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TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

Intra-team Comparison Report for AUSTRIA, GERMANY, LUXEMBOURG, SWITZERLAND[1]

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1. The current housing situation

1.1. General Features

1.1.1. Historical evolution of the national housing situation and housing policy

1.1.1.1 From the World Wars until the 1990s

In the aftermath of WW II, the housing policies in Germany[5], Austria[6], Switzerland[7] and Luxembourg[8] were aimed at supplying new dwellings to a growing population, which included a large number of war refugees from lost territories in DE and AU. Whereas in DE and AU the supply of new dwellings focused on the reconstruction of the destroyed housing stock, in CH and LU, which were not affected by the war's destruction, the *Wohnförderung* mainly involved constructing from scratch[9].

In DE and AU, public authorities administrated dwellings in a planned manner in the post war years (*Wohnraumzwangswirtschaft*). Under such planned administration, living space was assigned to people who had lost their dwellings due to warfare or foreign occupation. Often, such space consisted of rooms in the dwellings of other families. In CH, during the WWs, decreased construction led to housing shortage which, in turn, led to regulated rents.

The economic boom (*Wirtschaftswunder*) which occurred from the 1950s on enabled the construction of an unprecedented number of new buildings and led to the abandonment of these measures and the liberalisation of rents for private landlords. However, between 1969 and 2005 the rising demands of comfort led to increase of about 330% of the construction costs in CH.

Other important policies present in all countries are the promotion of home-ownership (directly or indirectly) and the wide range of housing subsidization measures, particularly to more disadvantaged households.

The 1990s brought increasing concerns about the quality of the living space (*Wohnraumförderung*). This phenomenon was particularly significant in DE where, before the reunification, the authorities in Eastern DE had been mainly concerned with the quick and inexpensive construction of (state-owned) dwellings in an industrial style (*Plattenbauten*)[10].

Moreover, from the 1990s onwards, a slight increase in home ownership rates was reported for DE, AU and CH. The predominance of rental tenure over homeownership tenure is attributed to the high quality of rented dwellings and to the high costs of purchase and construction.

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[5] Thereinafter, DE.
[6] Thereinafter, AU.
[7] Thereinafter, CH.
[8] Thereinafter, LU.
[9] Cornelius & Rzeznik – National Report for DE, 2014, sec. 1.2; Hofmann – National report for AU, 2014, sec. 1.2; Wehrrmüller – National Report for CH, 2014, sec. 1.2, "Housing production and construction costs" and Santos Silva – National Report for LU, 2014, sec. 1.2.
[10] Cornelius & Rzeznik – National Report for DE, 2014, sec. 1.2.

In all four countries the main concern is not increasing the construction of dwellings but, instead, providing qualitative and yet affordable dwellings to the population at large.

1.1.1.2 The effects of immigration in housing policies

Another common feature between the countries under analysis is immigration and its consequences for housing supply.

Immigration has mostly been due to demands for additional working force, but it is also due to warfare and political oppression in foreign countries. As for the latter, the most important phenomenon is the war migration of refugees of the Yugoslav civil wars.

The homeownership rate is relatively lower among immigrants in all four countries except LU, where this is only true for the higher skilled immigrants. In Luxembourg, even though many immigrants are homeowners, foreigners are entitled to subsidies for the construction of housing.

Related urban policies such as anti-ghettoization measures aiming at decreasing the concentration of particular ethnic groups in problematic neighbourhoods have not been so far implemented at a large scale.

1.1.2. Current situation

1.1.2.1 Statistical data

The overall amount of dwellings in DE, AU, CH and LU varies significantly and is in direct proportion to the size of each country.

DE has the highest number of dwellings, with 41.3 million reported units (*Statistisches Bundesamt,* 2011). It is followed by CH, with one tenth of this amount, more precisely 4,131,342 dwellings (2011) and AU with 3,705,100 (2012) dwellings. In LU there are only 130,091 residential dwellings (2011).[12]

In contrast to the EU average, where homeownership surpasses renting by far (70.6% as compared to 29.4%), renting prevails in both DE (2011) and CH (2011). According to Eurostat, in DE it amounts to 52.1% (as opposed to 42.4% of homeownership) and in CH it is even higher (59.8%, as opposed to 36.8%, which includes full-, co- and condominium ownership). In AU, renting also prevails over homeownership, although less significantly than in its two west-bordering countries. In 2012 50% of the residential housing stock was owner occupied (including condominium occupation), and 41.5 % was rented or sub-rented. LU is the only country of the group where owner-occupied dwellings are clearly predominant. According to STATEC, they correspond to 69.0% of the dwellings, whereas only 28.3% are tenant-occupied (2013)[13].

[12] See, respectively, Cornelius & Rzeznik – National Report for DE, 2014, sec. 1.3; Hofmann – National report for AU, 2014, sec. 1.3; Wehrmüller – National Report for CH, 2014, sec. 1.3 and Santos Silva – National Report for LU, 2014, sec. 1.3.

[13] See, respectively, Cornelius & Rzeznik – National Report for DE, 2014, sec. 1.3; Hofmann – National report for AU, 2014, sec. 1.3 and Santos Silva – National Report for LU, 2014, sec. 1.3.

1.1.2.2 Comfort of the housing stock

In all four countries the percentage of dwellings with minimal comfort (i.e., with bathroom or interior WC, running warm water and heating) is higher than 90% and in LU and CH this percentage was close to 100%. A relatively higher standard of comfort (including the quality and environment of housing) may be identified in LU and in CH, where both owner-occupied and rented dwellings usually come with a fully-equipped kitchen and laundry facilities and the overcrowding rate is one of the lowest in Europe (5.9%)[14].

Regulations on the quality of the dwellings are particularly thorough in LU and CH. Indeed, in LU, the RGD of 23 March 1979 requires an installed kitchen equipment and art. 32 of the LBUH[15] provides for the minimum size of rooms according to occupancy.

In CH, provisions on the inhabitability of rooms relate the size and height of the rooms and the minimum size for windows, access to sanitary facilities and laundry, etc.[16].

On the other hand, in DE the Building Regulations of the *Länder* require only that a dwelling has a lockable door, heating, functioning electricity supply, a room where a kitchen or a kitchenette can be set up (no previously installed kitchen is thus required) and it must be also technically possible to set up a toilet or a bathroom, which however do not necessarily have to be placed within the dwelling itself (§ 3 BauNVO, rec. 18)[18]. The relatively low ratio of vacant dwellings (4.5%) shows that the fact that lower-quality dwellings (namely, with no kitchen nor sanitary facilities) are still rented. It has not yet been assessed whether the more detailed regulation on the criteria of inhabitability of dwellings which must be observed in LU and CH reflects in the relatively better quality of the dwellings in the two countries. Likewise, it has not been assessed there is some connection between the relatively worse quality of dwellings in DE and the prevailing public opinion that rental tenancy is as a less desirable kind of tenure[19].

[14] For the definition of 'overcrowding rate', see http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Glossary:Overcrowding_rate (last retrieved 16 December 2013).

[15] *Loi du 21 septembre 2006 sur le bail à usage d'habitation* (law of 21 September 2006 on residential rental agreements).

[16] See for example: § 300 ff *PBG Zürich* (*Planungs- und Baugesetz Zürich*, Planning and Building Act of Zurich) and § 8 ff *BBV I Zürich* (*Besondere Bauverordnung I Zürich,* Special Building Regulation I of Zurich); § 63 ff *BV Berne* (*Bauverordnung Berne*, Building Regulation of Bern); Art. 52 ff of the *Loi sur les constructions et les installations diverses Geneva* (Law on the constructions and other installations of Geneva) and *Règlement d'application de la loi sur les constructions et les installations diverses* (Regulation of execution of the Building and Planning Act); § 63 ff *BPG Basel* (*Bau- und Planungsgesetz Basel,* Planning and Building Act of Basel).

[18] See Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.4.

[19] Cornelius & Rzeznik – National Report for DE, 2014, sec. 2.7.

1.1.3. Types of housing tenures

1.1.3.1 Homeownership and renting with and without a public task

Although roughly the same housing tenures exist in the four countries under comparison, they are object of distinct classifications, according to the importance they have in each of the countries.

The national German and Luxembourg reporters of the TENLAW project classified housing tenures in two main categories, namely home-ownership and renting. To these two categories, the Austrian reporter added another category in the national report, namely, the ownership of dwellings in condominiums (which in all other three countries was included under the broader category of homeownership). In the Swiss report, cooperative housing and condominium were included as intermediate tenure[21].

1.1.3.1.1 Homeownership

Homeownership is not predominant in any of the countries except LU. This is so despite in CH most citizens prefer homeownership to renting and in DE and AU the population recognises the advantages of homeownership (namely, as retirement planning and as long-term investment[22]). Also, private financing of housing has been facilitated by private banks[23] and state subsidies[24] or indirect subsidies viy the tx system (CH) 3.7. Indeed, renting is a competitive alternative to purchasing, where good quality dwellings are available with a high level of security of tenure, and purchase and construction costs are high, even if all countries are associated with high disposable incomes.

In DE 42.4% (2011) of the housing stock is owner-occupied. In AU the percentage was lower in 2012, at 39.4% (of which 10.3% are condominiums). In CH homeownership reached 36.8%. Contrary to this tendency, in LU homeownership predominates with a clear 69% (2011).

Owner-occupied housing is owned mostly by private persons. The percentage of private individual homeowners is particularly high in AU (88.7%[25]), and in all four countries it surpasses 70%. The State has a modest share in the property of these dwellings: such percentage does not surpass 4% in any of the countries analysed.

1.1.3.1.2 Renting

In every country of the group which one is analysing, renting may be divided in “renting with a public task” (i.e., dependent from any form of state intervention, which corresponds particularly to the so-called “social housing”) and in “renting without a public task” (i.e., determined by the free market). Besides these, all four countries know other

[21] According to the CH national reporter, cooperative housing was included as an intermediary tenure due to the specific terminology adopted by the TENLAW project. Nevertheless, condominium tenure and cooperative housing are to be generally included in a broader category of homeownership.
[22] Hofmann – National report for AU, 2014, sec. 2.2; Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.4.
[23] Cornelius & Rzeznik – National Report for DE, 2014, 1.4.
[24] Hofmann – National report for AU, 2014, sec. 3.6 and Wehrmüller – National Report for CH, 2014, sec. 3.6.
[25] Hofmann – National report for AU, 2014, sec. 1.4.

forms of lawful possession of premises for housing purposes, but they have secondary relevance in the overall housing panorama.

One important aspect which DE, AU, CH and LU have in common is the highly satisfactory level of quality of rental housing. Nevertheless, there are differences in the overall level of quality of dwellings between rented and owner-occupied dwellings.

Indeed, in all four countries owner-occupied dwellings have a higher living space available compared to tenant-occupied dwellings. In AU, the average inhabitable surface for owner-occupiers is more than the double of the size of rented dwellings[26].

The same could be said for comfort. Indeed, according to the European Union Statistics on Income and Living Conditions (EU-SILC), there is a higher percentage of dwellings with deficiencies or in need of maintenance in the rental sector as compared to the homeowner sector. In DE, about 35% of the German households live in "deficient"[27] dwellings and the percentage is 20% higher for rental households as compared to owner households (46.4% against 26.4%)[28]. Nevertheless, both rented and owner-occupied dwellings generally have comparable quality standards and, namely, are occupied with sanitary facilities.

Therefore, it can be said the quality of rental housing provided in all four countries is good, as compared to the EU average, but is still in tendency worse than the quality of owner-occupied housing.

1.1.3.2 Intermediate tenures

In all four countries also some kind of intermediate tenures, i.e., types of tenures which are between homeownership and renting, may be identified.

That is the case of the condominium tenure, which is to be found in every country of this group, although in different proportion and under distinct classifications.

In DE condominiums amount to 23% of the total dwelling stock[29] and in CH they reach 30% which is quite remarkable considering that the legal form of a condominium has generally been allowed only since 1965[30]. In AU *Wohnungseigentum* does not surpass 11%.

Another kind of intermediate tenure which may be found in CH and AU are company law schemes.

In CH the so-called tenant public limited company (*Mieteraktiengesellschaft*) involves "holding shares of a corporation combined with a rent (or a right defined in the statutes" for an apartment held by this corporation"[31]. However, since condominium

[26] Hofmann – National report for AU, 2014, sec. 1.4.
[27] A "deficient" dwelling is, particularly, that which is affected by noise disturbance, moisture damages and insufficient daylight.
[28] Cf. Federal Statistical Office, *Leben in Europa (EU-SILC), Einkommen und Lebensbedingungen in Deutschland und der Europäischen Union* (Wiesbaden: 2012), available at: https://www.destatis.de/DE/Publikationen/Thematisch/EinkommenKonsumLebensbedingungen/LebeninEuropa/EinkommenLebensbedingungen2150300117004.pdf;jsessionid=4CE9AC7C01A6EE05A09DF8A0851C6955.cae1?__blob=publicationFile, 39 (last retrieved: 06.03.2014).
[29] Cf. Federal Statistical Office, *Zensus 2011: Gebäude und Wohnungen*, 6.
[30] Wehrmüller – National Report for CH, 2014, sec. 1.2.
[31] Wehrmüller – National Report for CH, 2014, sec. 1.4 "Company law schemes".

ownership was introduced at the national level, tenant public limited companies have lost their utility.

