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# Unfit Housing and Slum Landlords in Europe

## Learning from different legislation to protect vulnerable tenants

HOUSING RIGHTS WATCH

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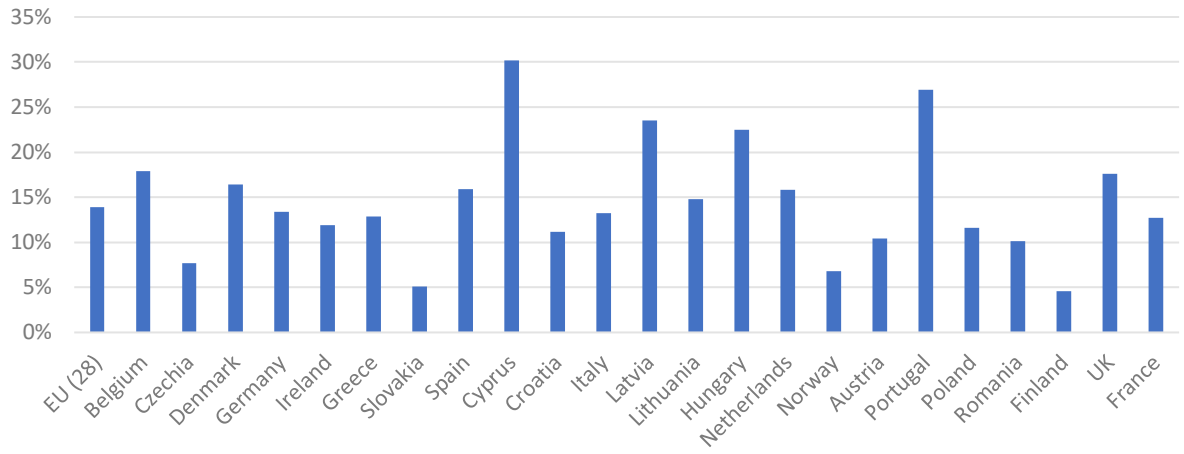
# 1 Introduction

Homes have been at the centre of our lives during the pandemic and, for thousands of people in Europe, inadequate housing and cramped conditions have made lockdown unbearable. Furthermore, poor housing conditions have exacerbated COVID-19 infection risks.

This is not new, as substandard housing issues have persisted across Europe in recent decades. In 2018, Cyprus, Portugal and Latvia had the highest percentage of households living in substandard dwellings as defined by the EU-SILC measure of severe housing deprivation[1] (house with a leaking roof; damp walls, floors, or foundations; or rot in window frames or floors) and Finland, Norway, and Slovakia the lowest.

**POPULATION % LIVING IN A DWELLING WITH A LEAKING ROOF, DAMP WALLS, FLOORS OR FOUNDATIONS OR ROT IN WINDOW FRAMES OR FLOORS - 2018**




*Data from Eurostat*[2]

The concept of "habitability" is essential to the definition of "adequate housing" according to international standards, established in Article 11.1 of the International Covenant on Economic, Social and Cultural Rights and General Comment number 4 on the right to adequate housing.[3] It means that inhabitants must be provided with a*dequate space, and be protected from cold, damp, heat, rain, wind or other threats to health or structural hazards to guarantee their physical safety.* Where the public bodies responsible do not take enough measures to ensure that private rented housing is of a decent standard, the right to adequate housing may be violated.

In the framework of the European Social Charter system, the European Committee of Social Rights has established clear obligations for States. States must guarantee housing of an adequate standard, which means that "*all beneficiaries should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services".*[4]

1 EU statistics on income and living conditions (EU-SILC) on housing deprivation.https://ec.europa.eu/eurostat/statisticsexplained/index.php/EU_statistics_on_income_and_living_conditions_(EU-SILC)_methodology_-_housing_deprivation
2 https://ec.europa.eu/eurostat/statisticsexplained/index.php/EU_st
3 General Comment number 4, interpretation of article11.1 in relation to adequate housing by the Committee on Economic, Social and Cultural Rights: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT/CESCR/GEC/4759&Lang=en
4 European Committee of Social Rights, France Conclusions, 2003: also, International Federation for Human Rights (FIDH) v. Ireland, No. 110/2014 (Article 16)

In recent decades, the private rental market has played a de facto social role, as the public sector is not always able to meet the growing demand in Europe. Governments have generally developed minimum standards of adequacy to ensure housing habitability. However, many tenants in Europe still face precarious housing conditions, especially in areas where markets are particularly tight, such as in major capital cities. In this context, the lack of maintenance and compliance with habitability standards has led to dramatic situations such as fires or collapses of buildings resulting in the death of their occupants.

In 2016, a report by Eurofound highlighted the cost of inadequate housing. It found that issues such as heating, insulation, structural problems, and cramped conditions continue to affect a substantial proportion of the population in most Member States, despite a gradual improvement in quality overall. These inadequacies have negative impacts on health, make it more likely that the residents will have accidents, and have a negative impact on productivity and economic output.[5]

Politically, the issue of inadequate housing is gaining ground in the European Union (EU). On 14 October 2020, the European Commission published its strategy for the renovation wave. The main objective of this strategy is to improve the energy performance of buildings, with a view to at least doubling renovation rates over the next ten years and ensuring that renovations result in higher levels of energy efficiency. However, behind the main objective of environmental impact through energy efficiency lies the quality of life of the people concerned. The European Commission has announced its objective to renovate 35 million buildings by 2030 while combatting fuel poverty. This is a unique political opportunity to mobilise European and national funds towards the renovation of inadequate housing. In order to meet the needs of the most vulnerable households, this wave of renovation must target the most energy-intensive buildings which are often those occupied by the most vulnerable households. This strategy initiated by the European Commission should be an opportunity to improve the fight against substandard housing and slum landlords in Europe.

In this study, we focus on so-called "slum landlords" or "rogue landlords", also known as "*marchands de sommeil*" (literally "sleep merchants") in French-speaking countries. There is no single definition, and this term may refer to different situations in different countries, but they are all unscrupulous landlords that fail to fulfil their obligations to keep dwellings fit for human habitation.

According to a definition developed by Michel Vols and Alex Belloir,[6] slum landlords can be identified by five characteristics:

1. Exploitation of tenants
2. Discrimination
3. Substandard housing
4. Use of property for illegal activities
5. Tax evasion

We have analysed ten European countries' legislation in order to better understand the legal framework that protects vulnerable tenants against these landlords, whether it be private or administrative law measures or criminal law responses to such behaviour. We will focus here mainly on the private rental market and only occasionally refer to social housing.

5 Eurofound report highlights cost of inadequate housing, 30 September 2016. https://www.eurofound.europa.eu/news/news-articles/eurofound-report-highlights-cost-of-inadequate-housing

6 Vols, M., and Belloir, A. (2019). Tackling Rogue Landlords and Substandard Housing: Local Authorities' Legal Instruments and their Effectiveness. ***Journal of Property, Planning and Environmental Law, 11***(1), 2-19. https://doi.org/10.1108/JPPEL-08-2018-0025, p. 3

# 2 COUNTRY ANALYSIS

## FRANCE

*Proportion of the population living in sub-standard housing in 2018, according to Eurostat:* 12.7%.

Several legal tools have been put in place in France to fight against substandard housing (in French "*habitat indigne*"), especially since the 1970s. However, in 1997-98 several serious fires cost the lives of several occupants of these dwellings, as many buildings in Paris had declined in quality. Faced with the public outcry, new measures were taken and marked a new starting point in the fight against substandard housing.

### Tenancy law

In French law, a distinction must be made between the minimum standards of comfort provided for in rental agreements and the rules of safety or health which apply to all, and which are the responsibility of the public authorities. In French tenancy law[7], the landlord is required to provide the tenant with a decent dwelling free of obvious risks that could affect the physical safety or health of the tenant. The right to decent housing has been an objective of constitutional value since 1995.[8]

The law "decence" [9] provides that a dwelling is decent if it respects a minimum surface area; the guarantee that there are no harmful or parasitic species present, a minimum energy performance criterion, at least the following facilities as standard: a well-functioning heating system, a drinking water supply system, sewage disposal facilities- preventing the backflow of odours and waste water-, a kitchen or kitchenette allowing the installation of a cooking appliance and a sink, a sanitary installation inside the dwelling, an electricity supply.[10]

The landlord must deliver the housing to the tenant in good condition of use and repair as well as the equipment mentioned in the rental agreement in good working order.

The landlord must guarantee the tenant the peaceful enjoyment of the accommodation and guarantee protection against vices or defects likely to hinder this. The landlord must maintain the premises in good condition for the use provided for in the contract and carry out all the repairs necessary for the maintenance of the rented premises. On the other hand, the landlord must not oppose the repairs made by the tenant which do not constitute a transformation of the dwelling.

