Courtesy translation

Resolution of the Riigikogu

Reasoned Opinion to the President of the European Parliament, the President of the European Commission and the Presidency of the Council of the European Union on the Incompatibility with the Principle of Subsidiarity of the Proposal for a Regulation of the European Parliament and of the Council establishing a framework for measures in Member States to safeguard housing affordability and availability (Affordable Housing Act)

Under subsection 152^6(1) of the Riigikogu Rules of Procedure and Internal Rules Act, and taking into consideration the second sentence of the second paragraph of Article 5(3) of the Treaty on European Union, and the first sentence of Article 6(1) of the Protocol on the Application of the Principles of Subsidiarity and Proportionality annexed to the Treaty on the Functioning of the European Union, the Riigikogu has decided as follows:

To submit a reasoned opinion to the President of the European Parliament, the President of the European Commission, and the Presidency of the Council of the European Union on the incompatibility with the principle of subsidiarity of the proposal for a regulation of the European Parliament and of the Council establishing a framework for measures in Member States to safeguard housing affordability and availability (Affordable Housing Act) for the following reasons.

The Riigikogu considers improving the affordability and availability of housing an important objective. This reasoned opinion does not call into question the imperative of this objective but the justification behind the establishment of a new binding legal framework at the European Union level, particularly in view of the fact that the shaping of the housing policy is generally in the competence of the Member States.

Although the European Commission emphasises that the purpose of the proposal is not to standardise the housing policies of the Member States and that the proposal respects the principle of subsidiarity, by establishing uniform requirements to the measures implemented to protect housing it actually leads to an extensive regulation of the housing market and thus significantly restricts the regulatory competence of the Member States in housing policy. The European Commission justifies the proposal with the need to improve the conditions for the establishment and functioning of the common internal market. At the same time, the regulation establishes requirements across the European Union to assess the lack of housing and to justify interventions in housing policies. This means that the proposal is not restricted to issues linked to the internal market. Instead, it concerns the conditions that allow the Member States to intervene in the housing market. However, questions about when the housing market could be seen as fraught and which measures could be seen as relevant, are part of the national housing policy core issues.

The reasons behind housing problems and ways to solve these differ significantly in Member States and regions. Many housing markets have a critical structural lack of supply that can be exacerbated by factors like low volume of investments into residential construction, high costs

of construction and financing, drawn-out planning and permit procedures, and lack of investment incentives. The proposal does not solve these issues; instead, it focuses on regulating certain usages of the existing housing stock. The proposal does not show clearly to what extent the planned measures would help to improve the availability of housing and reduce the structural lack of housing. The proposal creates a European legal framework to assess the housing markets and justify interventions into property rights and rights of use.

The proposal focuses mainly on short-term rental or the acquisition of a second or additional residence. The importance of these market segments from the perspective of the general supply of housing differs very widely by region. There are huge differences among Member States as well as at the national level, including between cities, rural regions, and tourist regions. In addition, the housing policy systems in Member States are sometimes fundamentally different. This concerns mainly the percentage of home ownership and the structures of housing allowances and housing markets. There are also important differences between legal frameworks that regulate tenant protection, acquisition of a residence, and housing allowances. It is factors like these that explain why housing policy decisions have so far remained in the responsibility of the Member States. Housing policy usually largely depends on regional and national conditions. This makes it doubtful whether establishing uniform assessment criteria at the European Union level would be appropriate and necessary in light of the clear structural differences on the housing markets.

Article 6 of the proposal provides the establishment of common criteria across the European Union for identifying fraught housing markets. The first factors considered here are primarily the links between the real estate prices and incomes. The criteria provided in Article 6 are material preconditions that determine whether competent national, regional, or local authorities have the right to establish restrictions included in the proposal in the first place. The competent national, regional, or local authorities can identify the lack of housing based on objective and verifiable indicators that consider the local conditions of the relevant region. The objective of achieving broader legal certainty, as proposed by the Commission, does not explain why the use of other evidence should be excluded, nor the additional benefit that would be provided by the purchase price and income ratio thresholds that would be binding across the European Union in comparison to these.

There is no need for a standardised legal framework to ensure the affordability and availability of housing. The systems for assessing the lack of housing and the systems of housing protection that already exist in the Member States hold the possibility of achieving the relevant objectives at least to a certain extent at the national, regional, or local level. The national legal provisions take into account the diversity of housing markets because the state of the housing market can differ at the national, regional, or local level. The European Court of Justice (ECJ) has also referred to the unique features of local housing markets in its practice linked to the lack of housing. In the attached court cases C-724/18 and C-727/18 *Cali Apartments*, the ECJ studied a system where the conditions for restrictions on short-term rental were set at the local level, taking into account the features of the relevant housing market and the need to avoid the exacerbation of the lack of housing.

It is important to emphasise that the proposal goes beyond what is needed to achieve the objectives. In addition to the complicated assessment of a fraught housing market under a detailed set of criteria, it must also be proven that short-term rental has had a clear negative impact on the affordability and availability of housing over at least three years, and less strict alternatives should be considered instead of a possible restriction. The extensive requirements for collecting, proving, and monitoring the data provided in the proposal significantly increase

the administrative and bureaucratic burden of the competent authorities. This might be a burden first and foremost for smaller local authorities, which might lead these to not being able to meet the requirements in practice and thus being forced to completely abandon any housing protection measures. The European Commission points out that decisions over specific measures should remain in the remit of the competent authorities of the Member States. However, this is not sufficient to ensure respect for the principle of subsidiarity. The decisive point is not only who adopts a specific measure, but also whether the Member States retain sufficient discretionary and shaping powers. The proposal sets out the criteria for assessing the housing market, identifying the market segments that can be the target for state interventions, and the conditions and measures that can be seen as justified. This means that although the Member States keep a formal decision-making competence, the actual framework conditions of these decisions would be determined at the European Union level. We need to remember that housing markets are very different across the European Union. The differences are not evident only in the percentage of home ownership or rent prices, but also in the legal, economic, and social conditions.

The European Commission has not sufficiently justified the added value of the new legal framework compared to the current European Union law. There are already requirements proceeding from the Treaty on the Functioning of the European Union and the Services Directive 2006/123/EC, as well as principles shaped through the practice of the ECJ to assess the legitimacy of the housing policy restrictions that affect the fundamental freedoms of the internal market. Additionally, regulation (EU) 2024/1028 has established the framework for registering short-term rental services and data exchange. This regulation has only been applied since 20 May 2026, which is why there has not been an opportunity to fundamentally assess the results of its implementation or impact on the options for countries to shape and justify restrictions on short-term rental. The European Commission has not shown convincingly why it is impossible to achieve the desired legal certainty with the application of the current legal framework, relevant guidelines, and cooperation between Member States without implementing additional binding conditions.

The proposal gradually takes the assessment of housing policy interventions to the European Union level, although the different structures of housing markets mean that such issues must generally be resolved at the national level. By implementing common requirements, the proposal leads to an extensive regulation of the housing market and consequently significantly restricts the regulatory competence of the Member States in housing policies. The proposal does not set out clearly enough the added value of acting on the European Union level. Based on the above, the proposal does not comply with the principle of subsidiarity.

Lauri Hussar
President of the Riigikogu

Tallinn, 17 November 2026