In AU, company law schemes arise when limited profit housing associations (*gemeinnützige Bauvereinigungen*, GBV), who provide housing to individuals on a non-profit basis, have the legal form of limited company (*Gesellschaft mit beschränkter Haftung*) or public limited company (*Aktiengesellschaft*).

Another type of intermediate tenure – at least as categorized in AU – are cooperatives. These are present in all countries except LU, and in DE they are considered a particular kind of tenure within the rental sector, even if they admittedly represent a "compromise between property and rent"[32].

Cooperative dwellings are particularly important in CH, where in addition to being available on the private rental market, they are subsidized by the State at the federal level, in most cantons, and at the municipal level[33]. In DE, the cooperative sector amounts to 5% of the full housing stock, and it may be classified as tenure with or without a public task depending upon whether or not they are subsidized with public funds[34]. Also in AU cooperatives may be classified as a type of tenure with or without a public task. In the latter case, they are deemed not relevant in the private rental market.[35]

In Germany, 52.1% of the full housing stock is rented, and from it 92.3% is privately rented. In AU rental housing with a public task takes the lead: limited-profit rental housing in dwellings owned by limited profit housing associations represent 40.5%, whereas municipal rental housing in dwellings owned by municipalities or non-profit municipal bodies amounts to 19%[36].

Both in LU and in CH the rental housing sector is residual, not surpassing 6% (provided that we exclude the cooperative sector in CH)[37].

Therefore, the sector of rental housing with a public task has a different importance in each of the countries under analysis, but in all it is aimed at providing affordable yet good quality dwellings to those who cannot afford renting on the private market.

1.1.4. Other general aspects of the current housing situation in comparative perspective

1.1.4.1 Lobby and umbrella groups

Several lobby and umbrella groups in the field of housing are active in DE, AU, LU and CH. These are aimed at protecting the interests of homeowners, tenants and real estate service providers and often cooperate with each other within the scope of their activities. The interests of tenants are sometimes pursued through consumer associations, as happens in AU (*Verein für Konsumenteninformation*)[42] and LU (*Union Luxembourgeoise*

[32] Cornelius & Rzeznik – National Report for DE, 2014, sec. 1.4.
[33] Wehrmüller – National Report for CH, 2014, sec. 1.4 "Cooperatives and other non-profit housing organizations".
[34] Cornelius & Rzeznik – National Report for DE, 2014, sec. 1.4 "Cooperatives".
[35] Hofmann – National report for AU, 2014, 4.2.
[36] Hofmann – National report for AU, 2014, 1.4 "Cooperatives".
[37] Respectively, Santos Silva – National Report for LU, 2014, table 1 and Wehrmüller – National Report for CH, 2014, sec. 4.3.
[42] Hofmann – National report for AU, 2014, sec. 1.5.

des Consommateurs, ULC)[43]. Also, chambers of commerce have been actively cooperating in the field of housing in AU (*Wirtschaftskammer Österreich, WKÖ*)[44] and LU (*Chambre de Commerce du Grand-Duché de LU*)[45].

1.1.4.2 Vacant dwellings

Another relevant aspect of the current housing situation is vacant dwellings. The relevance of this phenomenon has to do with the influence it has on the functioning of the domestic housing system as a whole.

In most countries of this group there are few reported vacant dwellings. Nevertheless, there are regional differences, and the data available can be misleading due to the lack of a common, widely shared definition of "vacant dwelling". Taking the example of secondary residences (namely, holiday homes), these are usually (but not always) classified as vacant dwellings, a distinction which necessarily has an effect on the calculation of percentages within the full housing stock.

In LU, where there are allegations that the high rate of vacancy (8%) has been artificially increased, some cantons effectively implemented a tax to be paid by owners of vacant dwellings[47].

One may thus conclude that, although vacancy of dwellings is not a problem in the remaining countries of the group, the lack of uniformity in the definition of "vacant dwellings" has been leading to inaccurate or confusing statistic data, and thus it would be helpful if a European definition would be put forward.

1.1.4.3 Black market and other irregular practises

As for black market or otherwise irregular practices, one may say they are **practically absent** in most countries of this group. In AU there is however one irregular practice of renting out dwellings at prices which significantly surpass the rent level imposed by law[48].

In DE and LU there are a few irregular practises. The unauthorized use of housing units for the accommodation of tourists and workers occurs in large German cities and tourist destinations[49], and in LU landlords provide unofficial rental agreements so that they do not have to pay tax on rental income[50]. Black market or other irregular practices were not reported for CH.

[43] Santos Silva – National Report for LU, 2014, sec. 1.5.
[44] Hofmann – National report for AU, 2014, sec. 1.5.
[45] Santos Silva – National Report for LU, 2014, sec. 1.5.
[47] Santos Silva – National Report for LU, 2014, sec. 1.5.
[48] Hofmann – National report for AU, 2014, sec. 1.5.
[49] Cornelius & Rzeznik – National Report for DE, 2014, sec. 1.5.
[50] Santos Silva – National Report for LU, 2014, sec. 1.5. See sec. 2.3 of the same report for further details.

1.2 Economic factors in comparison

1.2.1. Comparative view of the housing market

1.2.1.1 Freedom of contract

In every country of the group under analysis, there is both a regulated and an unregulated housing market, but, with the exception of AU, the latter is predominant. Tenancy law is characterized by freedom of contract. Provided that the tenant agrees upon the conditions of the dwelling put forward by the landlord, the rental agreement is considered legally valid, which often results in prohibitive rents for good quality dwellings, particularly in the main urban centres. In Luxembourg households who are not eligible for social housing (or who are still in the waiting line) more often than not rent dwellings across borders. In Switzerland, renting across borders is made by about one fifth of the people employed in the Geneva area and at an exceptional basis.[54]

1.2.1.2 Insufficient supply for increasing demand

Particularly problematic in the overall current housing situation is the fact that, except in AU, housing supply does not cope with increasing demand. This phenomenon, particularly intense in the great metropolises is especially due to a rising number of households (particularly single-occupied ones). The insufficient supply of dwellings has been leading to rising rents and, in the cases of LU and CH, as mentioned supra, to cross-border commuting.

The fact that the Austrian housing market works relatively well is attributed to the fact that, contrary to the liberal-oriented trend which spread generally in Europe from the 1980s on[62], Austrian housing policy remained strongly based on an exceptional continuity and maintenance of public and private financing structures and a combination of other factors, particularly during the crisis, among which are a high level of confidence in the financing structures and legal frameworks; a high quality of living and satisfaction; the increase of green housing construction and building renovation.[64]

1.2.1.3 Social rental agencies and other half-ways between public and private renting

In all four countries, particularly in LU and CH, housing with a public task presents good quality. Due to the unfortunate combination of insufficient supply and increasing demand in all four countries except AU, some “middle ways” have been pursued. That is the case of private housing with public task in LU (by means of social rental agencies) and in DE, through the *Soziale Wohnraumhilfen* or housing assistance agencies[65]. Nevertheless, in both countries this is still a residual section of housing in general.

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[54] Wehrmüller – National report for CH, 2014, sec. 2.1.
[62] Hoffmann – National report for AU, sec. 1.2.
[64] Oberhuber/Schuster, Wohnbauförderung als Instrument zur Sicherung des Wohnstandortes Österreich – Kurzfassung (2012), 8-9.
[65] Cornelius & Rzeznik – National Report for DE, 2014, sec. 4.3.

1.2.2. Comparative view on price and affordability

1.2.2.1 Housing and disposable income

DE, AU, CH and LU are European countries which are known for the high cost of housing when compared to Southern or Eastern European countries. It comes thus as no surprise that the average percentage of disposable income devoted to housing expenses exceeds, in all four countries, the EU average of 16.6% (2012)[67], and in AU it is about double the average[68]. The percentage of income that housing absorbs is particularly high for lower-income households (including unemployed persons and pensioners); there are thus clear social inequalities as far as affordability is concerned[69].

Among all the countries, housing associated costs are particularly high in LU and CH, comprising the largest single expenditure for many individuals and families. The housing cost overburden rate – i.e., the share of households where housing costs account for more than 40% of their disposable income – is not significant for average households, but it is clearly higher for tenants than for owner-occupiers, particularly those who are not burdened with a mortgage or loan[70].

All in all, in spite of a high level of rents and associated housing costs, the average households still cope with them due to the high level of income in these countries.

1.2.2.2 Rental tenure: An effective alternative to homeownership?

Rental housing has been an attractive alternative to home ownership, particularly because, even if mortgage rates have decreased in the last years, the costs of purchase and construction are still relatively high. For such reason, most households (particularly single and young households) opt for renting, which provides high security of tenure in affordable, good-quality housing and consists of a flexible alternative in scenarios of academic or professional change. Moreover, and even though many households would recognize their preference for homeownership, this kind of tenure is not associated with social recognition, as it is in most southern European countries. All in all, rental tenure is a competitive alternative to home-ownership in DE, AU and LU[71].

Still, home-ownership is unanimously recognized as an attractive long-term investment, both for retirement planning and for passing on property to one's children[73].

1.2.3 Tenancy contracts and investment

The basic assumption made by most real estate investors is that stable and performing can "pay" for the credit instalments. Nevertheless, even when the dwelling is rented

[67] http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_lvho08a&lang=de (last retrieved: 07.07.2014).
[68] Hofmann – National report for AU, 2014, sec. 2.2.
[69] Cornelius & Rzeznik – National Report for DE, 2014, sec. 2.2.
[70] Cornelius & Rzeznik – National Report for DE, 2014, sec. 2.2; Santos Silva – National Report for LU, 2014, sec. 2.2.
[71] See Cornelius & Rzeznik – National Report for DE, 2014, sec. 1.4; In AU it is particularly so in the capital city of Vienna (Hofmann – National report for AU, 2014, sec. 1.4).
[73] Cornelius & Rzeznik – National Report for DE, 2014, sec. 1.4; Hofmann – National report for AU, 2014, sec. 1.4.

without interruption until the payment of all the instalments, the fact is that very often at least a decade will be needed to recover the significant, initial investment and start making profit. Successful private landlords make an average of 1% to 6% return on rented residential property[74]. However, in DE, for example, only 40% of the landlords make profit: Most of the time, landlords either equalize costs with profits or their suffer losses[75].

1.2.4. Other economic factors

One particularly important actor in the tenancy economic machinery are real estate agents. These are intermediaries in transactions between third parties which involve real estate. They usually promote the renting or the sale of a dwelling (such as in DE)[76], but can provide for the exchange, cession of real estate, real estate rights or retail fund[77] as well. The figure exists in DE, AU, LU and CH, but in the latter these functions are more often performed by property administration companies, which are also in charge of the performance of some or all duties of the landlord as agreed in the contract[78].

The core of the real estate agent's role consists of his duty of information to potentially interested people, which must be performed diligently or otherwise involves disadvantages for the real estate agent[79]. The performance of estate agents is usually controlled by the respective chambers, which are active in LU and AU[80].

Although engaging the services of a real estate agent is still generally recognized as useful, the society as a whole is not uniformly content with their performance. There is some lack of clarity as far as what the money is being paid for, particularly when the agent's fees must be paid for in full or in part by the tenant[81].

The activity of real estate agents is particularly regulated in AU, where they must fulfil general and specific admission criteria, contract professional insurance and obtain a qualification certificate[84]. In DE, there are regulatory provisions in the BGB and Law on Housing Agency[85] and in LU the *Chambre immobilière du Grand-Duché de LU* (CIGDL) is engaged in ensuring quality in the performance of real estate services.

A sensitive question is that of who shall pay the commission fees. In AU and DE, even though real estate agents are traditionally mandated by the landlord, it is the tenant who must usually pay for their services[87].