The landlord is obliged to guarantee to the tenant the peaceful enjoyment of the dwelling, and to guarantee protection against defects of such a nature as to impede this. The landlord is obliged to maintain the premises in a state fit for the use provided for in the contract and to carry out all repairs, other than those required for rental purposes, necessary for the maintenance and normal upkeep of the rented premises. On the other hand, the landlord may not object to improvements made by the tenant, provided that they do not constitute a transformation of the rented property.

In the event of finding unfit housing issues, the tenant may take the matter to the district court to compel the landlord to carry out the work, subject to a fine and a reduction in rent if necessary.

7 Loi n° 89-462 du 6 juillet 1989 relative aux rapports locatifs : article 6, https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000037670751/
8 Conseil Constitutionnel, Décision n° 94-359 DC du 19 janvier 1995
9 Décret n°2002-120 du 30 janvier 2002 relatif aux caractéristiques du logement décent pris pour l'application de l'article 187 de la loi n° 2000-1208 du 13 décembre 2000 relative à la solidarité et au renouvellement urbains.
10 Loi n° 89-462 du 6 juillet 1989 tendant à améliorer les rapports locatifs et portant modification de la loi n° 86-1290 du 23 décembre 1986. (Article 6) https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000037670751/ Décret n°2002-120 du 30 janvier 2002 relatif aux caractéristiques du logement décent pris pour l'application de l'article 187 de la loi n° 2000-1208 du 13 décembre 2000 relative à la solidarité et au renouvellement urbains.https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000217471/

## Concept of unfit housing in France

Inadequate housing is called "*habitat indigne*" in France and is defined by the law of 31 May 1990. It was initially a political concept, but later became a legal concept, covering all housing situations that violate the right to adequate housing and are detrimental to the health or safety of people.[11]

In 2000, the Law on Solidarity and Urban Renewal (SRU) and the National Action Plan against substandard housing were adopted.[12] The latter provides for a multi-dimensional approach in order to hold landlords responsible for housing that violates human dignity, while ensuring the protection of the occupants. Administrative law provides for obligations on landlords and local officials to ensure the safety and health of citizens. These provisions include:

- premises or installations used for residential purposes and unfit for such use [13] (health risk)
- premises which are detrimental to the health of its occupants (health risk), dwellings and buildings using lead (risk of lead poisoning);
- buildings at risk of collapse (safety risk).

In case of insalubrity the tenant can contact the Regional Health Agency or the hygiene service of the city if there is one. In case of risk of collapse it is the mayor who is responsible and who is in charge of stopping the danger.

## Legal instruments to combat slum landlords

In case of infringement of these rules, landlords are exposed to civil and criminal sanctions. In 2018, the ELAN law[14] introduced several provisions aimed at combating Slum landlords who rent out accommodation that poses risks to the health or safety of tenants. This law encompasses two main provisions: the strengthening of sanctions against slum landlords and the simplification of procedures to combat substandard housing. [15]

### Simplification of existing procedures

The Elan Law empowers the government to issue orders, within 18 months of the promulgation of the Law, in order to take measures to better fight against substandard housing. These measures are applicable from 1 January 2021.

The new measures introduced imply a broadening of the scope of the legal framework for combating substandard housing by including buildings, premises and facilities. The legal framework includes buildings used primarily for residential purposes, buildings used wholly or partly for accommodation, and funeral buildings or monuments.

The new scheme focuses on walls, buildings or structures, the malfunction or lack of maintenance of common facilities in a collective building used mainly for residential purposes, the storage of explosive or inflammable materials, and insalubrity.

There are two types of measures to combat unhealthy housing: danger orders and unhealthy housing orders, which are now harmonised in terms of procedures and legal consequences, while maintaining their specificities in terms of content, criteria and fact-finding.

In the case of legal works, there is no obligation to give formal notice, which allows for the acceleration of the execution of the works. If the non-performance of prescribed measures concerning the common parts of a condominium results from the default of certain co-owners, the competent authority may, by reasoned decision, do it in their place.

11 Article 84, Loi n° 2009-323 du 25 mars 2009 de mobilisation pour le logement et la lutte contre l'exclusion and Loi n° 90-449 du 31 mai 1990 visant à la mise en œuvre du droit au logement : https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=3522D94B28511C991069AC445E4D85B5.tplgfr24s_3?cidTexte=JORFTEXT000000159413&dateTexte=20100710
12 Loi n° 2000-1208 du 13 décembre 2000 relative à la solidarité et au renouvellement urbains : https://www.legifrance.gouv.fr/loda/id/LEGITEXT000005630252/2020-10-23/
13 Premises unfit for habitation may be an attic, cellar, garden shed, garage, windowless room, etc. Premises unfit for habitation may be an attic, cellar, garden shed, garage, windowless room, etc.
14 Lutte contre l'habitat indigne et les marchands de sommeil. (Article 185). LOI n° 2018-1021 du 23 novembre 2018 portant évolution du logement, de l'aménagement et du numérique : https://www.legifrance.gouv.fr/eli/loi/2018/11/23/TERL1805474L/jo/texte Le texte officiel et définit a été publié dans le Journal officiel du 24 novembre 2018.
15 Loi ELAN : focus sur la lutte contre l'habitat indigne, Weblex :https://www.weblex.fr/weblex-actualite/loi-elan-focus-sur-la-lutte-contre-lhabitat-indigne

The definition of insalubrity is also broadened: vacant properties are also included, so that they can be considered as inhabitable but without the obligation to carry out works. The presence of degraded coatings containing lead in concentrations above the defined thresholds is also a criterion of unfit for habitation, particularly to protect minors and pregnant women.

The definition of "unfit for habitation" is also revised: new criteria have been added, such as insufficient ceiling height, insufficient natural light and cramped configuration. In order to declare a dwelling unfit for habitation, a review by the departmental environmental committee is still possible but is no longer mandatory. It is important to take into account the preservation of the principle of contradictory appeals and the increase in the number of contentious appeals.

In the context of an order procedure, the tenant has the right to give notice. The duration of the lease is suspended from the beginning of the adversarial process. Even if the decision is in favour of the tenant, the time limit for the implementation of the remedial measures remains undefined. However, the payment of rent is not suspended.

The role of the public establishments of inter-municipal cooperation (EPCI) is strengthened in the fight against substandard housing, and the transfer of competences by the mayors and the delegation of competences by the State are simplified. There is the possibility of pooling resources for municipalities that do not have them and, if necessary, creating an inter-municipal hygiene and health service.

### The rental permit

The Alur law[16] in 2014 had introduced a regulation aimed at fighting against unfit housing that allows a municipality to require "rental permits" in problematic areas.[17] Hence, a municipality can enforce administrative procedures on a landlord wishing to rent out a property. The purpose of these administrative procedures is to enable the municipality to carry out an assessment to ensure that the premises comply with the legislation and meet health requirements. If a landlord rents out the property without a prior declaration or authorisation, s/he can receive a sanction of between 5,000 and 15,000 euros, depending on whether the declaration was missing, or the authorisation was refused.[18]

In practice, only a few municipalities have implemented this procedure. This legal measure presents not only practical but also legal issues (in terms of implementation, monitoring, etc.) as it risks creating a "decency guarantee" that can be a barrier to tenants.

### Denouncing slum landlords

Article 193 of the ELAN law obliges the property managers and estate agents to report to the public prosecutor any suspicions of slum landlord activity of which they become aware in the course of their duties.

There is a general obligation to report situations of substandard housing. However, if a problem is not reported, there are no sanctions, so this measure is more of an awareness-raising measure.

### Criminal sanctions against slum landlords

Slum landlords in France are subject to criminal penalties. [19]

There are offences under the heading of substandard housing, such as collecting rent while the dwelling is under a decree (the action of the public authority suspends the lease and therefore the payment of rent) or threatening the occupants. These offences are provided for in the Public Health Code and the Construction and Housing Code.

In addition, the Penal Code prohibits subjecting vulnerable people to housing conditions contrary to human dignity.[20] Slum landlords can be fined and

16 Loi Alur : LOI n° 2014-366 du 24 mars 2014 pour l'accès au logement et un urbanisme rénové https://www.legifrance.gouv.fr/loda/id/JORFTEXT000028772256/
17 Loi Alur: LOI n° 2014-366 du 24 mars 2014 pour l'accès au logement et un urbanisme rénové https://www.legifrance.gouv.fr/loda/id/JORFTEXT000028772256/, Articles 92 and 93
18 https://www.legifrance.gouv.fr/jorf/id/JORFARTI000028774113
19 Voir pour plus d'informations : https://www.jurislogement.org/habitat-indigne-et-infractions-ples/
20 Articles L. 225-14 et suivants du code pénal

imprisoned for noncompliance.

