cataloguing European eviction-related cases. This could complement the development of legally enforceable housing rights in Member State laws and procedures relating to evictions, and could promote the EU objectives of combating social exclusion and promoting fundamental rights.

Support for coordination between NGOs and advocacy agencies dealing with evictions within the different tenures on sharing information, best practices, strategies and organisational skills is proposed. The development of such agencies in those Member States where none currently exists is strongly suggested.

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<sup>659</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

<sup>660</sup> Case C-243/08 *Pannon GSM Zrt v Erzsébet Sustikné Győrfi* has established that national courts must examine on their motion disputed contracts for compliance with Directive 93/13/EEC.



## **Housing and housing policy**

### **Recommendation no. 6**

#### **Developing effective secondary eviction prevention measures**

A number of national experts have identified deficits in the nationwide availability and accessibility of eviction prevention services. The main reasons identified include: insufficiently qualified staff (AT, CZ, ES, FI, IE, LT, LU, PT, RO and SK); missing, incomplete or delayed information on households at risk (often blocked by data protection legislation, e.g. in AT, BG, CZ, DE, ES, HR, LT, RO and SE); a lack of staff resources and the need for a more proactive approach (AT, BE, DE, FI, FR, HR, LT, NL, RO, SE and SI); the need for mediation (DE, EE, HR, PL, RO, SI and SK); a lack of resources to assume existing arrears (AT, HR, RO, SE and SK); insufficient competencies to allocate alternative housing or a lack of such alternatives (AT, BE, BG, CZ, DE, DK, EE, ES, FI, LT, LV, PL, SE and UK); and a lack of instruments to ensure sustainability of housing situations after a successful crisis intervention. There is a recommendation, in all these cases, to overcome these deficits and to facilitate effective secondary prevention of eviction.

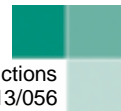
In order to efficiently prevent evictions, the establishment of dedicated eviction prevention services at the relevant national, regional or local level is proposed. These services could be most useful if they have the competency, resources and personnel to make appropriate interventions (including home visits) to prevent evictions. Efficient intervention measures through such services could include mediation between landlords and tenants, as well as between lenders and mortgagors; options to assume the existing debt and arrears and allow occupants to remain in place; arrangements for legal aid, advice and assistance; and competency to allocate alternative housing where eviction cannot be avoided. Specialised personal and social support could also be provided, offering support for people with addiction or mental health difficulties. This could be done throughout the process and especially after eviction, and could include debt settlement arrangements and income continuance. It is also suggested that, where appropriate, necessary steps be taken to improve existing services or to develop new services to facilitate the effective prevention of evictions. Creating an obligation for landlords, lenders, property owners, bailiffs, courts and related agencies to inform the proposed eviction prevention service of any households at risk of eviction at the earliest possible stage (even where no legal obligation exists) would be a very useful step.

### **Recommendation no. 7**

#### **Ensuring rapid rehousing, with intensive social support for evicted and homeless people with complex support needs, promoting the Housing First approach**

Rehousing evicted people who have complex needs, such as mental ill health and/or substance abuse problems, and preventing their recurrent homelessness, requires both access to affordable housing and the availability of social support. Experience shows that very vulnerable people tend to spend prolonged times in emergency





shelters, which are less efficient in providing individualised support to this population. The institutional and large-scale nature of many homelessness shelters is now advancing towards a more person-centred approach, which has been shown to be more successful in addressing and preventing recurrent homelessness. The Housing First approach – rapid rehousing in combination with intensive social support – has been proven to be an effective way to rehouse vulnerable homeless single-person households with high housing retention rates. The approach is enhanced when combined with interventions such as assertive community treatment (ACT) and intensive case management (ICM) – measures which can also be applied to prevent evictions.

Applying or extending the application of Housing First-based interventions for homeless people with complex support needs in Member States is therefore suggested, to enable their access to new permanent housing and to provide them with a sustainable housing solution.