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[74] For AU, see http://www.bankaustria.at/files/Real_Estate_Country_Facts_Oesterreich_9_2013.pdf, especially p. 20 et seq. (21.03.2014); for CH see Study of the Zurich School of Management and Law, cited in: Boligøkonomisk Videncenter, *The Private Rented Sector in the New Century – A Comparative Approach* (Copenhagen: University of Cambridge, 2012), 193.
[75] Cornelius & Rzeznik – National Report for DE, 2014, sec. 2.2.
[76] See Cornelius & Rzeznik – National Report for DE, 2014, sec. 2.4.
[77] See Wehrmüller – National report for CH, 2014, sec. 2.4.
[78] See Wehrmüller – National report for CH, 2014, 2.4.
[79] See Hofmann – National report for AU, 2014, 2.4.
[80] Cornelius & Rzeznik – National Report for DE, 2014, sec. 6.2; Hofmann – National report for AU, 2014, sec. 1.5; Santos Silva – National report for LU, 2014, sec. 6.2.
[81] See Cornelius & Rzeznik – National Report for DE, 2014, 2.4.
[84] Hofmann – National report for AU, 2014, sec. 2.4.
[85] Cornelius & Rzeznik – National Report for DE, 2014, sec. 2.4.
[87] Hofmann – National report for AU, 2014, sec. 2.4 and Cornelius & Rzeznik – National Report for DE, 2014, sec. 2.4.

A draft amendment imposing the obligation of payment on the party who mandates the agent (*Bestellerprinzip*) was recently adopted by the DE Parliament, which is an example of a good practice to be followed in this domain[88].

As of 2015, commission fees are usually based upon the value of the monthly rent[89], In DE, contrary to long-standing practice, it was proposed and adopted that the party to the rental agreement who contracts the real estate agent, i.e. the landlord[90], shall pay the commission fees. As far as fees are concerned, in CH they cannot surpass 75% of a monthly rent in and the court may in any case reduce excessive fees to an appropriate amount[91].

1.2.5. Effects of the current crisis in comparative perspective

The widespread global financial crisis hardly affected DE and AU as far as housing is concerned, and is safe to say it did not affect CH or LU.

In every country of this group there has been some sort of immunity to the pernicious effects of the financial crisis. For such reason, the allocation of mortgage loans was not strongly affected, and in AU and CH it even increased[92]. However, CH implemented additional requirements for their provision[93] and in LU, the attribution criteria of loans were slightly strengthened in the second quarter of 2013[94].

In the field of repossessions, the crisis did not seem to have had a remarkable impact either, although the lack of current national figures on repossessions and the respective effects on the rental market in DE, AU and LU makes it difficult to objectively evaluate this aspect.

Out of the four countries only CH and LU have introduced housing-related legislation in response to the crisis.

Indeed, as a measure against the overheating of the market, the Swiss "Federal Council activated a counter-cyclical capital buffer in February 2013 which required from banks that they would hold an additional equity capital of one percent of the issued mortgage credits from 30 October 2013 on"[95]. It is argued that banks are currently less likely to provide mortgage credit than they were before such measure was enacted[96].

In LU, the Housing Ministry enacted the *Pacte Logement* (October 2008) and the *Règlement Grand-Ducal* of 5 May 2011 (as amended by the RGD 30 December 2011) which, among other objectives, aimed at promoting homeownership. Finally, The RGD 24 March 2010 (as amended by the RGD 22 January 2011) developed a program of

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[88] Cornelius & Rzeznik – National Report for DE, 2014, sec. 2.4.
[89] Cornelius & Rzeznik – National Report for DE, 2014, 2.4.; Hofmann – National report for AU, 2014, 2.4; Santos Silva – National report for LU, 2014, 2.4.
[90] Cornelius & Rzeznik – National Report for DE, 2014, 2.4.
[91] Wehrmüller – National report for CH, 2014, sec. 2.4.
[92] Respectively, Hofmann – National report for AU, 2014, sec. 2.5 and Wehrmüller – National report for CH, 2014, sec. 2.5.
[93] Namely, the investment, by the borrower, of at least of 10% of own, non-pension fund assets. See Wehrmüller – National report for CH, 2014, sec. 2.5.
[94] This was particularly so as far as margins of loans, demands of guarantees and amount of loans are concerned. See Santos Silva – National report for LU, 2014, sec. 2.5.
[95] Wehrmüller – National report for CH, 2014, sec. 2.5.
[96] *Ibid*., with additional references.

construction of blocks of subsidized dwellings in response to the chronic need of affordable housing in LU[97].

As mentioned supra, the recent global financial crisis hardly affected the countries of this group as far as housing is concerned. Among the four countries, AU has proven to be the country that most effectively prevented the pernicious effects. The provision of varied (object-related) subsidized rental dwellings allowed for a stable level of prices and of debt-equity ratio of private households[98].

1.3. Urban and social aspects of the housing situation in comparison

1.3.1. Urban aspects in comparative perspective

In each of the countries under analysis, the housing structure differs significantly based upon whether the area is rural or urban. In rural areas the rate of vacancies has been progressively increasing[99], as people move to the largest cities. In the latter, it is always more difficult to find a good-quality, affordable dwelling, and this is reflected in the high amount of rents.

Homeownership predominates in rural areas[100] (although this tendency has been reverted in DE in the last ten years[101]) and medium-sized[102], peripheral municipalities[103] (usually with lower land prices). On the other hand, tenancies predominate in the largest metropolises, and this is also the case in LU, which is by far the country of the group where homeownership takes the lead over rental tenures.

It was not reported in any of the countries under comparison that a particular housing tenure has contributed to ghettoization. In DE, AU, CH and LU, recipients of subsidized housing live in a wide spectrum of dwellings that uniformly mix with those which are not subsidized[104]. The fact that dwellings with a public task cannot usually be easily identifiable from the outside helps to avoid the rise of the problem of ghettoization and contributes to prevent social stigmatization of the population who lives in subsidized dwellings[105].

Still, there is a certain residential segregation of the poorer households – almost exclusively tenants in DE[106] and almost exclusively homeowners in LU[107] – which typically concentrate in rural districts far away from the city centre where housing is more affordable. On the other hand, the better-off households usually live in neighbourhoods close to the city centre, and most of them are tenants, due to the significant cost of purchasing land in those areas.

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[97] Santos Silva – National report for LU, 2014, sec. 2.5.
[98] Hofmann – National report for AU, 2014, secs. 1.2 and 2.5.
[99] Wehrmüller – National report for CH, 2014, sec. 2.6.
[100] Hofmann – National report for AU, 2014, sec. 2.6; Wehrmüller – National report for CH, 2014, sec. 2.6.
[101] Cornelius & Rzeznik – National Report for DE, 2014, sec. 2.6.
[102] Wehrmüller – National report for CH, 2014, sec. 2.6.
[103] Santos Silva – National report for LU, 2014, sec. 2.6.
[104] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.4; Hofmann – National report for AU, 2014, sec. 3.4; Wehrmüller – National report for CH, 2014, sec. 3.4.
[105] Santos Silva – National report for LU, 2014, sec. 3.4.
[106] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.4.
[107] Santos Silva – National report for LU, sec. 1.2.

On the other hand, the high (sometimes prohibitive) amount of rents in the centre of capital cities has been contributing for the socio-urban phenomena of gentrification, with sitting residents moving out of those freshly desired areas, as rents become unaffordable.

Besides gentrification, there seems to be some form of squatting in each of the four countries under analysis, even though there are few (or no) official statistics on this phenomenon. Likewise, in the four countries analysed, squatting seems to represent more an act of peaceful protest against a social situation or event than a way of irregularly obtaining gratuitous housing[109]. In LU, squatters have been protesting against the "artificial increase of rents, which is aimed at increasing the price of real estate".

Squatting can only rarely lead to property acquisition, due to the need of a lengthy, uninterrupted und unchallenged factual possession of the immovable[110]. Furthermore, it can be penalized as trespass to the home[111], leading to fine or imprisonment[112], and there are actions for eviction of the unauthorized occupiers[113]. Property owners sometimes avoid the occurrence of squatting by renting their premises at lower rents[114].

1.3.2. Social aspects

It may be said that currently renting is still seen as an inferior form of tenure as compared to home ownership in the four countries under comparison, and that the latter consists of a safe investment for retirement time. This somehow harmonized way of envisaging renting is particularly interesting, especially provided that the rates of renting are very distinct among these countries.

In AU renting is considered socially inferior to home ownership, even though private rental housing, municipal rental housing and limited-profit rental housing (when the MRG is fully or partially applicable) also offer a safe protection after retirement in the case of contracts unlimited in time, due to the strict conditions on the landlord to give notice[115].

The fact of owning real estate is still considered to be a sign of wealth in DE, as well as a safe provision for old age.

The Home Ownership and Pensions Act (*Eigenheimrentengesetz*) from 29 July 2008 integrated owner-occupied dwellings (i.e., houses, condominium units, cooperative dwellings, and other owner-like households) into the system of tax deductions in private pension plans[116].

In LU, renting is no longer considered, as it was twenty to thirty years ago, socially inferior to homeownership. This is so because a great percentage of tenants are bankers and foreign high-skilled workers who would be able to purchase a dwelling if

[109] Hofmann – National report for AU, 2014, sec. 2.6.; Cornelius & Rzeznik – National Report for DE, 2014, sec. 2.6; Santos Silva – Natinal report for LU, sec. 2.6.
[110] Cornelius & Rzeznik – National Report for DE, 2014, sec. 2.6, Wehrmüller – National report for CH, 2014, sec. 2.6.
[111] Cornelius & Rzeznik – National Report for DE, 2014, sec. 2.6; Wehrmüller – National report for CH, 2014, sec. 2.6.
[112] Santos Silva – National report for LU, sec. 2.6.
[113] Cornelius & Rzeznik – National Report for DE, 2014, sec. 2.6.
[114] Wehrmüller – National report for CH, 2014, sec. 2.6.
[115] Hofmann – National report for AU, 2014, sec. 2.7.
[116] Cornelius & Rzeznik – National Report for DE, 2014, sec. 2.7.

they wish, but opt for renting for the flexibility it provides. Nevertheless, home ownership is clearly perceived as a source of safety after retirement[117].

Finally, in CH renting is not seen negatively, but there is also a clear preference for homeownership[118].

Even though Austrians are generally satisfied with the respective housing tenure, that degree of satisfaction is lower for those who live in rental housing, as compared to homeowners[119]. In DE, the percentage of tenants who are pleased with their current tenure is, like in AU, above 80%, and more than 70% are even pleased with the amount of rent[120].

LU follows the same pattern, as many tenants are satisfied with their status. However, the predominant idea in LU – which, among all four countries has the significantly highest percentage of homeownership – is that homeownership is the ideal form of tenure, not only because instalments are often lower than monthly rents for an equivalent dwelling, but also because having one's own dwelling is still seen as a financial safety net for retirement[121]. A similar line of thought is followed by Swiss citizens as well, who are also inclined to consider, based on economic reasons, homeownership an ideal form of tenure[122].

2. Housing policies and related policies in comparison

2.1. Introduction

According to the typology of Esping-Andersen[123], AU and DE can be classified as conservative welfare states in an international context.

In AU the role of housing with a public task is stronger and, accordingly, policies promote an affordable supply of good-quality dwellings. Even though there are less tax incentives than in the remaining countries of this group, policies for public loans and subsidies for construction and modernization of dwellings, building society savings and building society loans are some of the most important housing policies[124].

According to the jurisprudence of the German Federal Constitutional Court, one of the primary obligations of the German welfare state is to care for those in need, and that is the case of households with lower income, who struggle to find adequate housing.

Art. 1 (I) of the German Basic Law in conjunction with the welfare state imperative contained in Article 20 (III) GG is considered the origin and legitimation for social housing policy. The judgement of the BVerfG of 9 February 2010 concretized this

[117] Krieger – Le bail d'habitation, 2009, pp. 18-19. See, also, http://www.statistiques.public.lu/catalogue-publications/RP2011-premiers-resultats/2013/08-13- fr.pdf (last retrieved: 15.05.2014).
[118] Wehrmüller – National report for CH, 2014, sec. 2.7.
[119] Hofmann – National report for AU, 2014, sec. 2.7.
[120] Cornelius & Rzeznik – National Report for DE, 2014, sec. 2.7.
[121] Santos Silva – National report for LU, sec. 2.7.
[122] Wehrmüller – National report for CH, 2014, sec. 2.7.
[123] G. Esping-Andersen, The three worlds of welfare capitalism (New Jersey: Princeton University Press, 1990) available at: http://isites.harvard.edu/fs/docs/icb.topic1134169.files/Readings%20on%20Social%20Democracy/Esping%20Ande rson%20-%20THe%20Three%20Worlds%20of%20Welfare%20Capitalism.pdf, 27 (last retrieved. 10-03-2014).
[124] Hofmann – National report for AU, 2014, sec. 3.1.

principle insofar as the provision of the subsistence level aid is supposed to cover both the need to secure physical existence, thus accommodation, as well as the possibility to cultivate interpersonal contacts[125].