### Financial sanctions against slum landlords

In order for the tax authorities to be able to tax a slum landlord, they have to prove that s/he has unduly received rent for renting out unfit housing. This is often very difficult to do in practice. However, there is a tax system that allows the burden of proof to be reversed in order to recover tax on illegally received income. However, this tax system is only applicable to some crimes and offences. In order to reinforce the financial and fiscal pressure on slum landlords, the ELAN Law provides that this tax system of reversal of the burden of proof now applies to slum landlords.[21]

### Prohibition from purchasing properties to slum landlords

In France, some people may be subject to a ban on buying property for private use or accommodation. When properties subject to foreclosure are auctioned, the price of these properties is often more attractive than the market price. In these cases, it is common for sleep merchants to participate in these sales in order to subsequently rent out these dwellings, which are often in a precarious state. The Loi Elan prohibits sleep merchants who are subject to a purchase ban from taking part in a property auction, except in the case of an acquisition for personal occupation.

### Additional penalties for slum landlords

The ELAN Law foresees additional penalties (prohibition from purchasing or confiscation of real estate) against slum landlords that are, in principle, mandatory. If the judge does not establish additional penalties, s/he must give reasons for this decision.[22] Additional penalties can also be established against slum landlords who carry out their activity in the form of a company.

In addition, the Loi Elan increases from 5 to 10 years the period of prohibition to buy a property in case of conviction for offences related to substandard housing.

### Financial penalties generalised

The Elan Act allows public authorities to impose a compulsory penalty on slum landlords if they do not comply with the measures they have prescribed.

In addition, the payment of a penalty may be due in the following cases (non-exhaustive list):[23]

- Provision of residential housing that is unfit for habitation (basements, attics, rooms without windows, etc.);
- Provision of premises under conditions that clearly lead to their over-occupancy;
- Use of premises or installations that threaten the health or safety of their occupants;
- Notice of unhealthy environment, valid definitive prohibition from living in and using the premises.

### Conclusion

French legislation is very comprehensive in terms of the fight against substandard housing and against slum landlords, particularly because it provides for the protection of the occupant as a victim. However, it faces practical implementation difficulties. The public authorities have difficulty in deploying the necessary means for its application and victims lack appropriate legal support to carry out the procedures, sometimes for several years.

## BELGIUM

*Proportion of the population living in substandard housing in 2019, according to Eurostat: 16.7%.*

Inadequate housing is unfortunately frequent on the rental market in Belgium. In Wallonia and in Brussels, health and safety standards are not always respected. The percentage of the population living in dwellings with either leaking roofs, damp walls, floors or foundations, or rot in window

21 Actu Juridique. Loi Elan : focus sur la lutte contre l'habitat indigne : https://www.weblex.fr/weblex-actualite/loi-elan-focus-sur-la-lutte-contre-lhabitat-indigne
22 Actu Juridique. Loi Elan : focus sur la lutte contre l'habitat indigne : https://www.weblex.fr/weblex-actualite/loi-elan-focus-sur-la-lutte-contre-lhabitat-indigne
23 See previous note.

frames or floors, was 17.9% in 2018.[24] Different mechanisms to tackle substandard housing exist at various authority levels.

## Definition of unfit housing in Belgium

In Belgium, housing is regulated at regional level. Each region has defined its own housing code, but all follow the principle that a home must be safe and meet certain comfort requirements.[25] For the purposes of this study, we will focus on the situation in the Brussels region.

In Brussels, every dwelling must meet minimum requirements in terms of hygiene, safety, and comfort. Housing that does not meet these requirements and is thus unfit, may be banned from being rented out.[26]

The regions, the State and the municipalities have established health criteria that housing must respect. In general, they concern damp, natural lighting, ceiling height, water, gas and electricity installations and sanitation facilities.

## The different means of action available

When a dwelling is insalubrious, the tenant has several possibilities for action. The tenant must establish who is responsible for the insalubrity before taking any steps. Sometimes, the situation may be the consequence of the tenant's own behaviour. For example, damp can stem from a lack of aeration, and in this case, the tenant cannot seek redress.

The first step is to notify the landlord in writing and ask him/her to act within a specified period. The landlord may not be aware of the problems that the tenant is experiencing. Once the landlord receives this warning, s/he may take steps to remedy the situation. Many conflicts are resolved at this stage. However, if the owner does not respond accordingly, other actions must be considered.

The tenant can make a request to the justice of the peace of the area where the building is located. If the owner fails to act, the tenant may request the execution of works to bring the property into compliance with the minimum safety criteria for; he may ask to terminate the contract or withhold rent pending the execution of the works. To assess the state of the property, the justice of the peace relies on elements such as the property inventory. It is therefore important to write this accurately and give detail. The judge may also organise an unannounced inspection of the premises or rely on other evidence, such as a safety assessment.

In Brussels and Wallonia, the tenant can request that a health and safety inspection be carried out. An investigator visits the site and prepares a report describing the condition of the property and the measures to be taken to ensure compliance. Generally, the report requires the owner to carry out certain works within a specified time, but it can also declare the property uninhabitable.

Nevertheless, in all cases, the report does not automatically establish the responsibility of the owner. If the tenant wishes to receive compensation or to terminate the lease early, s/he must apply to the justice of the peace. The investigation can be used as proof, but it does not have an absolute value; the judge can deviate from it.

### Competence of the municipality

The Mayor of the Commune can issue an insalubrity order on the basis of article 135 of the New Municipal Law, if he considers that the problems concern public safety and health, a notion which falls within his discretionary power. A municipality will take action for example if a building is in a poor condition, and it creates a danger for citizens. Depending on the case, the municipality can order the owner to carry out works, have it carried out by the municipality or a third party and charge it to the homeowner, and order the occupants to leave the premises within a certain period of time or even immediately. The most common is an "inhabitability order". This is a decision where the mayor decides to close off access to a building, which is then sealed, and the occupants are evacuated.

24 https://indicators.be/fr/i/G11_IDW/
25 https://www.belgium.be/fr/logement/problemes_de_logement/insalubrite
26 https://logement.brussels/documents/dirl_dghi/coordination-officieuses-des-exigences-elementaires-en-matiere-de-securite-de-salubrite-et-dequipement

Due to the extreme complexity of these situations, different actors are involved. The municipalities play a key coordinating role. Good practice can be observed in relation to the collaboration between different actors. For example, in Molenbeek-Saint-Jean, a municipality in Brussels, a collaboration protocol for the exchange of information on sleep landlords was signed between the municipality, the social services and the police in order to fight effectively against slum landlords.[27]

Another good practice includes the introduction of a tax in several Brussels municipalities: in Auderghem, for example, this tax is aimed at dwellings declared uninhabitable by the mayor. In addition, the region has adopted an energy renovation premium for housing; other municipalities such as Ixelles, Saint-Josse or Evere offer a supplement to the regional amount.

### The Brussels Housing Code

The Housing Code adopted in 2013 by the Brussels Regional Government encompassed several important changes for more effective action against slum landlords as well as for the renovation of more housing. The Code included the possibility for the inspection service to act when unfit housing is placed on the rental market. Furthermore, a complaint remains valid even if in the meantime the tenant no longer occupies the premises. In the case of suspected insalubrity, the owner is no longer notified in advance of the inspectors' visit. Fines may be reduced by half or cancelled if the landlord performs the required works.[28]

Legislation is often not respected, so these rules have had limited effects on the ground. The extent of the problem is shown by the number of complaints to the regional housing inspectorate, known as DIRL[29] and also by the number of rehousing offers granted by the Region to financially disadvantaged tenants who leave an inadequate dwelling to live in new housing unit, which is often more expensive but meets the standards for size, health, and safety, among others. The available data are insufficient to demonstrate precisely the extent of the phenomenon in Brussels. However, they reflect a very worrying trend in inadequate housing.

## Criminal sanctions against slum landlords

In Belgium, the term to describe slum landlords is also "*marchands de sommeils*". The Criminal Code applies to all three regions (Brussels, Wallonia, and Flanders).

A slum landlord is defined as "a person who sells, leases, or makes available a property to vulnerable people, with the intention of making an abnormal profit".[30] The offence requires the concurrent existence of several elements, namely:

- Making available, renting, or selling.
- Movable or immovable property.
- In conditions "incompatible with human dignity".
- To make an abnormal profit.
- The victim has to be in a precarious situation so that s/he has no other real and acceptable choice than to submit to this abuse.

This offence can be punished with six months' to three years' imprisonment and a fine from 500 euros to 25,000 euros, for whoever has abused, either directly or through an intermediary, the situation of vulnerability in which a person finds him/herself because his/her illegal or precarious administrative situation, precarious social situation, age, pregnancy, illness, infirmity or physical or mental disability by selling, renting or making available with the intent to make an abnormal profit, movable property or part of this property, immovable property, or a bedroom or other space referred to in Article 479 of the Penal Code under conditions that are incompatible with human dignity. The fine may be applied as many times as there are victims.