### **Recommendation no. 8**

#### **Ensuring that low-income and vulnerable households have an adequate income or social benefit to access adequate housing, even after an eviction**

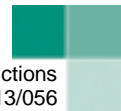
The lack of adequate income or social benefits can impact greatly on access to secure and adequate housing and housing retention. In many Member States there are reports of an increasing gap between the level of income or social benefit and rising rent levels, particularly in urban centres. For young people in many Member States, income or housing benefits are inadequate and create barriers to accessing secure, adequate private rented housing. This is particularly significant for people who are vulnerable or who have poor educational or employment opportunities. In other Member States, inadequate old-age pensions can limit access to adequate housing for older people.

It is suggested that Member States take into account the fact that the combined level of income and housing benefits enable unemployed and vulnerable households and individuals to pay the costs of adequate (private or social) local housing. This could be extended to minimum protected income after eviction.

### **Recommendation no. 9**

#### **Ensuring a sufficient stock of affordable/social housing and a continuum of housing tenures, with access for those on low incomes and those who are vulnerable**

Ensuring access to social/affordable housing by low-income and vulnerable households threatened with homelessness/eviction can greatly help reduce the risk of evictions. A sufficient pool of affordable/social housing which is available to meet local needs can offer secure affordable housing for those on a low income, those in precarious employment, unemployed people, people who are unable to compete in housing markets, or those requiring support to maintain tenancies. This can act as a



major structural preventative factor for evictions, as well as presenting a rapid rehousing opportunity for those who have been evicted.

This research has identified consistent inadequacy of such affordable/social housing across Member States to meet people's needs, even in Member States with a large social housing stock. In some cases, there is little affordable or social housing at all, although some small-scale initiatives are being supported by EU and Member State policies. In the context of the growing singularisation of households in most Member States, and given the prevalence of single people among the homeless population, Member States are encouraged to support access to affordable housing for both family households and single people, while at the same time ensuring that access arrangements prioritise those on low incomes and those who are vulnerable. The monitoring of housing market developments, including access to affordable housing at national and EU level, is suggested.

Provisions to provide an adequate supply of housing are set out in international law, for example in Article 16 ESC (accepted by all Member States except Cyprus). Article 34(3) of the EUCFR,<sup>661</sup> recognising and respecting the right to social and housing assistance so as to ensure a decent existence, is now part of Treaty law.<sup>662</sup> It draws on Article 16 and Article 31 RESC on the right to housing, and is binding on EU institutions and on Member States when acting 'within the scope' of EU law.<sup>663</sup> The European Parliament has proposed that social housing could have a major role in ensuring access to a high level of quality, safety, affordability and equal treatment, as well as in the promotion of housing rights.<sup>664</sup>

In the context of housing needs and housing rights obligations, many measures are available to increase the supply of affordable/social housing, including direct state investment, public-private partnerships, subsidies to regulated private landlords, hybrid tenures, appropriation of long-term vacant housing and other measures.

It is important for a balanced housing system that development and availability includes sufficient owner-occupied, private rented, intermediate tenures (shared ownership-like tenures, cooperatives and community land trusts) and social housing schemes. It is suggested that the EU and its Member States promote a continuum of tenures, and that the potential role of intermediate tenures in preventing household over-indebtedness, enhancing flexibility and housing system stability be explored.

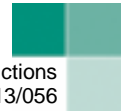
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<sup>661</sup> 'In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices'.

<sup>662</sup> Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, *Charter of Fundamental Rights of the European Union*.

<sup>663</sup> *Explanations relating to the Charter of Fundamental Rights*, OJ 2007/C 303/02.

<sup>664</sup> Resolution of the European Parliament, Social Housing in the European Union, June 2013. (P7\_TA (2013)0246, paragraph 3).



## **Recommendation no. 10**

### **Restricting the use of short-term tenancies to special circumstances e.g. for students and highly mobile workers**

The possibility for landlords to offer short-term tenancies has been introduced in housing legislation in some Member States in recent years, particularly in the UK. The aim has been to increase the ‘flexibility’ of housing rental markets, and to provide more housing options for people experiencing difficulties in accessing rented housing. This can assist people in special circumstances, such as highly mobile workers and students. However, evidence indicates that an unintended consequence of these short-term tenancies has been increased insecurity of tenure for socially vulnerable people, who are often unable to secure permanent affordable tenancy contracts. Short-term contracts are clearly not suitable for socially vulnerable groups. The expiry of short-term tenancies has also been increasingly linked with local authority statutory homelessness acceptances in England and Wales. By contrast, some Member States without such short-term tenancies appear to have upheld a higher degree of security of tenure for vulnerable people.