In Luxembourg, in the last few years, particularly since the enactment of the LBUH, the Housing Ministry has been promoting the rental sector. The Government is particularly concerned with households who are not entitled to access the residual social rental sector but cannot afford to rent a dwelling in the private rental sector. The already existent AIS[126] has a characteristic which seems to be original in the European panorama. It involves cooperation with social security services, which are responsible for drafting a personal and professional development plan of the tenant. When signing the agreement with the AIS, the tenant agrees to follow the individualized program. This shall allow him or her to gather sufficient financial autonomy to be able to enter the private rental sector after three years, which is the fixed and non-extendable length of the contract with the AIS. The new rent subsidy provided for in the Law Project 6542 will assist households in risk of poverty to cope with the payment of rents 'without actually creating a general rise in rents. The Law Project 6583 provides for a significant public subsidization of land for development and of immovables aimed at accommodating particular parts of the population. Elderly persons benefit from priority access to social housing (Art. 10 in fine of the amended RGD 16 November 1998), and minor children of low age have special treatment in eviction procedures. Nowadays, there are practically no homeless people in LU. Young adults facing social difficulties are the main target of services which provide the so-called "*logements encadrés*", where, despite their fragile social and financial position, tenants are still expected to pay rent and associated costs[127].

In CH the subsidization of tenants on the federal level is subject-related; persons in need are supported with social assistance provided as an amount of money. Taxation also plays a role in the housing system as private landlords and cooperatives can optimize taxes by investing in maintenance projects annually[128].

An express, fundamental and enforceable "right to housing" does not exist in any of the countries of the group. Nevertheless, each country has regulations (constitutional or infra-constitutional) supporting access to decent housing.

In DE Article 13 GG provides for a "defence right" (*Abwehrrecht*) against violations of an existing home. Article 14 GG guarantees protection of ownership within the limits that are defined by the laws, and the case law of the German Constitutional Court has established that the right of possession of a tenant is protected within the scope of this article as well, consistent with its social functions.

Some of the *Länder* (Bavaria, Berlin, Bremen) have provisions in the respective *Land* constitutions (*Landesverfassungen*) which go further in the protection of the home, but according to the jurisprudence of the Constitutional Courts of Bavaria and Berlin, these provisions do not include subjective rights (even in the social housing sector). Instead, they refer merely to the obligation of the *Länder* and the municipalities to invest in construction projects.

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[125] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.1.
[126] *Agence Immobilière Sociale*, social rental agency.
[127] Santos Silva – National report for LU, sec. 3.1.
[128] Van Wezemael, 123 f. For further details see Wehrmüller – National report for CH, 2014, sec. 3.1.

Article 1 GG, which protects human dignity, allows for the assumption that such a right could be derived from the dignity-based need for living space and the welfare state principle, but this would not guarantee effective enforcement.

In AU the constitutional framework of housing is relevant by reference to the spheres of competencies for legislating over and executing housing policy. The Austrian Constitution of 1920 (*Bundes-Verfassungsgesetz*, *B-VG*) divides such competencies of the federal state (*Bund*) and the different Austrian states (*Länder*), but several competencies are be mixed.

The right to housing is not contemplated by the LU Constitution, nor is a definition of "decent housing" found in LU legislation. However, the amended Law of 25 February 1979 and the policy of housing which was put in place to take action in this field are instruments aimed at facilitating access to housing in the Grand-Duchy. For that reason one might consider that there is a certain guarantee of access to housing in the Grand-Duchy. Nevertheless, due to the residual percentage of social housing in LU, the introduction of a "right to housing" in the LU Constitution is currently not an issue.

Although also in CH there is no real "*droit au logement*", there are several provisions, at the federal and cantonal level, which provide some degree of protection in this field. Art. 41 s. 1 ff of the Const. provides that all persons should be entitled to "suitable accommodation on reasonable terms", which constitutes a social objective (*Sozialziel*) of the Confederation and the cantons. Arts 108 and 109 of the Swiss Constitution contribute for achieving such objective. While art. 108 Const. serves as a basis for the Housing construction and Housing Ownership Promotion Act (WEG) and the Federal Act for the promotion of Affordable Housing (WFG), art. 109 s. 1 Const. provides for the obligation of the confederation to legislate against abuses in tenancy matters.

On a cantonal level few constitutions provide for a right to housing. Some constitutions mention it as a social objective, but as we have seen in the case of DE, this does not translate into a greater protection in practice.

2.2. Policies and actors

2.2.1. Governmental actors

In all four countries, not only national but also regional and local levels of government are actively involved in the design and implementation of housing policies.

In AU several important housing policies are designed and implemented at the national, i.e., federal state level. The Ministry of Economy is responsible for international representation of housing policy and for the design and supervision of the law on limited-profit housing[129]. The Ministry of Justice is responsible, in particular, for the Rent Act and the Home Ownership Act. The Ministry of Environment is responsible for climate programs, together with state governments, and the Ministry of Finance is responsible for tax law, also sharing some competencies with the states. The nine Austrian States (regional level) design and promote housing policies and implement the law relating to limited-profit housing and climate programs (the latter together with the Ministry of Environment). Finally, at the local level, municipalities are responsible for building law

[129] Hofmann – National report for AU, 2014, sec. 3.2.

and planning regulations (both with limits set at the regional level); they are also responsible for policies on the use of land and allocation for housing purposes and for the allocation of subsidized dwellings[130].

In DE the federation is responsible for the design of laws concerning tenancy law. The Ministry dealing specifically with housing issues is the Federal Ministry of Transports, Building and Urban Development, and the most important policies on housing management are climate policy, regional planning and urban development promotion. At the state level, housing policy is dealt with by different regional ministries, and only the city-states (namely, Bremen, Hamburg and Berlin) have ministries dedicated specifically to construction, housing and urban development. According to constitutional provisions, in regard to fields being subject to concurrent legislation, the *Länder* have the right to adopt their own legislation in so far as the *Bund* has not made use of its legislative powers in the same field. Even with the limitations at the national and regional level, local authorities play the most important role in housing policies, as they manage the existing housing stock and plan the new residential space[131].

In LU the competent ministry on housing issues is the *Ministère du Logement.* It is responsible for housing policies and the Housing Observatory, legislation on rents, state subsidies for the construction of housing units and public housing promoters, state subsidies for individuals, the Service for Housing Aids and Commission for individual housing aids and the housing pact. The *Observatoire de l'Habitat* was set up for the planning of a coherent and efficient policy in the short, middle and long term, concerning housing in particular and habitat in general[132].

In CH there are three different entities responsible for housing: the confederation, the cantons and the municipalities. The cantons exercise all rights that are not transferred to the Confederation by the Constitution (Art. 3 Const.). The distribution of competences is, thus, as in DE, made by constitutional provisions.

Accordingly, the responsibility for legislation in tenancy law and housing policy is assigned to the Confederation. The cantons have the responsibility of organizing the courts and administrating justice in civil matters. The promotion of the construction of housing and home ownership gives the Confederation a parallel competence to the cantons. Thus, promotional measures as well as legislation concerning these measures can be taken by the Confederation and the cantons. Construction and planning legislation is organized at all three political levels, though the Confederation lays down the principles on land use and spatial planning and decides directly on "important matters"[133].

2.2.2. Housing policies

The main objective of Austrian housing policies pursued at all levels of governance is to provide affordable housing of high quality to the citizens. This is also the main goal of the policies in LU, where the Government is committed to getting the evolution of the

[130] Hofmann – National report for AU, 2014, sec. 3.2.
[131] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.2.
[132] Santos Silva – National report for LU, 2014, sec. 3.2.
[133] See Wehrmüller – National report for CH, 2014, sec. 3.2 and art. 13 from the *Bundesgesetz über die Raumplanung (Raumplanungsgesetz, RPG)*, available under https://www.admin.ch/opc/de/classified-compilation/19790171/201405010000/700.pdf (last retrieved: 04.06.2015).

prices in the real estate market under control, by increasing the supply of dwellings and land for property development and by simplifying and shortening the administrative procedures concerning the construction of housing[134].

In DE construction of new dwellings is one of the country's top priorities due to the expiration of the temporary commitments of social dwellings[135].

In AU a clear national policy preference for a specific tenure cannot be noticed and thereby one may conclude that neutrality of tenure is promoted. In DE, however, policy is directed at renting as the dominant housing choice. The political system is highly sensitive to tenants' rights even though the most recent amendment to the German Civil Code on tenancy law also strengthened the right of landlords

In LU promoting homeownership was a clear housing policy for several decades, but more recently, and having acknowledged the importance of the rental sector particularly in the city centres, Government has been promoting it as well with subsidies and tax benefits[136].

In CH Art. 108 of the Federal Constitution provides that the Swiss Confederation shall "encourage the acquisition of the ownership of apartments and houses for the personal use of private individuals". The Federal Council intends to support particularly the improvement of the promotion of non-profit housing, for example by facilitating access to construction land and measures in the field of spatial planning[137].

The countries under review do not have special housing policies targeted at certain ethnical groups of the population, but they do acknowledge particularly the rights of some social segments, namely the elderly, disadvantaged people, families with children and migrants.

In AU special housing policies targeted at certain groups exist primarily for elderly people with reference to barrier-free construction of new buildings and barrier-free modernization of existing buildings.

In DE local projects financed within the scope of the national "Social City" programme aim at improving the housing situation in socially disadvantaged neighbourhoods, where many Sinti and Roma people live, as well as other migrants[138].

In LU amended Law 25 February 1979 granted a significant amount of state grants to people who had lower incomes and families with children. With a new law project submitted in June 2013 to the LU Parliament the Government intends to enlarge the beneficiaries of these individual aids; in particular persons living in a detention centre or prison could also apply to these grants for the purpose of renting. The Service for Housing Aids provides advice and information on housing subsidies to seniors and people in need of handicapped-adapted dwellings[139].

Cantons and especially municipalities are responsible for rendering services to elderly people in CH, who benefit for special protective rules upon termination of rental agreements[140].

[134] Hofmann – National report for AU, 2014, sec. 3.3.
[135] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.3.
[136] Santos Silva – National report for LU, 2014, sec. 3.3.
[137] Wehrmüller – National report for CH, 2014, sec. 3.3.
[138] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.3.
[139] Santos Silva – National report for LU, 2014, sec. 3.3.
[140] Wehrmüller – National report for CH, 2014, sec. 3.3.

2.3. Urban policies

Even though ghettoization is not a concerning phenomenon in the countries under analysis, Governments have been actively promoting a more diverse social mix of different housing tenures[141].

Gentrification is also not problematic, but raises a greater concern of public authorities than ghettoization does. It has been combatted with different instruments, among which is the imposition of certain quotas of non-profit dwellings among "good neighbourhoods"[142], which may go up to 50%[143] or the delimitation of a maximum level of rents in those areas[144].

The concern of public authorities for providing a social mix of tenures, a significant percentage of social housing (except for LU) and the availability of social dwellings which look the same as dwellings from the private rental market has avoided that social rental housing is perceived as a less respectable form of tenure. Nevertheless, the expensive cost of rental housing in certain urban central areas will always provoke a centralization of the poorer households in peripheral areas and the concentration of the better-off in the main central ones.

In all four countries the quality of private rented housing is not only determined by free market mechanisms, but there are means of controlling and regulating it as well.

The Construction Law Statutes of the nine Austrian states and bylaws provide a compulsory valid permit of usage by the local construction authorities, and there are binding technical standards for the construction of new dwellings[147].

In DE the Building Regulations of the *Länder* require that a dwelling must fulfil basic minimum requirements in order to be called housing. Nevertheless, tenancy law is a field of private law characterized by freedom of contract, and thus even dwellings which do not fulfil the minimum standard are considered contract-compliant if these conditions were explicitly agreed upon[148].

Art. 34 of the amended *loi du 25 février 1979* in LU concerns state financial subsidy to housing, and it provides that municipal authorities are responsible for controlling dwellings. Pursuant to this provision, the competent municipal service, in collaboration with the police, executes regular controls of immovables with furnished rooms. Art. 33 of the same Act reads that any person or body which rents or makes available furnished dwellings and collective dwellings must previously declare it to the mayor of the municipality, indicating the maximum number of persons who can be simultaneously accommodated and the amount of the rent, and annexing to the declaration a detailed description of the state of the sites. Moreover, every dwelling for renting must meet requirements of hygiene and habitability defined by RGD 23 March 1979. Authorities have concluded that these measures have been leading to a significant improvement of the degree of comfort of the furnished rooms[149].

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[141] Santos Silva – National report for LU, sec. 3.4; Wehrmüller – National report for CH, 2014, sec. 3.4.
[142] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.4., Hofmann – National report for AU, 2014, sec. 2.6.
[143] Wehrmüller – National report for CH, 2014, sec. 3.4.
[144] *Ibid*.
[147] Hofmann – National report for AU, 2014, sec. 3.4.
[148] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.4.
[149] Santos Silva – National report for LU, sec. 3.4.