27 Bernard, N., Université de Saint Louis, Bruxelles., Bonnes pratiques des communes bruxelloises : Les Echos du Logement n°123, juillet 2018, http://lampspw.wallonie.be/dgo4/tinymvc/apps/echos/views/documents/FlippingBook/Echos_123/27/#zoom=z
28 Ordonnance portant le Code bruxellois du Logement: http://www.ejustice.just.fgov.be/eli/ordonnance/2003/07/17/2013A31614/justel
29 526 complaints in 2019: see https://logement.brussels/documents/dirl_dghi/rapports-annuels/rapport-dactivite-2019, p. 3.
30 Les Marchands de Sommeil. Droit Pénal, Abrèges juridiques : https://www.actualitesdroitbelge.be/droit-penal/droit-penal-abreges-juridiques/les-marchands-de-sommeil/les-marchands-de-sommeil

However, when the activity concerned constitutes a habitual activity or when it constitutes an act of participation in the main or accessory activity of an association, whether or not the offender is a manager, the offence will be sanctioned by one to five years' imprisonment and a fine from 1,000 to 100,000 euros.

Finally, victims may be accommodated or rehoused by decision of the competent minister, the competent authority or the officials designated by them in consultation with the relevant services. The cost of accommodation shall be borne by the accused. Where the accused is acquitted, the costs shall be borne by the State or the competent C.P.A.S. (Centre public d'aide sociale), as appropriate.

# THE NETHERLANDS

*Proportion of the population living in substandard housing in 2019, according to Eurostat:* 14.7%.

The Housing Act remains one of the principal administrative laws on the quality of housing in terms of health, safety, and habitability in the Netherlands. Its primary objective remains eradicating or at least impeding the occupation of unsafe and indecent homes, so is central when dealing with health and safety issues that can arise in relation to substandard housing, and thus indirectly with rogue landlords.

## Definition of unfit housing in the Netherlands

In the Netherlands, there is no explicit legal definition of unfit housing. In 2011, the municipality of Rotterdam described rogue landlords to the national government as property owners whose *"buildings, structures, terrains or yards can be characterised by fundamental overdue maintenance, overcrowding, cannabis cultivation and other behaviours that lead to violations of the Housing Act, the Housing Allocation Act, or the Opium Act".*[31]

In the Netherlands rogue landlords typically own more than one building. They are involved in substandard housing but there are other additional problems. They don't have problems to break the law in order to make as much money as possible. Most of them would ask for excessive rents, they would not comply with the Dutch rent control system, they are rack renters. Some may be involved in illegal activities related to drugs (cannabis farms, for instance). Finally many of them will not pay taxes for their income.

## Obligations on landlords

The requirements that property owners need to comply with can be found in two articles of the Housing Act.

Article 1b of the Housing Act explicitly forbids property owners from violating the Buildings Decree 2012 (*Bouwbesluit 2012*). This decree, established by the Dutch national government, stipulates detailed requirements and regulations regarding health, safety, usability, energy efficiency, waste disposal and the environment;[32]

Article 1a serves as more of a "safety net", in the sense that if Article 1b of the Housing Act does not provide sufficient grounds for enforcement action in the event of hazardous or unsafe conditions, Article 1a of the Housing Act is there to cover these violations. Being much broader, Article 1a simply highlights the notion of the "duty of care" of property owners, to ensure that no threat to the health or safety of others is posed.[33]

## Administrative law provisions

In 2011, Dutch municipalities requested supplementary legal enforcement instruments to tackle rogue landlords and substandard housing. The national government implemented new legislation in 2015, granting local authorities more legal instruments.

31 As cited in Vols, M., and Belloir, A. (2019). Tackling Rogue Landlords and Substandard Housing: Local Authorities' Legal Instruments and their Effectiveness. ***Journal of Property, Planning and Environmental Law, 11***(1), 2-19. https://doi.org/10.1108/JPPEL-08-2018-0025, p. 4

32 Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, 2012.

33 Vols, M., and Belloir, A. (2019). Tackling Rogue Landlords and Substandard Housing: Local Authorities' Legal Instruments and their Effectiveness. ***Journal of Property, Planning and Environmental Law, 11***(1), 2-19. https://doi.org/10.1108/JPPEL-08-2018-0025

Thanks to the "Improvement of the Housing Act's Enforcement Instruments Act",[34] local authorities are now able to use a larger number of instruments under administrative law, which mostly include the imposing of "remedial sanctions". These range from imposing incremental penalty payments and can end up in more drastic action such as the closure of the building and expropriation. After the closure the local authorities can issue a management control order, the landlord remains the property owner, but they are stripped from the management of the building. The above-mentioned study by Vols and Belloir[35] found that slightly more than half (28) of the fifty largest Dutch municipalities studied clearly specified that they encountered problems with rogue landlords. This encompassed several issues, such as substandard housing, illegal (room) renting, illegal hotels, cannabis cultivation, overcrowding, and charging too much rent. It was therefore not surprising that twenty-three of the fifty municipalities had thus specifically formulated policies aimed at tackling these landlords.

In practice, less than a fifth (nine out of fifty) had specifically included the enforcement instruments in the new Act in their policies. As a result, although many municipalities state that they are regularly faced with issues caused by rogue landlords and rack-renters, paradoxically, only a minority of them have drawn up detailed policies concerning the very instruments that were implemented to allow them to deal with this issue more effectively.

# UNITED KINGDOM

*Proportion of the population living in sub-standard housing in 2019, according to Eurostat: 17.6%.*

Since devolution in 1998, there has been significant divergence in housing law among the countries of the UK. The following account outlines the situation in England.

## Definition of unfit housing in England

In England, a dwelling is considered to be fit if it is safe, healthy, and free from things that could cause serious harm. The Homes (Fitness for Human Habitation) Act 2018 defines the rights of the tenant and the obligations on the landlord in order to prevent unfit housing.[36]

## Obligations on landlords

The Landlord and Tenant Act 1985imposes obligations on landlords to carry out repairs but only if there is "disrepair" – damp, mould or asbestos not causing structural damage are not covered.[37]

The Homes (Fitness for Human Habitation) Act 2018 is designed to ensure that all rented accommodation is fit for human habitation and to strengthen tenants' means of redress against landlords who do not fulfil their legal obligations to keep their properties safe.[38]

Under the Act, the Landlord and Tenant Act 1985 was amended to require all landlords (private and social) to ensure that their properties, including any common parts of the building, are fit for human habitation at the beginning of the tenancy and throughout. The Act states that there is an implied agreement between the tenant and landlord at the beginning of the tenancy that the property will be fit for human habitation.

Thus, this Act provides additional means for tenants to seek redress by giving them the power to hold their landlord to account without having to rely on their local authority to do so.

The government expected standards to improve as tenants are empowered to act against their landlord where the landlord fails to maintain the property adequately. This should level the playing field for most landlords who are already keeping homes

34 'Improvement of the Housing Act's Enforcement Instruments Act' https://www.eerstekamer.nl/wetsvoorstel/33798_versterking
35 Vols and Belloir, 2019
36 https://www.gov.uk/government/publications/homes-fitness-for-human-habitation-act-2018/guide-for-tenants-homes-fitness-for-human-habitation-act-2018
37 Landlord and Tenant Act 1985: https://www.legislation.gov.uk/ukpga/1985/70
38 Homes (Fitness for Human Habitation) Act 2018: https://www.legislation.gov.uk/ukpga/2018/34/introduction/enacted

fit for human habitation without serious hazards, by ensuring that they are not undercut by landlords who knowingly and persistently shirk their responsibilities.[39]

In the UK, the landlord is responsible for most repairs. This applies to private landlords, councils, and housing associations. They must carry out repairs within a reasonable period. Indeed, landlords must deal with repairs as soon as they are aware of the problem.[40]

Landlords' responsibilities include repairs to electrical wiring, gas pipes and boilers, heating and hot water, chimneys and ventilation, sinks, baths, toilets, pipes and drains, common areas including entrance halls and stairways, the structure and exterior of the building, including walls, stairs and bannisters, roof, external doors, and windows. Landlords should also redecorate if needed once the problem is fixed. A landlord is always responsible for these repairs, even if the tenancy agreement says something different.

### Legal instruments to combat unfit housing

If the landlord refuses to carry out repairs or will not respond to phone calls, texts, emails or letters, the tenant can report disrepair in the home to their local council's private renting team.

Tenants can also ask the council to inspect their home if poor conditions are affecting their health and safety. Local councils have an Environmental Health department, which is responsible for monitoring housing conditions in the area, including private rented properties. This department will only investigate serious repair problems that could affect the health of the tenant or put him or her at risk. It can order the landlord to carry out repairs or improve conditions.