It is suggested that Member States ensure that short-term tenancies are not promoted for vulnerable groups, those on low incomes or unemployed people, or as an alternative to the provision of long-term secure social/affordable housing.

## **Recommendation no.11**

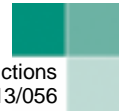
### **Assessing the impact of anti-eviction measures on the efficiency of the mortgage and housing markets**

This report shows that anti-eviction measures can be more intrusive (moratoria, winter bans, compulsory restructuring, etc.) or less intrusive (consumer education, ADR mechanisms, subsidies, etc.) with regard to the functioning of the mortgage market and housing systems. There may be risks that some measures could cause a general malfunction of the mortgage and housing markets on the supply side and the voidance of existing mortgages (even for invalid minor clauses), or that they could breach the validity of concluded housing sales contracts. The risk of uncertain consequences to the efficiency of the mortgage and housing markets and systems was pointed out by the European Commission in 2014 in relation to Spain.<sup>665</sup>

It is suggested that prior comprehensive and holistic assessments be undertaken of the impact on mortgage and housing systems of proposed anti-eviction-related legislation. This would avoid negative distortions in the supply or demand for market-provided housing and within housing systems. The assessments could also evaluate the impact of proposed measures on households at risk of evictions.

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<sup>665</sup> European Commission, DG for Economic and Financial Affairs (2014c).



## **Responsible lending and fresh start**

### **Recommendation no. 12**

#### **Securing a second opportunity or ‘fresh start’ for over-indebted borrowers**

While access to mortgage finance offers the primary route to home ownership in Europe today, many borrowers find themselves with high and unsustainable loans. Some will then be at higher risk of eviction in the event of unemployment, illness, disability, relationship breakdown or other factors. These situations have been identified in this research as creating major risks of eviction and homelessness.

The EU Financial Services User Group (FSUG)/London Economics Report (2012), which examined the range of debt reduction and debt write-off approaches across Member States, concluded that those debt recovery measures which do not involve the eviction of the borrower should be preferred. Mortgage-to-rent and mortgage-to-equity schemes can ensure that the lender receives some repayment, and while *datio in solutum* options could be useful, these can impact on property rights. The EU FSUG/London Economics Report stated: ‘Best practice requires a compromise between the debtor and creditor; the debtor must pay what he can and the creditor must accept that as the best resolution they can receive, so it is better for them to cut their losses, stop paying legal fees and allow a rapid discharge of unpayable debts’.<sup>666</sup> A mechanism to facilitate an effective second opportunity or ‘fresh start’ for over-indebted borrowers with unsustainable loans has been requested by many national experts, where possible ensuring that no eviction takes place.

This study suggests the promotion, at both national and EU level, of effective measures for a second opportunity or ‘fresh start’ for those with unsustainable debt where existing mechanisms are insufficient. These measures could prevent evictions, but they would also enable debtors to effectively re-engage in the economy and society. The best-practice debt cancellation model developed in the EU FSUG/London Economics report could be fully considered. Other mechanisms, such as *datio in solutum*, *datio pro solvendo*, mortgage-to-rent and mortgage-to-equity schemes should be further examined in the context of tackling evictions and from the perspective of the efficiency of the mortgage market. Special attention should be paid to the effects of the voluntary, semi-compulsory (code of conduct) or compulsory implementation outlined in the report.

### **Recommendation no. 13**

#### **Promoting responsible mortgage lending**

A series of problems have been identified in mortgage markets within the European Union relating to irresponsible lending and borrowing and to the potential scope for irresponsible behaviour by market participants, including credit intermediaries and non-credit institutions.<sup>667</sup> However, some Member States have promoted

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<sup>666</sup> London Economics (2012), p. xiv.

<sup>667</sup> Directive 2014/17/EU, Preamble paragraph 4.

conservative lending and funding, which has curbed housing debt and defaults, although it has made access to home ownership less likely for low-income households. While prudential approaches have been taken at national level through limited loan-to-value or debt-to-income limits, Article 18 of the Mortgage Credit Directive would curb irresponsible mortgage lending, although it may also have a significant impact on access to home ownership in many Member States.