In CH provisions concerning structural safety and requirements for inhabited rooms are incorporated in cantonal and/or municipal building acts. Apart from these regulations, a tenant can require that the landlord maintain the apartment in a condition fit for its designated use, which is determined by the contractual agreement and the requirements for normal use of the apartment[150].

2.4. Energy policies

European, national and local energy policies affect (rental) housing substantively in AU, DE, LU and CH with regard to the aim to increase energy efficiency of buildings.[151] Especially in the fields of construction and modernization of buildings and of housing subsidies and taxation, energy policies have a high influence on the housing market in all four countries under review except LU.

As a consequence of the two severe oil crises of the 1970s, many European countries have developed strategies of state intervention to secure a more sustainable use of energy resources. The energy policies since the 1970s in all four countries under review have at first mainly focused on questions of individual or collective mobility (e.g. transportation and sustainable use of cars). However, the national or local state authorities of these countries have by that time started to implement some limit values for essential components of new buildings e.g. with regard to insulation of roofs or walls.[152]

The aim to increase energy efficiency in buildings steadily gained more importance in the 1990s in Europe: In 1993 Directive 93/76/EE[153] to limit carbon dioxide emissions by improving energy efficiency (SAVE) was enacted, and in 1997 the 'Kyoto-protocol' was concluded. The following commitments[154] of the European Commission in 1998 towards a strategy for the rational use of energy lead to a first action plan[155] by the European Commission to improve energy efficiency in the European Community in 2000.

The Directives 2004/8/EC[156] and 2006/32/EC[157] on energy efficiency as well as the first Directive 2002/91/EC[158] and the second Directive 2010/31/EU[159] on the energy

[150] Wehrmüller – National report for CH, 2014, sec. 3.4.
[151] As CH is not an EU member state, EU Directives and Regulations do not have to be implemented into Swiss law. The relations of CH with the European Union are governed by bilateral agreements. EU energy policy therefore has only direct effect if governed by these bilateral agreements; see Wehrmüller – National report for CH, 2014, sec. 7 for details. AU became an EU member state in 1995. EC law although had some effects before as AU has been a contracting state of the agreement on the European Economic Area.
[152] Cf. Hofmann – National report for AU, 2014, sec. 3.5.
[153] Council Directive 93/76/EEC of 13 September 1993 to limit carbon dioxide emissions by improving energy efficiency (SAVE), OJEEC L 237, 22.9.1993.
[154] Communication from the Commission of 29. April 1998: Energy Efficiency in the European Community – Towards a Strategy for the Rational Use of Energy, COM (1998) 246.
[155] Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, of 26. April 2000, entitled: 'Action Plan to improve energy efficiency in the European Community', COM (2000) 247.
[156] Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC, OJEC L 52, 21.2.2004.

performance of buildings were entirely implemented in AU, DE and LU. Furthermore, the 'National Energy Efficiency Action Plans' of AU, DE and LU[160] in accordance with the EU-directive 2006/32/EC list a number of energy efficient measures with reference to private households, such as improving the thermal quality of the building shell, the use of energy-efficient building installations, in the case of new construction, renovation and ongoing operation, or the use of energy-efficient appliances and lightening.

In CH, the cantons regulate about efficient use of energy in new and existing buildings. All cantons have enforced insulation requirements and maximum percentages of non-renewable energy. Furthermore, a building programme was started in 2010 by the confederation and the cantons to reduce energy consumption and CO_2 emissions by supporting energy-efficient renovation and the use of renewable energy in buildings.[161] Similar subsidization programmes for modernization of existing buildings have been established in DE and AU as well.[162]

With regard to rental tenancies in AU, DE and LU, the most visible influence of the EU energy policy for any tenant so far is the obligation of landlords to provide an energy performance certificate whenever a new rental contract is concluded.[163] Also, the energy performance indicator of the energy performance certificate has to be stated in the advertisements in commercial media.[164] In CH, these concrete obligations have not been reported.[165]

Energy efficient modernization of buildings is in all four countries a reason to allow extraordinary rent increases in continuing contracts temporarily (AU)[166] or permanently (DE, CH, LU).[167]

2.5. Subsidization

All four countries under review have both object-related and subject-related funding, but through different providers of dwellings and with certain emphasis.

While in AU and Luxembourg object-related subsidies for the construction and modernization of buildings are dominant, in DE and CH subject-related subsidies are the preferred type of housing subsidies available.[168]

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[157] Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC,
OJEC L 114, 27.4.2006.

[158] Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings, OJEC L 1, 4.1.2003.

[159] Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings, OJEU L 153, 18.6.2010.

[160] http://ec.europa.eu/energy/efficiency/eed/neep_en.htm (last retrieved 27.10.2014).

[161] Wehrmüller – National report for CH, 2014, sec. 3.5.

[162] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.5; Hofmann – National report for AU, 2014, sec. 3.5.

[163] Arts. 11 and 12 of the Directive 2010/31/EU.

[164] Art. 12 par. 4 of the Directive 2010/31/EU.

[165] Wehrmüller – National report for CH, 2014, sec. 3.5,

[166] For a maximum period of 10 years in case the MRG is fully applicable (§ 18 MRG).

[167] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.5; Wehrmüller – National report for CH, 2014, sec. 3.5; Santos Silva – National Report for LU, 2014, sec. 6.5.

Although both AU and LU provide object-related subsidies, the aim of the subsidies differs noticeably between these two countries. Whereas in LU a broad range of state financial funding in the form of capital or interest subsidies has been launched to encourage individuals to construct their own dwellings and thereby build-up private assets,[169] in AU limited-profit housing associations profit most of all from public loans or annuity and interest subsidies.[170] In CH, the Confederation financially supports construction and renovation works by giving advantageous loans to organizations that are involved in the construction of non-profit housing (mainly housing cooperatives, but also foundations and public limited companies).[171] In DE, every type of landlord is entitled to apply for social housing subsidies according to the Law on State Funding of Housing and Housing Construction.[172]

In return for the object-based subsidies, the landlords in AU, DE and CH are committed to observe certain limitations such as special occupancy requirements for low income households. In AU and DE rent ceilings are also common.[173]

Object-based instruments in AU are (long-term) low-interest loans, annuity and interest subsidies for construction and modernization of dwellings, non-refundable one-off payments for construction and modernization of dwellings for citizens or property developers, tax incentives and building society savings (premiums).[174] In DE low-interest loans and interest subsidies granted by the Reconstruction Credit Institute (*Kreditanstalt für Wiederaufbau*[175]) for the construction and modernization of dwellings for low income households and special purpose investments like energy efficient modernization dominate. Further instruments are building society savings (premiums), an employee saving bonus, which is a subsidy to promote the capital formation of employees e.g. for buildings society savings), and the *Riester Pension programme*, which pension scheme can be used for building loan contracts or for buying real estate by individuals.[176] In LU the preferred object-based instruments are construction subsidies in the form of one-off payments granted to individuals for the construction of a single family dwelling or apartment,[177] annuity and interest subsidies granted to individuals for the construction of a single family dwelling or apartment and guarantees

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[168] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.6; Wehrmüller – National report for CH, 2014, sec. 3.6; Santos Silva – National Report for LU, 2014, sec. 3.6; Hofmann – National report for AU, 2014, sec. 3.6.

[169] Santos Silva – National Report for LU, 2014, sec. 3.6.

[170] Hofmann – National report for AU, 2014, sec. 3.6.

[171] Wehrmüller – National Report for CH, 2014, sec. 3.6.

[172] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.6.

[173] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.6; Wehrmüller – National report for CH, 2014, sec. 3.6; Hofmann – National report for AU, 2014, sec. 3.6.

[174] Hofmann – National report for AU, 2014, sec. 3.6.

[175] The '*Kreditanstalt für Wiederaufbau'* is closely linked with the economic development of the Federal Republic of DE since WW II and has been founded as public-law institution to support change and encourage forward looking ideas in Germans, Europe and throughout the world; see Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.6 for details.

[176] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.6.

[177] Luxembourg also grants in addition to the construction subsidy a financial subsidy for paying the architect and engineer consulting fees in certain circumstances; Santos Silva – National Report for LU, 2014, sec. 3.6.

for loans by the State.[178] In CH low-interest loans and guarantees for loans with counter-guarantee are granted for non-profit housing providers.[179]

With regard to subject-related subsidies, it can be noticed that in CH a specific subsidy programme for housing apart of the general social assistance benefits system does not exist. AU and DE both rely on a mixed subject-based funding system granting either specific housing subsidies to low income households or accommodation cost subsidy as part of the social welfare system. In LU, only subsidies directly linked to housing have been reported.[180]

Subject-based instruments in AU are a housing subsidy (*Wohnbeihilfe*) granted to low income households, a subsidy for heating costs granted to low income households and an accommodation cost subsidy as part of needs-based minimum benefits (*Bedarfsorientierte Mindestsicherung*) granted to low income households.[181] DE provides housing allowance (*Wohngeld*) granted to low income households and an accommodation cost subsidy granted to the recipients of minimum social welfare.[182] In LU the subject-based instruments are a subsidy for the financing of the rental guarantee and a rent subsidy (*subvention de loyer*) granted to tenants with low income paying more than 1/3 of their income for the rent.[183] CH offers accommodation cost subsidy as part of social assistance benefits.[184]

2.6. Taxation

Tax policies of DE, CH and LU regarding rental tenancies do not differ significantly. In general the rule that "no tax is paid on rental tenancies" applies. However, the real property tax charges due by a landlord in DE are usually passed on to the tenant and the municipal taxes for the use of a dwelling like waste collection fees can be imposed on a tenant in LU.[185]

AU is the only country under review where tenants have to pay a value added tax (VAT) of 10% on their rent for dwellings. Tenants even need to pay 20% VAT on their rent for furniture or garages and heat supply. Furthermore, the stamp duty on written tenancy agreements and the real property tax expenses of the landlords (like in DE) are regularly transferred to the tenant.[186]

Homeowners in all four countries under review are confronted with a duty to pay a land transfer tax at time of acquisition of immovable property. In DE and CH additionally

[178] Santos Silva – National Report for LU, 2014, sec. 3.6.
[179] Wehrmüller – National Report for CH, 2014, sec. 3.6.
[180] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.6; Wehrmüller – National Report for CH, 2014, sec. 3.6; Santos Silva – National Report for LU, 2014, sec. 3.6; Hofmann – National Report for AU, 2014, sec. 3.6.
[181] Hofmann – National Report for AU, 2014, sec. 3.6.
[182] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.6.
[183] Santos Silva – National Report for LU, 2014, sec. 3.6.
[184] Wehrmüller – National Report for CH, 2014, sec. 3.6.
[185] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.7; Wehrmüller – National Report for CH, 2014, sec. 3.7; Santos Silva – National Report for LU, 2014, sec. 3.7.
[186] Hofmann – National Report for AU, 2014, sec. 3.7.

inheritance or gift tax is also charged, whereas in Luxembourg and AU no such tax has been reported.[187]

In CH and Luxembourg homeowners have to pay income taxes on imputed rental value but may also deduct certain expenses related to the acquisition or use of their property such as mortgage interest payments. Also, income tax deductions may be acquired in Luxembourg within the frame of a home-buyer savings plan or for mortgage registration costs.[188] In marked contrast to CH and Luxembourg, occupying your own house is not considered as taxable income in AU and DE. However, landlords' income of renting out a premise is subject to income or corporate income tax in all four countries, providing also a broad range of instruments for deductions for property owners in general and exceptions e.g. for limited-profit housing associations (AU) or cooperatives (DE, CH).[189]

Homeowners in AU and DE also have to pay real property taxes. Austrian and German landlords are in principle also obliged to pay real property taxes but – as already stated above – regularly impose this obligation to their tenants. The tax amount differs with respect to the involved state (DE) or municipality (AU).[190]

In CH, real property tax for homeowners and landlords is known at cantonal and/or municipal level either in addition to wealth and equity tax or instead of income and wealth or equity tax, depending on the concrete regulations of each canton and/or municipality.[191] In Luxembourg recently the introduction of a new real property tax has been discussed but has not been implemented yet.[192]

In case of disposal of immovable property, homeowners and landlords in AU, CH and DE also have to pay real property profit taxes. In DE, this kind of tax is part of the income tax and only applies to objects that are sold within 10 years after acquisition.[193]

With regard to tax evasion, only marginal problems have been reported in all countries under review.[194]

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[187] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.7; Wehrmüller – National Report for CH, 2014, sec. 3.7; Santos Silva – National Report for LU, 2014, sec. 3.7; Hofmann – National Report for AU, 2014, sec. 3.7.

[188] Wehrmüller – National Report for CH, 2014, sec. 3.7; Santos Silva – National Report for LU, 2014, sec. 3.7.

[189] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.7; Wehrmüller – National Report for CH, 2014, sec. 3.7; Santos Silva – National Report for LU, 2014, sec. 3.7; Hofmann – National Report for AU, 2014, sec. 3.7.