The council should come out to inspect a home if the problems appear serious and the landlord is not taking steps to put things right. They might do an informal home visit before deciding if a formal Environmental Health inspection under the Housing Health and Safety Rating System (HHSRS) is needed. The council will usually inform the landlord that they intend to inspect the property.

If the council will not inspect or take some action, tenants can make a complaint if they believe that the council has not dealt with the problem properly. Tenants can check whether the council has followed its own housing enforcement policy. If not, tenants can use the complaints procedure. If the tenants are not satisfied with the council's response to the complaint, they can complain to the Local Government and Social Care Ombudsman. They could also consider raising the issue with their local councillor or MP.

In this context, tenants are at risk of eviction if they take legal action, because section 21 of the Housing Act 1988 permits landlords to evict tenants without giving a reason. However, there is some redress in this situation.[41]

## Shortcomings in the present legislation

The Grenfell Tower fire[42] has considerably impacted efforts to improve the health and safety conditions of housing in the UK. Indeed, a report by the University of Bristol Law School, *Closing the Gaps: Health and Safety at Home* considers that "*the law relating to health and safety in people's homes is piecemeal, out-dated, complex, dependent on tenure, and patchily enforced. It makes obscure distinctions, which have little relationship with experiences of poor conditions. Tenants wanting to remedy defects face numerous and often insurmountable barriers to justice.*"[43]

39 Guide for landlords: Homes (Fitness for Human Habitation) Act 2018, Published 6 March 2019. https://www.gov.uk/government/publications/homes-fitness-for-human-habitation-act-2018/guide-for-landlords-homes-fitness-for-human-habitation-act-2018

40 This section has been drafted using information from the Shelter website (last accessed June 2020): https://england.shelter.org.uk/housing_advice/repairs/complain_to_environmental_health_about_rented_housing

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

42 On 14 June 2017, there was a fire at Grenfell Tower in the Royal Borough of Kensington and Chelsea. At least 80 people died. Grenfell Tower was a tower block of 24 stories with around 120 flats.

43 Carr, H., Cowan, D., Kirton-Darling, E., & Burtonshaw-Gunn, E. (2017). Closing the Gaps: Health and Safety in the Home:

In practice, according to a study by the Equality and Human Rights Commission issued after the Grenfell Tower fire incident in London, "*tenants in social and private rented accommodation often struggle to take action to improve their living conditions and address health and safety hazards. Local authorities cannot take enforcement action against themselves, while private tenants can face retaliatory eviction if they make requests for repairs. Access to justice is also impeded by the lack of legal aid for disrepair cases. The current legal framework in England does not guarantee the right to adequate and safe housing and does not conform with international standards*".[44]

The government was planning to open its rogue landlord database to prospective tenants, a register that can currently only be accessed by local authorities. This is part of proposals aiming to give greater protection to renters.[45] A four-million-pound fund was announced in January 2020 to pursue rogue landlords.[46] This funding should be used by local authorities to drive out exploitative landlords and enable good landlords to thrive.

# IRELAND

*Proportion of the population living in substandard housing in 2018, according to Eurostat:* 11.9%.

## Landlord obligations under tenancy law

The Housing Act 1992 lay down the minimum standards for dwellings rented from private landlords.[47] If a housing unit does not comply with these standards, it is considered unfit for housing. Landlords' obligations are twofold:

*"Carry out to the structure of the dwelling all such repairs as are, from time to time, necessary, and ensure that the structure complies with any standards for houses for the time being prescribed under section 18 of the Housing (Miscellaneous Provisions) Act 1992, which establishes the standards for rented houses."*[48]

*"Carry out repairs to the interior of the dwelling, such repairs and replacement of fittings as are necessary so that that interior and those fittings are maintained in, at least, the condition in which they were at the commencement of the tenancy and in compliance with any such standards for the time being prescribed."*[49]

## Legal framework to combat unfit housing

**The Housing Act 2009** strengthened the sanctions regime on landlords, by inserting ss 18A and 18B into the Housing Act 1992, introducing an **Improvement Notice and a Prohibition Notice.**[50]

**Section 18A** provides that where a landlord contravenes a requirement of the housing standards regulations, it is open to a housing authority to issue an **Improvement Notice** to the landlord informing them of the contravention, the remedial works necessary, the time limit within which the works must be carried out, and information on the appeal process. The landlord must inform the tenant and the local authority when the remedial works have been carried out.

The landlord may object to an Improvement notice being served on them – if this objection is not upheld by the local authority, they may appeal authority's decision to the District Court. This possibility of objection by the landlord is problematic as it makes the process very long, cumbersome, and expensive for the local authority. They will only make use of this to this process as a last resort.

The local authority may withdraw an Improvement notice, but in so doing, they are not precluded from issuing a further Improvement Notice in respect of the property.

**Section 18B** rules that where a landlord fails to comply with an Improvement Notice, it is open to

https://research-information.bris.ac.uk/en/publications/closing-the-gaps-health-and-safety-in-the-home
44 Following Grenfell: the right to adequate and safe housing. Equality and Human Rights Commission. https://www.equalityhumanrights.com/sites/default/files/following-grenfell-briefing-right-to-adequate-safe-housing_0.pdf
45 https://www.theguardian.com/business/2019/jul/21/tenants-will-be-given-access-to-rogue-landlord-database
46 https://www.theguardian.com/society/2020/jan/03/labour-criticises-4m-fund-tackle-rogue-landlords-uk
47 http://www.irishstatutebook.ie/eli/2019/si/137/made/en/print
48 Housing (Miscellaneous Provisions) Act, 1992, Standards for rented houses.
49 See above. Housing (Miscellaneous Provisions) Act, 1992, Standards for rented houses.
50 Housing (Miscellaneous Provisions) Act 2009, schedule 1 part 4. Offenses http://www.irishstatutebook.ie/eli/2009/act/22/enacted/en/html

a housing authority to issue a **Prohibition Notice** to inform the landlord that they have failed to comply with the Improvement Notice. The effect of service of Prohibition Notice once the existing tenancy comes to an end, the landlord shall not re-let the property until breach of the regulations is remedied. Prohibition Notice takes effect when the property is vacated. Landlord may appeal a Prohibition Notice to the District Court

Where the landlord has remedied the contravention, they are required to confirm this to the housing authority and the tenant. Local authority must issue written notice of compliance with the prohibition notice to the landlord, with a copy issued to the tenant.

The local authority may withdraw a Prohibition Notice, but in so doing, they are not precluded from issuing a further Prohibition Notice in respect of the property. The local authority may, in the interests of public health and safety, make whatever arrangements it considers necessary and appropriate to bring the contents of the prohibition notice to the attention of the public.

One of the issues with **the Housing Act 2009** is that local authorities can be reluctant to enforce minimum standards. Clearing a substandard, overcrowded property is not necessarily in the best interests of the tenants who live there as such tenants may become homeless on foot of the property being cleared. If they had somewhere else to go, they clearly would not be living in this sort of property in the first place – power asymmetry as between landlord and tenant, in which the tenant is dependent on their rogue landlord

The current legal framework is not satisfactory as local authority's effectiveness is curtailed in terms of tackling slum landlords. Although the strengthened sanctions regime could be effective in stopping slum landlords from re-letting properties that contravene minimum standards, such action could have a ripple effect. No tenant should have to live in such substandard accommodation and appalling conditions but removing properties from the rental market further tightens an already-squeezed housing market.

In relation to the **Residential Tenancies Act 2004**, although local authorities are responsible for enforcing minimum standards regulations, issues pertaining to standards and maintenance of private rented dwellings may be the subject of an Residential Tenancies Board dispute lodged by the tenant against their landlord. Compliance with the Minimum Standards Regulations is named as a landlord obligation in the Residential Tenancies Act. However, enforcement requires a tenant to lodge a dispute with the Residential Tenancies Board.

According to recent research on the Irish rental market[51] much of the implementation and enforcement of the legislation is tenant led, so it requires action on the part of the tenants to address and remedy breaches of legislation. But because tenants fear that they are easily replaceable, and due to the inherent asymmetry in the landlord-tenant relationship, tenants are apprehensive of the consequences of taking action to advocate for themselves, or contest breaches of their rights. Because of this reluctance, the effectiveness of policy and robustness of regulation are hampered. Even if a tenant does assert their rights, the landlord may engage in retaliatory conduct. A slum landlord may refuse to carry out necessary maintenance, harassment intimidations, and potentially illegal eviction. All of this contributes to a culture of landlord non-compliance.