It is suggested that Member States quickly transpose the Mortgage Credit Directive in 2016. It is also suggested that the EU regularly monitor the impact of the Mortgage Credit Directive on responsible lending and access to housing in Member States.

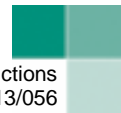
### **Recommendation no. 14**

#### **Increasing general information/education about the risks of over-indebtedness and defaulting on housing-related payments**

Rent and mortgage arrears and over-indebtedness are regularly accompanied or exacerbated by the mismanagement of limited resources and problematic choices of financial priorities. Ensuring that people, especially young and vulnerable people, are informed about borrowing, debt, money management and risks can indirectly impact on evictions. This could be facilitated by providing information in schools and other educational institutions, but also by targeted public campaigns. A number of national reports for this study (FI, HR, LV and PL) mention this approach as being particularly relevant. Exchanges of examples of good practice in developing and implementing curricula, information leaflets and campaigns about budgeting and about the potential risks and consequences of over-indebtedness and rent, mortgage and utility arrears, could support this target. Article 6 of the Mortgage Credit Directive, which came into effect in March 2016, states:

1. Member States shall promote measures that support the education of consumers in relation to responsible borrowing and debt management, in particular in relation to mortgage credit agreements. Clear and general information on the credit granting process is necessary in order to guide consumers, especially those who take out a mortgage credit for the first time. Information regarding the guidance that consumer organisations and national authorities may provide to consumers is also necessary.
2. The Commission shall publish an assessment of the financial education available to consumers in the Member States and identify examples of best practices which could be further developed in order to increase the financial awareness of consumers.

This study endorses Article 6 of the Mortgage Credit Directive as a recommendation on consumer education in relation to mortgages. It is suggested that this be expanded to include consumer education on rent, mortgage and utility arrears and over-indebtedness, identifying approaches based on best practice.



## **Research**

### **Recommendation no. 15**

#### **Improving the monitoring of evictions**

Monitoring eviction data facilitates an important early warning system, and can help to measure the effects of policies and economic and structural changes, as well as the need for preventative interventions. Currently, data collected across EU Member States by courts, bailiffs, lenders and a variety of agencies is either incomplete or – in many cases – absent. It has become clear in this research that primary data on evictions needs to be comprehensively collected and systematised by the court systems, tribunals, adjudication systems, relevant public bodies and agencies and others. Proposals to improve the monitoring of evictions, or to introduce a national system for monitoring evictions, have been advanced by most national experts in this study, reacting to the poor quantity and quality of data available at national, regional or local level in Member States.

Many more households are threatened with an eviction than those who are actually evicted at the very end of the eviction process. Our research shows that most people who become homeless through eviction leave before the conclusion of the eviction process. It is suggested that data should be collected not only about executed evictions but also on periods of notice for eviction, length of court proceedings and forced sales of owner-occupied housing.

It is also suggested that a regular, comprehensive and detailed monitoring and reporting system for all evictions be developed in each Member State. Courts, bailiffs and lending agencies play the most important roles in such a monitoring system, as they usually process the most relevant data. Social housing providers, advice agencies, tenancy dispute resolution agencies and other relevant agencies can also be useful providers of information. It would be most useful to collect data at different stages of the formal and court-based evictions process, from notice to execution, including on forced sales. Clear differentiation between principal and primary residences, commercial properties, holiday homes, garages, etc. should be facilitated. Data could clearly distinguish between tenures and could provide more information about the households concerned (household structure, number of household members and their age, sex, migration background, value of the property, etc.).

Where possible, information could be collated on household composition and size, on the ages, gender, country of birth/migration background, disability or vulnerability of household members, on their income and employment status and on dependants of the head of household. It would also be valuable to obtain improved information, including on the extent of advocacy and support available, on compliance by the landlord/lender with consumer, human rights and legal obligations and on the value of the property, as well as on the levels of original and outstanding mortgages.

Ideally, an EU-wide format with minimum requirements and a core set of data categories could be developed to facilitate comparisons and to track developing





trends. It is suggested that this data collection approach be advanced at EU level, as a structural and long-term approach to tackling evictions in the context of social inclusion policies.