[190] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.7; Hofmann – National Report for AU, 2014, sec. 3.7.

[191] Wehrmüller – National Report for CH, 2014, sec. 3.7.

[192] Santos Silva – National Report for LU, 2014, sec. 3.7 (cf.)

[193] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.7; Wehrmüller – National Report for CH, 2014, sec. 3.7; Santos Silva – National Report for LU, 2014, sec. 3.7; Hofmann – National Report for AU, 2014, sec. 3.7.

[194] Cornelius & Rzeznik – National Report for DE, 2014, sec. 3.7; Wehrmüller – National Report for CH, 2014, sec. 3.7; Santos Silva – National Report for LU, 2014, sec. 3.7; Hofmann – National Report for AU, 2014, sec. 3.7.

3. Comparison of tenures without a public task

3.1. Evaluative criteria for landlord

3.1.1. Profitability

Table 1[195]

	DE	AU	CH	LU
Taxation	Income for rent taxed (cooperatives and REITS exempted) Tax benefits - Tenant and landlord excepted from VAT Tax costs partially transferable to tenant	Real property profit tax and rental revenues taxed Tax costs transferable to tenant Tenants pay VAT on rent, furniture, garages and on their costs	Tax benefits (advantageous imputed rent) Energy efficiency renovations deductible	Income for rent taxed
Incentives to renting besides taxation	Low interest rates Liberal requirements for providing rental dwellings Mechanisms for rent increase[196]	Lien[197] secures patrimonial interests of landlord	Early withdrawal of pension funds	Low interest rates (but complex set of rules and procedures; speculative bubbles)
Perceived effects of renting	Stable financial security for retirement planning	Strategic option after price of real estate increased with the crisis	Sense of security prevails over objective lower return as compared to other types of investment	Stable option in particular in times of crisis

[195] The issue of the determination and increase of rents is addresses in the table * under “Affordability”.
[196] See sec. on “affordability”.
[197] § 1101 AGBG.

Cost for repairs or maintenance "fit-for- use"	On the landlord[198] Minor and cosmetic repairs on the tenant[199]	On the landlord, assignable to the tenant[200]	On the landlord[201], assignable *de facto* to the tenant through rent or accessory charges Minor defects and defects attributable to tenant on the tenant	On the landlord[202]
Other costs	On the landlord, assignable to tenant (except operating costs[203]) Electricity costs on the tenant[204]	General expenses, public charges and extraordinary costs on the tenant Improvement works on the tenant Subject to judicial price control	Accessory charges[205] must be specifically described to be collectable apart from rent and landlord must not profit from them Costs of renovation works can be passed on to tenant[206]	On the tenant the costs for which he contributed

In most cases, the decisive aspect in the decision of real property owners to become landlords consists of whether letting their dwellings will be profitable for them, at least in the long-run. Nevertheless, national and European regulation are traditionally protective of the weaker contractual party, and this will often mean that the interests of the tenant will be protected (namely, that renting will be affordable). This is the case of regulation on rents.

Each of the four countries has some type of rent regulation, but this does not seem to be preventing investors (mostly individuals) in the private market of making profit on their investment.

German landlords can increase the rent when it has remained unchanged for fifteen months or when they carried out modernization works which lead to energy saving or a greater comfort. Operating costs may likewise be adjusted to a reasonable amount in case advance payments have been agreed upon.

[198] § 535 (I) 2 BGB.
[199] § 28 III, 1 IV, II Regulation on Housing Costs Calculation.
[200] § 1096 ABGB.
[201] § 265 s. 1 CO.
[202] Art. 1719 CC.
[203] § 556 (I, 1).
[204] § 556 II BGB.
[205] Accessory charges are defined as "actual outlays made by the landlord for services connected to the use of property".
[206] About 50 to 70%, according to the CH report. See § 14, sec. 1 VMWG.

Nevertheless, § 126b BGB imposes on German private investors the obligation of thoroughly justifying, in text, all types of unilateral rent increases to the tenant. Only when the landlord wants to increase the rent up to the customary level in the locality (*ortsübliche Vergleichsmiete)* is he free from the previous approval by the tenant (§ 558b (I) BGB). Up to 2006 the declining-balance method of depreciation for investment (*degressive Abschreibung für Anlagen*) allowed investors to make higher tax deductions in the first years of the investment so that the investment turned out to be rentable earlier. The abolition of this tax-shifting effect led to significant enough losses in the beginning of the investment that is started becoming unattractive in the eyes of some investors[207].

In AU , the calculation of rent is limited only to the general restrictions of the ABGB.

In LU there are three limits on private rent regulation: rents cannot be automatically increased; they cannot be increased during the first six months at the beginning of the rental agreement (and afterwards they can only be increased after every two years according to ratios of adaptation) and finally, whenever rents are increased, they cannot surpass 5% of the invested capital[208]. As far as the last limit is concerned, the legislator has acknowledged the interests of the landlords of used dwellings by allowing a re-evaluation of the dwellings to compensate inflation (art. 3, 3 LUBH).

Finally, in CH the landlord is usually free to increase the rent in unlimited-in-time contracts, but the tenant can challenge the initial rent (under Art. 269 and 269a CO) or rent increases during the tenancy (Art. 270a s. 1 CO). The tenant can request a rent reduction during the tenancy, whenever he has good reason to assume that the landlord is profiting excessively from the premises because of significant changes to the calculation basis.

When compared with the profit obtained by other investment activities, the return on investment from offering rental housing is typically less appealing, but the sense of security that it inspires in investors compensates somewhat for the generally lower return. On these grounds, investment in real estate is considered a stable option in DE, AU, CH and LU, particularly in current times of crisis[209].

Investment in rental objects is considered reasonable in the context of personal retirement arrangements and tax deductions. In all countries this perception of real estate as a safe investment has been leading to a steady increase of real estate prices[210].

One way of analysing whether national regulations are aimed at incentivising real estate owners to rent their dwellings is looking into tax law, namely into specific tax rules which may tax income from rent.

Income for rent is taxed in every of the four systems.

Both the German Income Tax Act[211] and the Austrian Income Tax Act (*Einkommensteuergesetz*) impose on natural persons the submission of their rental revenues (*Einkünfte aus Vermietung und Verpachtung*) to tax. While in DE REITS and cooperatives are exempted from such tax, in AU rental revenues of corporate bodies are

[207] Cornelius & Rzeznik – National Report for DE, sec. 2.3.
[208] See Santos Silva – National report for LU, sec. 6.5.
[209] Cornelius & Rzeznik – National Report for DE and Hofmann – National report for AU, 2014, sec. 2.3.
[210] Hofmann – National report for AU, 2014, sec. 2.3.
[211] *Einkommenssteuergesetz* (v. 08.10.2009, BGBl. I 3366; corr. I 3862).

a type of income subject to a flat tax of 25% under the Corporate Income Tax Act "*Körperschaftsteuergesetz 198*").

In LU income from rents is calculated according to the surplus of revenues in relation to the costs of acquisition (*frais d'obtention*), and it is taxed in the category of net income arising from leasing of goods (*revenus nets provenant de la location de biens*). The advances of costs (*advances sur frais*) provided for by the tenant will be considered income only if it is lawfully retained by the landlord in the end of the contract.

In CH the tax on imputed rental value, which is a highly political and controversial topic, was introduced as part of the personal income tax to grant equal treatment of rental tenants and homeowners, who could always deduct costs related to the use of the property.

The aspect which has usually a bigger influence on the landlord's profits arising from the rental agreement is the expenses which he has to bear. These are not the same in every European country and certainly not the same in all four countries of this group.

The landlord's main responsibility to ensure that the rented property is in suitable condition for the designated use in the rental agreement is expressly provided for in DE (sec. 535 (I 2) BGB), LU (Art. 1719 of the CC) and CH (Art. 256 s. 1 CO). In AU whenever the MRG is not or is only partially applicable, such obligation may be, in principle, lawfully assigned to the tenant under sec. 1096 ABGB.

From such obligation derives the responsibility of the landlord to provide maintenance works (*Erhaltungsarbeiten*) and repairs which result from a responsible and normal use of the dwelling. Nevertheless, it is usual that rental agreements include clauses according to which the tenant must bear a portion of the costs for minor or trivial maintenance works (*kleine Instandhaltungsarbeiten, réparations locatives*) and cosmetic repairs (*Schönheitsreparaturen*)[212]. In CH the landlord can pass 50-70% of the costs of the renovation work to the tenant (Art. 14 s. 1 VMWG).

In AU maintenance works are to be distinguished from improvement works (*Verbesserungsarbeiten*). As for costs of utilities, other charges and taxes, they are shared by the tenant and the landlord according to different criteria.

In DE the landlord is, as a rule, to bear every cost to which the rented dwelling is subject. Nevertheless, it can be agreed between landlord and tenant that the latter is to bear the operating costs (§ 556 (I 1) BGB), which include the costs for the supply and the consumption of water and heating but not the costs for the supply and consumption of electricity. Pursuant to § 556 (II) BGB, electricity costs are to be paid by the tenant through a lump sum (*Betriebskostenpauschale*) or advance payment in a reasonable amount.

In AU general expenses, public charges and extraordinary costs are usually borne by the tenant whenever the MRG does not apply or applies only partially. However, in LU the rule is that the tenant will only bear the costs for which he contributed or which he consumed (*charges locatives*). It is debated whether administrative expenses (*frais de gérance*) may be placed at the expenses of the tenant; technical assistance expenses (*frais de gérance technique*) may, in principle, be.

In CH every cost necessary for keeping the dwelling fit for its designated use must be borne by the landlord but is usually covered by the rent paid by the tenant. The

[212] See in DE section 28 (III 1, IV 1) of the II. Regulation on Housing Costs Calculation (II. BV). For LU see Santos Silva – National Report on LU and CH see Wehrmüller – National report on CH.

parties to the rental agreement can agree that costs necessary for keeping the dwelling fit for its intended use shall be included as accessory charges. All services defined as "accessory charges" can be charged to the tenant in addition to the rent; in such case, the latter will be reduced accordingly., which results in a respective reduction of rent.

As for costs, one may consider that the ones which are the responsibility of the landlord are usually covered by the amount of rent which he receives by the tenant or are (fully or partially) paid by the latter within contractual arrangements or compulsory national rules. From this point of view, one may consider that regulations in force permit to landlords to profit from the rental activity.

But there are other economic and financial advantages from landlords which arise from this investment.

In DE, for example, home ownership is regarded as a stable financial security for retirement planning, due to low interest rates and the widespread fear of inflation[213]. Homeowners benefit from a legally friendly environment to rent their premises, and this has to do with the liberal requirements for provision of dwellings, tax benefits and mechanisms for rent increase. Moreover, due to the fact that freedom of contract generally applies to tenancy law, dwellings can be rented without main equipment (namely, a furnished bath) provided that the tenant agreed upon such situation. Tax rules are also protective of the landlord, as they exempt him from the value added tax (§ 4 (no.12a) VAT Act, *Umsatzsteuergesetz*), in contrast to what happens to an owner-occupier.

Even though the situation of landlords varies according to whether the rental agreements are or are not regulated by the MRG, one may consider that home-owners are also protected by Austrian tenancy law regulations. This is, for example, the case of tax rules. Although the transfer tax is usually paid by the landlord or his legal representative, he is allowed to transfer this cost to the tenant together with the demanded deposit. As for the latter, there is no rule which establishes a limit for its amount and, contrary to what happens in the other countries under analysis, the OGH has held that landlords can ask up to an amount of six months of rents including charges (whenever the MRG is fully applicable[214]) or, even further, that they can establish the amount they please, provided that the amount does not contradict general contract rules.

As far as security, the landlord benefits from a lien on all moveable property (including money) within the rented dwelling owned by the tenant and the relatives who live together with him in the rented dwelling (*gesetzliches Bestandgeberpfandrecht*, § 1101 ABGB). The lien secures not only the payment of the rent, but also the payment of overheads, taxes and other costs and expenses.

In contrast to these two scenarios, LU's rental market is said to be "strongly pro-tenant" as far as investment in housing is concerned.

Indeed, on the one hand, rent control limits the amount of return a landlord can receive (rent can only be increased every two years), and if illegally evicted, the tenant is usually awarded a generous compensation.

The regulations in force might make landlords think twice before deciding to invest in renting. First, and despite LU being one of the countries which allows compensation with other types of revenues, as the rental losses are deductible from professional

[213] Cornelius & Rzeznik – National Report for DE, sec. 2.2.
[214] To remove references to where MRG is applicable fully.

revenues, landlords are subject to different types of taxation. Second, rules (particularly those on energy efficiency) and administrative procedures are relatively complex. Third, the development of speculative bubbles may be a concern for investors: a sudden decrease of the value of their assets may effectively be disadvantageous to economic agents, as it reduces their consumption, but also their capacity of lending.