## Criminal sanctions against slum landlords

Calls for tougher enforcement for rental properties have been made in Ireland for many years and the Irish Housing minister received cabinet approval in April 2018 for a new law that could even **sentence rogue landlords to imprisonment.**

The Residential Tenancies Act 2004[52] which contains all the private rented sector law related to non-compliance offences related to the obligations on the parties. Article 9 establishes that:

- *"A person guilty of an offence under this*

51 Byrne M.and McArdle R., Security and Agency in the Irish Private Rental Sector. June 2020. Funded by the Irish Research Council New Foundations programme for Threshold Ireland: https://www.threshold.ie/assets/files/pdf/security_and_agency_in_irish_private_rented_sector_july2020.pdf
52 Residential tenancies act 2004: http://www.irishstatutebook.ie/eli/2004/act/27/enacted/en/print.html

*Act shall be liable on summary conviction to a fine not exceeding 3,000 euros or imprisonment for a term not exceeding 6 months or both;*

- *If the contravention in respect of which a person is convicted of an offence under this Act is continued after the conviction, the person is guilty of a further offence on every day on which the contravention continues and for each such offence, the person shall be liable on summary conviction to a fine not exceeding 250 euros;*
- *Proceedings in relation to an offence under this Act may be brought and prosecuted by the Board.*"

Unfortunately, the local authorities have the power of enforcement, not the tenants, and in practice this option is never used, and landlords are never imprisoned.

# SPAIN

*Proportion of the population living in substandard housing in 2019, according to Eurostat:* 14.7%.

## Definition of unfit housing

Unfit housing is connected with the notion of habitability of housing. Every dwelling must have a certificate of habitability, a document that certifies that a home meets the legal requirements to be classified as habitable. This relates to health and hygiene conditions, minimum space, and basic facilities, such as a kitchen, toilet, hot water, etc.

This document is provided by the Autonomous Community. It can be requested when a person wants to sell or rent out a house and when registering different kinds of utilities such as electricity, gas, water, Internet, etc.

## Minimal intervention by the government in the monitoring of housing

The only government intervention into housing conditions relates to rent deposits, which is carried out by a public regional body. Indeed, deposits do not necessitate any kind of inspection of the house, therefore a house in poor condition can be rented without any administrative obstacles, provided the landlord has a "certificate of habitability" of the apartment.[53] The reality is that this lack of monitoring by the authorities means that many houses are rented out in poor condition, or that unfit housing or slums are rented out.

## Legal framework

### Obligations on landlords

The housing maintenance obligations on landlords are contained in Articles 21 and 22 of Spain's Tenancy Act,[54] which relate to conservation and improvement works.

These items are applicable once the rental agreement has been signed. In this sense, in its article 21.1, this act provides that "*[t]he lessor is obliged to carry out, without the right to increase the rent, all the repairs that are necessary to preserve the house in the conditions of habitability relevant to the agreed use*".

In practice, this obligation to maintain the premises in such a condition as to be habitable is difficult to enforce, since the mechanisms to demand compliance imply the filing of a lawsuit, with the cost that this means for the tenant. In the absence of a specific procedure for interim measures, execution may be delayed for a long time; even once the conflict is resolved, if the landlord refuses to comply with what is ordered in the judgment, the tenant must request its execution before the Court of Justice.

### Obligations on tenants

Repairs to keep the house in a condition of habitability will be the responsibility of the landlord. However, small repairs due to wear and tear for normal use of the dwelling should be covered by the tenant, as set out in Article 21.4 of the Urban Tenancy Act.

These home repairs are those that have their origin

53 The Spanish legal system requires a building to have a series of documents that certify its complete legality, (from the building's first occupation licence to the habitability certificate and other administrative authorisations) that prove that it is habitable and guarantees that the house meets the necessary conditions. Having an up-to-date occupancy certificate means that the property is suitable to be inhabited.

54 Art. 21. Ley de Arrendamientos Urbanos (LAU): http://noticias.juridicas.com/base_datos/Privado/l29-1994.html

in elements that are used daily and that are not part of the general facilities or services in the property.

Finally, the law does not explain what should be understood as repairs necessary to keep the house in a habitable condition; therefore it is case law and the Courts that interpret this based on different criteria.

### The quasi-monopoly of the Civil Courts of Justice

The Civil Courts of Justice are responsible for ensuring compliance with the regulations outlined in the Residential Tenancy Act. The only case in which this habitability is monitored by a different body is when owners rent their homes with the help of the government (regional, local) or NGO rental mediation programmes such as those offered by *Provivienda*.[55]

Dwellings that are rented out through letting agencies depend on the professionalism of the letting agent that manages them, as there is no administrative control. A home which a private owner rent directly to tenants are left out of this supervision, beyond the good faith of the landlord.

In Madrid, a report on the hygienic-sanitary conditions of a dwelling may be requested by the City Council, although this is not binding on the owners when it comes to the repair and maintenance of the dwelling.

### Means of recourse available to the tenant

In the event that the landlord does not carry out the necessary conservation works, there are several ways to make a claim:

- Filing a civil lawsuit to request conservation works based on Article 21 of the LAU through an ordinary declarative procedure, which will also entail an execution procedure if there is a favourable ruling for the tenant and is not voluntarily fulfilled by the landlord;
- Filing a lawsuit to claim compensation when the tenants, after requesting repairs from the landlord, performed the works in place of the landlord;
- Extrajudicial negotiation with the owner to carry out the conservation works may be the fastest avenue, but this depends on the willingness of the owner to comply.

If tenants are forced to initiate a judicial procedure to request the performance of conservation works, they may also claim compensation for damages caused by the lack of repair up until then.

### No criminal offence for slum landlords

The Criminal Code does not criminalise landlords that do not keep their housing in habitable conditions, nor does it criminalise the failure to carry out conservation works in a home when required to do so. The only possibility contemplated in criminal proceedings would be to file a complaint with the landlord for a possible crime of coercion, if it can be proven that the landlord's omission is conscious and voluntary and aims to force the tenant to leave the premises "voluntarily".

## PORTUGAL

*Proportion of the population living in substandard housing in 2019, according to Eurostat:* 24.4%.

Article 65 of the Portuguese Constitution enshrines the right to adequate housing by stating that "*everyone has the right, for himself and his family, to have an adequately sized dwelling that provides hygienic and comfortable conditions and preserves personal and family privacy*".[56] Portugal's Basic Housing Law entered into force on 1 October 2019 and gives a general framework for the right to housing in the country, including protection

55 See: https://www.provivienda.org/

56 Constitution of the Portuguese Republic, Seventh Revision, 2005,

https://www.wipo.int/edocs/lexdocs/laws/en/pt/pt045en.pdf

against housing discrimination on a broad range of grounds.[57]

## Definition of unfit housing in Portugal

In Portugal, according to Law-Decree 160/2006, substandard premises cannot be rented out. Besides this Law-Decree, which establishes that rental contracts should indicate the permission of use (issued by Municipalities), recent legislation defines the criteria for substandard housing. This is the case of the Framework Law on Housing (Law 83/2019, article 9) and Law-Decree 37/2018 (1st Right – Housing Support Program), which defines "*housing in conditions of indignity*" and establishes support lines in case those conditions are verified (article 5).

## Obligations on landlords and tenants

Landlords must perform maintenance works on properties they own every eight years.[58] Indeed, "*the owner must, regardless of this period, carry out all the work necessary to maintain safety, health and aesthetic disposition*".[59] There are also some other obligations on landlords for maintenance and repair, according to art.1074° Civil Code.

The tenancy law that regulates relations between landlords and tenants [Civil Code] includes only Article 1036 on repairs. This article says that if a landlord does not carry out repairs, the tenants can do so and ask for a reimbursement. The tenant can for instance, not pay the full rent for a certain period of time to compensate for the expenses he has incurred, according to art.1074° Civil Code.

Tenants have also the right to request works, but whether or not they are carried out depends on the owner's willingness. If the landlord does not make the repairs requested, the tenant can carry them out and request a refund later.[60]

In practice, because of the imbalance of power, precarious tenants with one-year contracts often do not claim their rights. However, the great majority of the contracts are not one-year contract, but 4 or 5 year-contract, according to articles 1094. 1095, 1096 of the Civil Code, amended by Law n.13/2019.

### Competence of municipalities

Tenants are entitled to ask for inspection of the housing by the Municipality. However, municipalities only intervene if a house is in a very poor condition or if there is a risk of collapse. In this case, the municipality notifies the owner that they must carry out works. It also intervenes if landlords want to contribute to the aesthetic improvement or rehabilitation of certain areas.

If there is a risk of collapse (derelict housing), or if the building does collapse, people are rehoused in emergency housing. Resettlement must be done by the local social services.

## No criminal offence pertaining to slum landlords in Portugal

There is no criminal offence for slum landlords. However, a fine may be given to anyone building without a prior permit or using a building for purposes it was not meant to be used for (for instance using warehouses for housing). In these cases Municipalities may also demolish such buildings and prohibit the use of such buildings.