Specific surveys are also suggested to improve information about illegal evictions.

### **Recommendation no. 16**

#### **Promoting research into the personal factors leading to evictions**

Many arrangements and procedures authorised in national laws dealing with divorce and relationship breakdown can contribute to homelessness for one party. In some cases, for example in Spain, both separated spouses have to find alternative temporary accommodation to facilitate the shared custody of children. Measures applying to relationship breakdown in Bulgaria and Malta can entail extra costs for the spouse who remains within the property, but they can assist the spouse who must leave. National measures relating to reallocation of housing in cases of domestic violence often fail to address the risk of homelessness for both parties. There is also a lack of information on how housing/urban renovation, gentrification or declaration of ruin impact on people being dispossessed from their properties.

Personal factors, such as illness, relationship breakdown, divorce or domestic violence, can impact significantly on home dispossession, alongside structural factors such as large-scale indebtedness, recession, unemployment and rent increases. The triggers for eviction are often personal, for example relationship issues, and focused intervention can be extremely effective. Out-of-court professional mediation can provide satisfactory solutions in some cases, but such facilities do not exist in all Member States and, where they are present, they are often undeveloped or under-resourced.

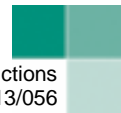
It is suggested to promote research into these personal factors triggering evictions, from the perspective of possible palliatives and solutions to prevent homelessness.

### **Recommendation no. 17**

#### **Researching the weakness in legal protection and countering illegal eviction**

It is suggested that further research be advanced on the extent to which national constitutional rights of home (inviolability) (see Annex 2), as well as housing, social property, mortgage, procedural, contractual and other laws, actually guarantee adequate measures to prevent and tackle evictions. This may involve examining how ECHR, EUCFR and international human rights obligations and standards on evictions are considered by national courts, comparing approaches across Member States. Such research could also examine whether procedural weaknesses, including lack of legal aid, distrust of legal processes and their length, restrictions to defences against eviction for mortgagors/tenants, and dispossessions arising from divorce or domestic violence, are affecting citizens' legal protection in evictions.

A critical limitation in this research study was the absence of data and reports on



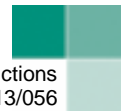
evictions in the informal or 'black' housing sector, particularly among migrants (documented and undocumented) and other excluded people. These include people with disabilities, asylum seekers and others who experience insecure housing, precarious employment and a high risk of eviction. Many are not included in state, court or NGO bureaucracy or record-keeping. Data exists on these evictions in only a few Northern European Member States, although anecdotal accounts would suggest that there are many evictions in this sector. The risk of homelessness among those evicted is clearly related to economic and social resource levels, with the poorest people (always including migrants) generally becoming homeless in the absence of state or family support. Further research on the nature and extent of illegal evictions from the informal rented sector across Member States and potential changes in laws and procedures to counter these is suggested. The development of a prohibitory injunction against illegal or unauthorised evictions (similar to that in environmental cases and consumer protection under Directive 98/27/EC) could be examined.

### **Recommendation no. 18**

#### **Improving the basis for the EU-SILC question on housing evictions (as a reason for 'change of dwelling')**

There is a clear case for improving national databases on evictions from primary residences.

It is suggested that the next EU-SILC data module on housing introduce a clearer question (with a yes/no response option) as to whether the interviewee experienced an eviction process. This would also be helpful for recording the original tenure of households who have moved dwellings. Furthermore, given the obvious under-representation of people who have changed dwelling, it is suggested that the sampling of lower income groups in EU-SILC be further improved to access more reliable data on different situations, such as those involving households threatened with eviction. For added value in the context of evictions research, this EU-SILC household survey could also focus more deeply on transient groups of households, who change dwellings or move in and out of housing more often.



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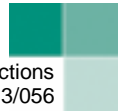


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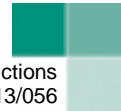
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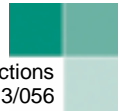
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## **Annexes**

**[Separate files].**

**Annex 1. Glossary**

**Annex 2. Inviolability of Home Provisions in EU Member State Constitutions**

**Annex 3. Minimum protected income across EU Member States**

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