Despite the above, LU investors are uniformly positive about the attractiveness of their market as a location for real estate investment. This is mainly due to the low interest rates, which were boosted with the crisis and are expected to keep stable in the next few years.

Article 108 s. 1 of the Swiss Constitution states that "the Confederation shall encourage the construction of housing, the acquisition of the ownership of apartments and houses for the personal use of private individuals, as well as the activities of developers and organizations involved in the construction of public utility housing." Non-profit house providers receive indirect aid under the WFG.

Landlords are not especially encouraged to enter the rental market.

Personal income tax, levied by the confederation and all cantons and municipalities, is the most important type of tax and includes the imputed rent of owner-occupied housing and the income from immovable property, such as the rental income. Expenses related to the earning of income are deductible from the gross income.

The politically controversial tax on imputed rental value was introduced as part of the income tax to grant equal treatment of rental tenants and homeowners. It was aimed at compensating the fact that homeowners could deduct costs related to the use of the property – such as mortgage interest payments and maintenance costs – and in most of the cantons the tenants could not deduct the rent from their taxable income.

Value-adding investments, which entitle the landlord to raise the rent, are generally not deductible, but value-adding *energy efficient* renovations are and entitle the landlord to raise the rent.

Provided that value-preserving investments can be deducted from the taxable income, landlords may optimise tax-savings by investing in rental property and keeping it in good shape, but all in all, renting may well be seen as a less profitable investment option.

3.1.2. Property rights respected *de iure* and *de facto*

	DE	AU	CH	LU
Consequences of delayed payment	Automatic default of tenant[215] Interests on the unpaid rent[216] May lead to termination	May lead to termination in case the period of grace expires	Default on expiry of the deadline and interests due[217]	

[215] 286 I BGB.
[216] 288 I BGB.
[217] S. 102, 2 CO.

Risk of deterioration of dwelling	On the tenant (damage caused by him does not entitle to rent reduction)	On the tenant	On the tenant (damage caused by him does not entitle to rent reduction)[218]	On the tenant
Conditions for eviction	Yes Situation leading to eviction Enforceable documents Compliance with deadlines Bailiff for enforcement Custody of goods Eviction costs (to be paid by tenant)	Yes Situation leading to eviction Enforceable documents Compliance with deadlines Bailiff for enforcement Workmen if necessary Custody of goods (to be paid by tenant)	Yes Regular and summary process[219] Presence of police may be required[220]	Yes Complex process dependent on several factors (grounds of termination; date purchase of dwelling)
Defences against eviction	Reasonable period to vacate the dwelling[221] Irreplaceable disadvantage plus payment of security is defence against eviction[222] No extension of lease	Extension of tenancy or suspension under general rules[223] Snow-flake order prohibits eviction in Winter	Challenge of notice and extension of lease	Extension admitted up to two times Special treatment of families including minors

[218] 259a s. a CO *a contrario.*
[219] 257 s. 1 CPC.
[220] 343 s. 3 CPC.
[221] 721 VI, 94 II, 1 ZPO.
[222] 712 (I), 712 II ZPO.
[223] 42 EO.

Lien or pledge over tenant's belongings	Yes[224] but complex and unpractical Limited to the minimum existence level[225]	Yes, also over co-resident relatives belongings[226] Limited to the minimum existence level[227]	Yes, only for commercial tenancies[228] since 1990	Yes, regulated in Commercial Code
Insurances	Contracted by landlord, transferable to tenant (*Betriebskosten*) Building insurance Personal liability insurance Household insurance Etc	Contracted by landlord, transferable to tenant (*Betriebskosten*) Building insurance Personal liability insurance Household insurance Fire insurance	Contracted by landlord Building insurance Household insurance	Compulsory for tenant Fire insurance Household insurace
Personal need	Yes (personal or professional use, own use or use by relatives), conditioned	Yes (exceptional termination), conditioned (special notice length)	Yes[229] (ex.: renovation works)	Yes (own use or use by relatives), conditioned (special notice length)
Performance in kind	No statutory right Allowed as set-off costs assumed by repairs owed by landlord[230]	No statutory right	No statutory right Allowed as set-off costs assumed by repairs owed by landlord[231]	No statutory right

[224] 562 (I) BGB.
[225] 811 (I) BGB.
[226] 1101 ABGB.
[227] 1101 ABGB.
[228] 268 CO.
[229] 261 s. 2 ff a CO.
[230] 556 b I; 536 II BGB.
[231] 259b s. b. CO.

Subsidisation	(re)construction and modernisation works (ex.: energy efficiency)	(re)construction and modernisation works	Cooperatives receive indirect aid Subsidisation via taxation	Construction grants Energy efficiency related subsidies

The only source of income of the landlord when he enters into a rental agreement is the rent and associated costs which are paid by the tenant. For such reasons, default in rent payment puts profitability at risk and can make the landlord incur significant losses, particularly if the renting activity has been performed for a shorter period.

In DE, AU, LU and CH, landlords incur a different degree of risk as far as default with rent payment is concerned, and this is particularly due to differences in the regulations.

In DE the rent is to be paid at the beginning of each payment period that the parties agreed in the contract (§ 556b (I) BGB), at the latest on the third working day. Most of the times the parties agree that the tenant has to pay the rent every month via bank transfer, and this is often done through standing order.

In case of delayed payment, the tenant is automatically in default (§ 286 (I) BGB). This means that the landlord does not need to issue a warning notice (§ 286 (II no. 1) BGB). For the length of time that the tenant is in default, he must pay interest on the rent (§ 288 (I) BGB), and the default rate of interest per year is 5% above the basic rate of interest. Currently, the basic rate of interest is -3,62 (§ 247 (I) BGB), so that the default rate of interest amounts to 4.62%.

If the tenant (i) is in default, on two successive dates, of paying the rent or a portion of it that is not insignificant or (ii) is in default of paying the rent in a period of time spanning more than two months and in an amount that is as much as the rent amount for two months, then the landlord is after an unheeded warning notice entitled to terminate the tenancy without notice period (§ 543 (II no. 3) BGB).

In AU, § 1100 II ABGB, which is a dispositive rule, provides that the rent of premises has to be paid monthly and is due on the 5th day of the month, but the parties often agree that the rent shall be paid (become available within the landlord's sphere) on the first day of the month.

In case of delayed payment the landlord can demand payment from the tenant and set a reasonable grace period. If the tenant fails to pay the rent within the next rent period and the period of grace expires, there is a "qualified rent delay" (*qualifizierter Mietzinsrückstand*), which entitles the landlord to formlessly declare the immediate termination of the tenancy agreement.

In LU, as in other countries, the main obligation of the tenant is to pay the rent (usually in the first day of the month), and non-payment of the rent justifies an immediate termination by the landlord. Many lease contracts provide a clause according to which the lease contract automatically terminates upon the non-payment of one rent, and case law has been upholding termination even in cases of delayed payment.

The landlord to whom the due rent is not paid can address the court to obtain a declaration of termination of the lease and an order for the tenant to pay the lease arrears. The landlord can also deduct the due rents from the deposit, in case it was invoiced as “upon first demand' guarantee”. These rules apply to social rental agreements and private rental agreements with a public task, according to Art. 1 *in fine* LBUH (*a contrario sensu*).

In CH, contrary to what is common in the other countries of the group under analysis, the rent and accessory charges are considered due at the end of each month (Art. 257c CO), although most often the parties agree on an obligation for advance performance by the tenant. If the rent is owed as a monetary payment, the date agreed upon for payment consists of a deadline for performance according to Art. 102 s. 2 CO; on expiry of the deadline, the obligor is automatically in default and must pay default interests (5% per year, under Art. 104 s. 1 CO).

A usually less frequent – but always possible – risk to the property rights of the landlord is the risk of abuse or deterioration of the house by the tenant.

In DE using the dwelling in conformity with the contract is a secondary obligation arising from the rental agreement, together with the obligation of informing the landlord of a defect (defined according to §§ 536 (I) and (III) BGB and of tolerating the measures required for the maintenance of the dwelling.

Damage caused by the tenant is not regarded as a defect, with the consequence that the landlord maintains his claim for rent to the full extent pursuant to § 326 (II) BGB. The damage caused by third parties will be considered a defect only in case the tenant does not have fault, such as in the case of damage caused by neighbours, thieves or the landlord himself. In this case, the tenant will be allowed to reduce the rent amount.

In AU the tenant may use the dwelling as he pleases, but he must not cause damage to it or contradict the use for which the dwelling was rented.

Both in LU and CH, repairing minor defects or defects caused by him are the responsibility of the tenant. In the case of CH this is provided for by Art. 259 CO and minor defects are to be distinguished from *serious* defects (Art. 259b s. a CO; similar: Art. 258 s. 1 CO) and *major* defects. In LU, where the tenant causes damage to the dwelling while carrying everyday repairs, he will be liable towards the landlord.

In CH, if a defect is attributable to the tenant, he has no claim towards the landlord (Art. 259a s. 1 CO *a contrario*). On the other hand, if there is a major or serious defect, the tenant may require the landlord to reduce the rent proportionately.

In case the tenant does not comply (or does not comply fully with his obligations) the only chance for the landlord to avoid suffering financial and economic losses arising from the rental agreement will often be eviction. Nevertheless, there are diverse social protective rules which limit the cases where certain persons can be evicted.

In DE in any given case there might be the situation of moral hardship for the tenant, special provisions protect the tenant from the enforcement of eviction judgments or settlements. The court may allow the tenant to avert enforcement whenever it would entail a disadvantage for him that it is impossible to compensate or remedy (§ 712 (I) ZPO) or allow enforcement only against provision of security by the landlord (§ 712 (II) ZPO). The court may also grant, *ex officio* or upon a tenant’s request, a reasonable period to vacate the dwelling (§ 721 (I 1) 794a (I 1) ZPO) which must not amount to more than one year (§§ 721 (V 1), 794a (III 1) ZPO).

After this time limit has passed, § 765a (I 1) ZPO allows the court, upon request of the tenant, to reserve, prohibit or temporarily suspend the measure of compulsory enforcement, in case eviction entails a hardship that due to very special circumstances is immoral (such as if the tenant as a life or health threatening disease). In general, impending homelessness does not constitute a hardship in this sense, since the tenant is responsible to find a new dwelling within the period of time set by the court and there exists also public accommodation for homeless persons. Nevertheless, public authorities may intervene and make the judgment temporarily unenforceable by allowing the tenant to continue to occupy the "previous" dwelling.

As a last resort, the tenant may file an action raising an objection to the claim being enforced (*Vollstreckungsabwehrklage*) pursuant to § 767 (I) ZPO.

In case the court grants protection according to any of these provisions, this does not mean that the tenancy contract was prorogued, but only that the right of continuing to occupy the dwelling was authorized. The tenant is therefore in default in his duty of returning the dwelling, and thus the landlord is allowed to demand as compensation the agreed rent or the rent that is customarily paid for comparable items in the locality (§ 546a (I) BGB).

In AU tenants shall usually leave the dwelling within the period of fourteen days after the decision of the court.

When the MRG does not apply, the tenant cannot apply for an extension of the term for eviction before the court decides on it. In case there is already an enforceable court order or settlement, the tenant can benefit from a prolongation of the eviction term or a suspension according to the general rules for challenging foreclosure procedures (§ 42 EO).

When the MRG applies partially or fully and there are "important reasons", the tenant is allowed to apply for an extension of the term up to nine months (§ 34 par. 1 MRG). Furthermore, eviction may be suspended in case a purported subtenant (*Scheinuntermieter*) claims to be accepted as main tenant (*Anerkennung als Hauptmieter*) (§ 34a MRG). In case there is already an enforceable court order or settlement, the tenant can apply for an extension of the clearance period (usually three months) in case of imminent danger of homelessness or other important reasons, provided that the prolongation of the term is also reasonable for the landlord (§ 35 MRG). A prolongation would be unreasonable if the tenant is not able to pay the rent equivalent (*Benützungsentgelt*) for the actual use of the dwelling.

In extraordinary situations, the clearance period can even be prolonged by the court two more times up to a total amount of nine months (§ 35 sentence 3 MRG). If an extension of the clearance term has already been granted, another extension of the clearance period in the foreclosure procedure is lawful only up to a maximum amount of altogether one year (§ 35 sentence 4 MRG).

In the "snow-flake order" (*Schneeflockenerlass*) the Ministry of Justice recommended that tenants should not (or only exceptionally) be evicted in the cold period of the year.

In LU it is possible to delay eviction for one or two periods of three months each, and in CH the only social defences from eviction available are the possibilities to challenge the notice of termination and to request an extension of the lease.

Due to the existence of several real risks to the property rights of the landlord there are several legal mechanisms aimed at protecting or guaranteeing these rights. One of the most current and effective is the deposit.