# FINLAND

*Proportion of the population living in substandard housing in 2019, according to Eurostat:* 4.1%.

According to Y-Foundation, unfit housing is not a particular problem in Finland. While there are individual cases where a private landlord (for example, family members renting out a flat they have inherited) has not followed the obligations of the act on residential leases, this may be due to ignorance rather than intent. The housing stock is of rather good quality. Unfit conditions might be considered

57 Portugal: UN expert welcomes new law protecting the right to housing https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25083&LangID=E
58 http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=625&tabela=leis
59 http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?artigo_id=625A0089&nid=625&tabela=leis&pagina=1&ficha=1&so_miolo=&nversao=#artigo Article 89
60 https://dre.pt/web/guest/legislacao-consolidada/-/lc/130791225/202011181256/73803953/diploma/indice

a hazard given the Finnish climate.

However, there is no specific information about the housing situation of migrants who do not have a residence permit but have not left the country (overstayers). The number of undocumented migrants has increased since 2015. It is conceivable that their living conditions may be worse than those of the rest of the population.

# HUNGARY

*Proportion of the population living in substandard housing in 2019, according to Eurostat:* 22.3%.

According to the conservative estimate in the 2018 Annual report on housing poverty in Hungary, written by Habitat for Humanity,[61] between 2 and 3 million people are affected by some form of "housing poverty" in Hungary. The report defines "housing poverty" according to four different aspects: tenure status, affordability, accessibility, and housing quality or energy efficiency. Those living under worse conditions than what would be minimally acceptable as regards any of these dimensions can be considered to be experiencing housing poverty. 1.5 million people live in severe housing deprivation (i.e., in overcrowded living conditions coupled with other problems, such as damp walls, lack of adequate sanitation, etc.), and 80% of all (4.4 million) housing units do not correspond to contemporary energy requirements – which affects housing costs and housing quality as well.

The report dedicates a chapter to analysing "*Exploitative rental housing and institutionalised accommodation*", that describes an increasing tendency at the lower end of the private rental market for slum landlords, substandard housing conditions and different forms of institutional accommodation (see below) to flourish. Many low-income households find housing solutions in this area, because of their ever-narrower possibilities for accessing other, more stable, and secure forms of housing. Renting an average apartment would exceed the total monthly income of a low-income family. Furthermore, because of high deposits and discrimination against Roma people or families with children, many households cannot even find housing on the formal private market.

There are also a growing number of actors, predatory entrepreneurs who exploit the market gap presented by the growing demand under the pressures of the housing market. They operate overcrowded informal rental housing or hostel-type accommodation.

The private rental market is largely unregulated. Housing is not cheap and is of low quality and very precarious, but it is accessible to those who cannot access anything else in the formal market. The phenomenon of slum landlords is common in large cities but occurs especially in areas where there is the possibility to profit from low-income households.

In Hungary, the legal framework for housing consists of the following four acts: The Fundamental Law of Hungary,[62] Act CLXXXIX of 2011 on Local Governments of Hungary (hereinafter: Local Governments Act),[63] Act V of 2013 on the Civil Code (hereinafter: Hungarian Civil Code)[64] and Act LXXVIII of 1993 on the lease and alienation of apartments and premises (hereinafter: Housing Act).[65]

## Definition of unfit housing in Hungary

According to the Fundamental Law of Hungary, the Hungarian State represented by the Hungarian government should "*guarantee housing or accommodation to everyone*". However, this formulation is difficult to interpret in legal terms and does not establish an enforceable right.

The Fundamental Law also provides that local governments should strive to ensure decent housing. Based on this provision, the Local Governments Act refers to the management of housing as

61 Annual report on housing poverty in Hungary 2018 – English summary: https://habitat.hu/tanulmany/2018/11/annual-report-on-housing-poverty-in-hungary-2018-english-summary/
62 https://njt.hu/translated/doc/TheFundamentalLawofHungary_20190101_FIN.pdf
63 https://net.jogtar.hu/jogszabaly?docid=a1100189.tv
64 http://njt.hu/translated/doc/J2013T0005P_20180808_FIN.pdf
65 https://net.jogtar.hu/jogszabaly?docid=99300078.tv

a task that may be performed by local governments as part of a range of local public duties, but the legislation does not give any regulatory or administrative tools to local governments in respect of private renting.

An explicit definition of unfit housing or slum landlords is thus missing from Hungarian law.

### Obligations to repair and maintain

According to the Housing Act, generally, the landlord is obliged to pay the costs of necessary repairs to keep the house in good use, but it is the tenant who is responsible for paying the day to day maintenance related to a rented apartment, unless otherwise agreed.

In practice, tenants are not in the position to change the contract terms and conditions determined by owners. Furthermore, landlords often do not rent their premises with written contracts, which is an illegal practice that favours landlords.

### Lack of legislation to combat slum landlords

At state level, private rented housing is regulated by the Hungarian Civil Code and the Housing Act. Neither the Hungarian Civil Code nor the Housing Act recognise the problem of or contain rules concerning slum landlords.

### Lack of means of action available to tenants and no public protection

The Hungarian Civil Code allows tenants to terminate a lease if the property they inhabit endangers human health.

In practice, since there are few affordable housing opportunities in Hungary, tenants may be forced to accept inadequate conditions and even breach of contract. Thus, the right to termination is not an effective way to enforce landlords' obligations.

Generally, tenants cannot protect themselves and their housing against poor practice by landlords. They can pursue landlords in court for damages but besides that, there are no specific rules or authority to protect tenants. The Housing Act does not contain comprehensive guarantees to protect people in housing poverty or provisions protecting tenants.

Although there are sporadic provisions that are favourable for underprivileged people, these measures are not sufficient to establish the conditions for secure housing. The only exception is the eviction moratorium in winter, which is a temporary solution.

In addition, criminal law fails to reflect the presence of slum landlords in private lease relations, as there is no specific regulation concerning this matter. Therefore, slum landlords and properties with substandard living conditions are an existing and growing issue in Hungary, however, there is no regulation or protection mechanism against these anomalies.

## POLAND

*Proportion of the population living in substandard housing in 2019, according to Eurostat:* 10.8%.

### Definition of unfit housing in Poland

Article 75 of the Polish Constitution provides that *"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. Protection of the rights of tenants shall be established by statute."* [66]

According to Article 76 of the Constitution, "*public authorities shall protect consumers, customers, hirers, or lessees against activities threatening their health, privacy, and safety, as well as against dishonest market practices. The scope of such protection shall be specified by statute.*"[67]

Nevertheless, the provisions of the Constitution do not provide an independent legal basis for actionable claims.

66 https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm
67 https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm

The Tenants Protection Act 2001[68] only refers to standards in reference to social housing for the most vulnerable households[69] allowing municipalities to offer housing units of lower standards.

## Minimal government intervention in the monitoring of housing

Public authorities will only be involved in regulating the housing market in relation to one of the types of rental agreements (the so-called "occasional lease"), which must be registered with the tax office. However, there is no monitoring of housing conditions.[70]

Therefore, in Poland, a flat in poor habitability conditions can be rented out without any administrative obstacles, provided there are tenants interested in renting it.

The reality is that in Poland, houses are often rented out in poor conditions.[71] The most frequent problems seem to be mould and damp. Additionally, there is a problem with the standard of rented apartments. According to a private survey, tenants feel rented flats are outdated – equipped with old appliances and furniture (49%) or with bathrooms that require renovation (28%).[72]

The only intervention by public institutions may be if a tenant files a civil claim before a court. However, many tenants, especially among the most vulnerable groups of people, do not have the means or knowledge to proceed with this route.

## Obligations on landlords and tenants

Some civil law provisions oblige landlords to keep rented apartments in a decent condition. The obligations on landlords around the maintenance of leased premises are contained mainly in:

- The Polish Civil Code (the most important provisions are Article 682 and Article 662);[73]
- The Polish Act on the Protection of Tenants[74] (UOPL) (Articles 6a and 6b of the Act regarding conservation and renovation works).

These items are applicable once the rental agreement has been signed. It should be stressed that the regulation contained in the UOPL precludes the application of some of the provisions contained in the Civil Code.[75] This particularly concerns the division of the conservation and renovation works between the parties to the lease agreement. However, both regulations generally may be disregarded through an agreement,[76] and the parties may draw up their legal relationship as they see fit.

### Landlords' obligations stemming from the Civil Code

The Polish Civil Code provides for two significant privileges of tenants, referring to apartment conditions and landlords' duties in this respect (less efficient than the UOPL).

1 The possibility to terminate the lease agreement without any notice period if the apartment has defects that endanger the life or health of the tenants or their family. [77]

68 http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20010710733
69 There are two types of lease agreements that may be concluded with municipalities – social housing lease agreement (concluded for definite period of time, apartments may be of lower standard, available for people in worst financial condition, including people who were evicted from their flats) and municipal housing lease agreements (offered for unlimited time period, "regular" municipal housing).
70 The general rules provided for in the Act on Building Law of 7 July 1994, governing building processes, the procedure for releasing buildings for use, verification of the condition of a building, etc. are not discussed in this study, as those apply to building owners/managers and do not relate to lease agreements. Generally, an owner or a manager of a building is obliged to guarantee the safety of a building and carry out periodic building inspections.
71 The above also refers to the public housing stock held by Polish municipalities, however, the focus of this study on Poland is on the private rental market.
72 https://www.morizon.pl/blog/wynajem-mieszkania-oczami-najemcow/
73 http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19640160093/U/D19640093Lj.pdf
74 http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20010710733/U/D20010733Lj.pdf
75 Therefore, those are not discussed in this study.
76 This relates only to private rental agreements.
77 Article 682 of the Polish Civil Code.

The parties to the agreement cannot modify this regulation. It applies even if the tenant had known about those defects at the time of signing the agreement and if the defect may be removed. The tenant is not obliged to ask the landlord to remove the defect or to wait for its removal before terminating the lease. According to case law, defects endangering health or life are, for example: mould and damp[78], the emission of toxic substances by materials used for the construction of a building,[79] or low temperatures.[80]

2 The possibility to conduct necessary renovations or repairs at the landlord's expense.[81] Some requirements need to be met:

- It should be the landlord's legal obligation to carry out the repairs;
- The repairs must be necessary for the apartment to be used as agreed;
- The tenant must ask the landlord to carry out the repairs and set a deadline.

If these formal requirements are not met, the tenant cannot use the benefits of this provision. Only after the lapse of the deadline may the tenant carry out the necessary repairs at the landlord's expense.

In practice, this is an easier way to get repairs done, as it does not require a court judgment, and a tenant is entitled to benefit from this provision upon meeting the requirements. However, it is the tenant who will fund the repairs. The tenant may offset the incurred costs with the rent. In the event that the rent is insufficient to cover the costs, the tenant may demand that the landlord reimburse the remaining costs. If the landlord refuses to reimburse the costs, court proceedings may be necessary.

### Polish Act on the Protection of Tenants

The Polish Act on the Protection of Tenants (UOPL) contains a more detailed, and thus prevailing over the Civil Code, regulation on the division of the conservation, renovation, and obligations between the parties to the lease agreement.

The landlord is obliged to ensure that all the installations and equipment work properly, thus enabling the tenant to use water, gas and liquid fuel, heat, electricity, elevators, and all other installations in the building. The landlord is obliged to carry out any repairs on the building, apartment and amenities, renovations to the building in case of damages and repairs to the apartment, amenities in the apartment and electrical appliances.

In practice, it should be noted that any enforcement of these rights requires a prior court judgement. Given that court proceedings may be lengthy and costly, many tenants decide not to instigate them.

Tenants are obliged to maintain the premises in proper technical and hygienic/sanitary conditions and comply with the house rules. In addition, they are obliged to take care of the premises and shared areas so that they are not degraded or damaged.

According to the regulations, it is the landlord who is in principle obliged to carry out renovations and repairs. On the private market, these provisions may be subject to contractual modifications. However, there is some scope for renovations or repairs imposed by the tenant, and this is quite broad. Legal doctrine shows that it may not correspond with the Civil Code regulation that places fewer burdens on tenants.

Tenants are obliged to conserve and repair floors; windows and doors; built-in furniture; kitchen appliances used for cooking, frying, and baking; radiators; boilers; heaters; bathtubs; showers; sinks; the parts of electrical installations; furnaces/heating stoves/central heating. Those are far-reaching, extensive, and expensive repairs.

Therefore, under the UOPL, it is tenants who are responsible for the majority of the most common repairs in rented apartments.

78 Judgment of the Supreme Court of 21 May 1974, II CR 199/74.
79 Judgment of the Supreme Court of 1 December 1986, II CR 362/86.
80 Judgment of the Supreme Court of 9 September 2013, V CSK 467/12.
81 Article 663 of the Polish Civil Code.

# 3 Conclusions

- Unsafe and unhealthy housing is a problem in the private rental sector in several countries in Europe, despite the existence of regulations intended to protect tenants.

- The private rented sector has relied largely on the regulation of the relationship between landlord and tenant at the level of individual tenancy agreements.

- Rental housing quality regulations often rely on tenants reporting problems with their housing, but this fails to take into account power dynamics in the tenant/landlord relationship that make it difficult for tenants to do so.

- There is a need for broader regulatory intervention – registration and accreditation schemes – which can help address the shortcomings of this contractual approach by introducing measures for public intervention.

## BEST PRACTISES AND RECOMMENDATIONS

- Faced with the problem of substandard housing, a lawsuit should not be tenants' only means of defence as legal proceedings may be lengthy and expensive.

- The availability of legal aid can be important in supporting a tenant to understand and assert their rights in a context of austerity and budget cuts

- The introduction of extra-judicial proceedings may be more effective in some cases, i.e. a specific procedure for preventive measures, such as: remedial sanctions (Netherlands); or the possibility to conduct necessary renovations or repairs by the tenant at the landlord's expense (Poland).

- Making sure that effective bodies in charge of monitoring the conditions of housing exist at local level. Local authorities need to have at their disposal the means to monitor the conformity of private rented houses. For instance: uninhabitability orders (Belgium); rent permits (France); setting up identification of unfit housing at local level (France).

- Establishing the possibility to request a health and safety inspection: in the event of suspicions of insalubrity, the landlord is no longer notified in advance of the visit by the inspectors (Belgium); Housing Health and Safety Rating System (UK) – if tenants are not satisfied with the council's response to the complaint, they can make a complaint to the Local Government and Social Care Ombudsman.

- In the case of relocation for renovation works decided by an administrative authority, the new rent should not exceed that of the previous accommodation.

- The introduction of criminal penalties is incipient and not widespread in Europe. It was an important step in France and Belgium particularly and to a less extent in the Netherlands and Ireland, but it is still not widely used in any of these countries. Challenges in relation to available resources, reporting and coordination of the actors involved remain an important issue.

- Introducing criminal legislation to tackle the activity of slum landlords in cases where administrative legislation has proven ineffective.

- Requiring co-ownership managers and estate agents to report to the public authority any suspicions of slum-landlord activities of which they become aware in the performance of their duties (France).

- Setting up the possibility to terminate the lease agreement without any notice period if the apartment has defects that endanger the life or health of the tenant (Poland).

- Introducing legislation to protect the tenancy agreement when the premises require improvement works.

# RECOMMENDATIONS FOR THE EU

Although housing is not a competence of the European Union, European Law touches on housing in a wide range of fields. Given the growing importance of tenancy law and housing law in Europe and the significant collateral effects of EU law and policies in other areas, the TENLAW project advocated for a stronger European coordinative role in this field. Legal harmonisation was regarded as unrealistic and undesirable, but the project suggested that the open method of coordination (OMC), which has been carried out in other branches of social policy, was the best institutional tool currently available.[82]

Housing exclusion and housing quality are critical social issues in the EU and are inextricably linked to the need for an energy transition to mitigate climate change. A core element of the energy transition is to achieve large-scale improvement in the energy efficiency of buildings, reflected in current EU policy: the Clean Energy Package, the European Green Deal, and the Renovation Wave launched in October 2020. The Renovation Wave has the potential to bring significant social, health, and economic benefits to lower-income and vulnerable households, through improved housing conditions.

Consumer law must be brought into consideration when problems are related to the consumer regulatory framework. An effective consumer protection policy ensures consumers' rights against abusive practices by lessors and provides better protection for vulnerable consumers. Empowering consumers and effectively protecting their safety and economic interests have become key objectives of EU policy. It is therefore important to protect the rights of tenants as consumers. The rights of tenants as consumers in the housing market must be at the heart of housing policies. Therefore, tenants should not be given less protection than consumers of other goods and services.[83]

Furthermore, the European Institutions have reached a partial agreement on the legislative package for cohesion policy in 2021-2027. This package covers instruments such as the European Social Fund, the Fund for European Aid to the Most Deprived, and the European Regional Development Fund, which could be used by Member States to support measures relating to homelessness and housing during 2021-2027.

- insufficient assistance to the consumers
- not considering the non-financial barriers that can lead to the abandonment of the renovation works.

82 Universität Bremen. TENLAW: Tenancy Law and Housing Policy in Multi-level Europe, Reports https://www.uni-bremen.de/fileadmin/user_upload/fachbereiche/fb6/fb6/Forschung/ZERP/TENLAW/POLICY_BRIEF_final_02112016.pdf
83 IUT https://www.iut.nu/news-events/tenants-rights-as-consumers-must-be-protected/

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