Deposit in the sense of "*Kaution*"[232] refers to an amount of money intended to be held as security to ensure that the tenant pays the rent and complies with the terms of the tenancy[233]. We will refer to this second meaning.[234]

The request for paying a deposit by the landlord to the tenant is relatively widespread in all four countries under comparison[235], except in CH, where it occurs only in 1/3 of the rental agreements (1999). This is so despite the fact that the deposit is not compulsory in any of the countries.

In AU[236], DE[237] and LU[238], several possible ways of paying the deposit are permitted. In CH, on the other hand, specifically in the field of tenancy law the "landlord must deposit [the amount] in a bank savings or deposit account in the tenant's name"[239].

If it was stipulated that the tenant would pay the deposit before the beginning of the tenancy and he or she does not do it, the landlord can refuse to deliver the rental property to the tenant, claim damages for non-performance or even terminate the agreement[240]. Termination of the agreement can occur as well whenever the deposit could be paid in instalments and the tenant only pays a few of them[241].

Generally, one may consider that the deposit consists of an effective protection of the immovable property of the landlord. Indeed, in every country of this group, it corresponds to a guarantee against every future claim the landlord might have over the tenant based on the tenancy agreement[242], such as a claim for a contractually prohibited or illegal usage of the rented object[243], the lack of payment of rent or the lack of payment of accessory charges[244]. This means that a private landlord can take the rent payment from the amount of the deposit in case the tenant is in arrears[245]. In contrast to AU, where the landlord can dissolve the deposit if the tenant is in arrears (although he/she is not obliged to it), in DE a private landlord cannot simply dissolve the deposit in case the tenant is in arrears (*Zahlungsrückstand*). In general, the landlord is prohibited from

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[232] In legal German, deposit may be used to translate two different concepts. "*Mietzinsreserve*" ("*Mietzinsvorbehalt",* as it is also called in CH or "*Erhaltungs- und Verbesserungsbetrag*", as it is known in AU), where it means the part of the rent which is set aside to cover future necessary maintenance or modernization worksIn LU, art. 5 of the Tenancy Act (*loi 21 septembre 2006*) forbids the fixation of amounts other than the deposit. According to art. 5 IV the costs may be adapted during the performance of the rental agreement.

[233] More specifically, it is a right to secure obligations that the creditor (i.e. the landlord) has over a movable asset of the debtor (tenant) which is relieved from obligations. This right arises at the time of the *traditio*, i.e., when the tenant delivers that asset or makes it available to the landlord.

[234] See Art. 257e CO (CH).

[235] See table 1.

[236] 16b MRG does not mention the bank guarantee, but it is common in practice.

[237] See Cornelius & Rzeznik – National Report for DE, sec. 6.4 and Hofmann – National report for AU, 2014, sec. 6.4.

[238] Thewes, *Le nouveau droit du bail*, ULC: Luxembourg, 2007.

[239] Art. 257e CO § 1. See table 3.

[240] Wehrmüller – National report for CH, 2014, sec. 6.4; Santos Silva – National report for LU, sec. 6.4.

[241] Cornelius & Rzeznik – National Report for DE, sec. 6.4.

[242] See table 2 and Cornelius & Rzeznik – National Report for DE, sec. 6.4.

[243] Hofmann – National report for AU, 2014, sec. 6.4.

[244] Wehrmüller – National report for CH, 2014, sec. 6.4.

[245] LG Mannheim, WuM 1996, 269; BGH, NJW 1972, 625.

making use of the security deposit during the tenancy. Only if he or she has an undisputed, legally recognized or obviously justified claim arising from the tenancy would such dissolution be possible. Therefore, the landlord would have to demand payment and be awarded an executive title by the court (according to the *Deutsche Mieterbund*, Berlin), apply for an order to pay (*Mahnbescheid*) or apply for an enforcement order (*Vollstreckungsbescheid*). After the dissolution of the deposit, the landlord may demand the tenant to replenish it pursuant to § 240 BGB.

In DE the guarantee is narrower within social rental agreements: The deposit is aimed at covering only damage in the dwelling or forborne cosmetic repairs[246], which means that social landlords cannot take the rent payment from the amount of the deposit in case the tenant is in arrears[247]. On the other hand, the tenant is also not allowed to pay rents out of the deposit, even when these relate the remaining payments due before termination of the contract[248].

Table 2 – Payment of deposit

<table>
<tr><th></th><th colspan="2">Private rental agreement</th><th>Social rental agreement</th><th colspan="2">Private rental agreement with a public task</th></tr>
<tr><td>DE</td><td colspan="5">Not compulsory but common practice</td></tr>
<tr><td>CH</td><td colspan="5">Not compulsory</td></tr>
<tr><td>LU</td><td colspan="5">Not-compulsory but common practice</td></tr>
<tr><td rowspan="3">AU</td><td colspan="2">Rental tenancies with a public task</td><td colspan="3">Rental tenancies without a public task / private rental tenancies</td></tr>
<tr><td>Limited-profit rental housing tenancies</td><td>Municipal rental tenancies</td><td>MRG fully applicable</td><td>MRG partially applicable</td><td>MRG not applicable</td></tr>
<tr><td colspan="5">Not compulsory but common practice</td></tr>
</table>

[246] See sec. 9 V WoBindG and Cornelius & Rzeznik – National Report for DE, sec. 6.4.
[247] For the analysis of the deposit within rental housing with a public task see sec. 4.3.2. of this report.
[248] See table 6.

Table 3 - Scope of guarantee

<table>
<tr><td></td><td colspan="2">Private rental agreement</td><td>Social rental agreement</td><td colspan="2">Private rental agreement with a public task</td></tr>
<tr><td>DE</td><td colspan="2">Guarantee for every future claim based on tenancy agreement</td><td colspan="3">Guarantee for damage in dwelling or forborne cosmetic repairs</td></tr>
<tr><td>CH</td><td colspan="5">Guarantee for every future claim based on tenancy agreement</td></tr>
<tr><td>LU</td><td colspan="5">Guarantee for every future claim based on tenancy agreement</td></tr>
<tr><td rowspan="3">AU</td><td colspan="2">Rental tenancies with a public task</td><td colspan="3">Rental tenancies without a public task / private rental tenancies</td></tr>
<tr><td>Limited-profit rental housing tenancies</td><td>Municipal rental tenancies</td><td>MRG fully applicable</td><td>MRG partially applicable</td><td>MRG not applicable</td></tr>
<tr><td colspan="5">Guarantee for every future claim based on tenancy agreement</td></tr>
</table>

Table 4 – Forms of payment of deposit when asked by landlord

<table>
<tr><td></td><td colspan="2">Private rental agreement</td><td>Social rental agreement</td><td colspan="2">Private rental agreement with a public task</td></tr>
<tr><td>DE</td><td colspan="5">Unregulated; tenant entitled to interests</td></tr>
<tr><td>CH</td><td colspan="5">Deposit in bank savings account in tenant’s name + lien on assets; tenant entitled to interests</td></tr>
<tr><td>LU</td><td colspan="5">Unregulated (usually landlord entitled to interests)</td></tr>
<tr><td rowspan="3">AU</td><td colspan="2">Rental tenancies with a public task</td><td colspan="3">Rental tenancies without a public task / private rental tenancies</td></tr>
<tr><td>Limited-profit rental housing tenancies</td><td>Municipal rental tenancies</td><td>MRG fully applicable</td><td>MRG partially applicable</td><td>MRG not applicable</td></tr>
<tr><td colspan="4">Cash, surrender of bankbook (16b MRG) or bank guarantee (tenant entitled to interests)</td><td>Unregulated (tenant entitled to interests)</td></tr>
</table>

The deposit has been an effective guarantee of the landlord’s premises and it is allowed in all four countries under comparison.

A slightly different situation is that of liens and pledges on the tenant’s belongings, which are allowed in only some of the four countries. For example, the special lien of the landlord of residential premises previously available under Swiss law was abolished with the new tenancy law of 1990, and now only the landlord of commercial premises has a special lien on chattels located on the leased premises (Art. 268 CO).

In DE, although it is often complex, useless and of little practical importance, the law in force provides the landlord a right of lien (*Vermieterpfandrecht*) over the things brought into the dwelling by the tenant (§ 562 (I) BGB). This right may not be asserted for future compensation claims and for rent for periods subsequent to the following years

of the tenancy.[249] Furthermore, it does not extend to the things that are not subject to attachment (*Pfändung*). These are namely, under § 811 (I) ZPO, things serving the tenant's personal use or his household, food, fuel for heating and cooking, and means of lighting needed by the tenant and remaining household members for the period of four weeks. The right of lien is extinguished upon the removal of the things (§ 562a BGB) or provision of security (*Sicherheitsleistung*) by the tenant (§ 562c BGB), although the landlord can try to enforce his right under § 562b (I) BGB[250].

As in DE, in AU the landlord also has a lien over all moveable property of the tenant and co-resident relatives (*gesetzliches Bestandgeberpfandrecht*, § 1101 ABGB). This includes money and in general every movable which is above the minimum subsistence level (*Existenzminimum*).

The lien secures both the payment of the rent and the payment of overheads, taxes and other costs and expenses considered as performance of the tenant in return for the use of the dwelling. To enforce his lien a landlord usually files a request for attachment of property (*Antrag auf pfandweise Beschreibung)* together with a claim for rent payment and for eviction (*Mietzins- und Räumungsklage*).

Liens & pledges	DE	AU	CH	LU
Admissibility	Yes (movables and claims) – 562 I BGB	Yes (movables) – 1101 ABGB	No (abolished 1990) Yes for commercial tenancies (268 CO)	Yes (Commercial Code)
Scope	Things listed in 811 I ZPO	Above *Existenzminimum*		
Specificities	Removable by the tenant against provision of security (562c BGB)			

One of the methods of guaranteeing the property rights of the landlord which are also permitted inclusion in rental agreements in LU and CH is personal securities.

In LU personal guarantees are one of the three methods available to guarantee payment, besides bank guarantee and the deposit. Whereas the deposit is so far the most ubiquitous, the bank guarantee is considered a less favourable option for the tenant, due to the time-consuming administrative procedures it implies and the need of paying for a commission. Personal securities are admitted in the field of tenancy law up

[249] WiP.
[250] Cornelius & Rzeznik – National Report for DE, sec. 6.4.

to the point that the lease can be guaranteed by a third party, who is usually a family member or a friend. Nevertheless, the validity of this option is controversial, and therefore, it is generally not recommended (*cautionnement entre privés*).

In CH, only the deposit in cash or negotiable securities are especially regulated by federal tenancy law, namely in the Code of Obligations. However, the cantons are free to enact further provisions (e.g. additional provisions on the deposit) subjecting other forms of security to restrictions or excluding some forms of security. As far as the latter is concerned, some cantons have excluded the guarantee of performance by third party when, as a rule, this could have otherwise been provided for in the contract and legally admitted.[251]

Personal securities	DE	AU	CH	LU
Admissibility	Yes (*Bürge*) – 232 BGB	N.A.	Yes but some cantons exclude it	Yes but validity controversial

Provided that during the performance of the rental agreement the landlord is deprived of having access to the dwelling, it is usually advised that tenants or landlord conclude insurance contracts, which would protect the landlord against damage caused to his dwelling and protect tenant from liability, particularly when it is a luxurious dwelling or when the dwelling is furnished.

In DE insurance is concluded by both parties to the rental agreement. As far as the tenant is concerned, he is advised to concluded household insurance, private third party liability insurance (§§100-124 Insurance Contract Act), glass insurance and legal protection insurance (125-129 WG). None of these types of insurance is compulsory for the tenant. The landlord, in his turn, must contract building insurance, building liability insurance and independent household insurance[252].

In AU there are also several types of insurance connected to housing[253]. Usually they are concluded by the landlord, but, in practise, they are paid by the tenant through the payment of general expenses connected to the rental agreement. Among these types of insurance are insurance of the building, fire insurance, tap water damage insurance, fire alarm systems[254] and third party liability insurance. Particularly important is household insurance (*Haushaltsversicherung*), which is sometimes imposed in the rental agreement[255].

Similar to in AU, in LU the most common types of insurance are fire insurance, insurance against losses caused by floods and insurance for tenancy losses. Fire

[251] WiP.
[252] Cornelius & Rzeznik – National Report for DE, sec. 2.4.
[253] § 21, 1, fig. 4,5,6, MRG.
[254] MietSlg 45.311.
[255] Hofmann – National Report for AU, sec. 2.4.

insurance is particularly relevant because, although it is not compulsory, it is strongly advisable to the tenant to have it: He will be responsible, in principle, for losses caused by fire in the dwelling[256].

In CH the property rights of the owner are protected, but it is the landlord himself who must contract the insurance policies, namely building insurance (mandatory), personal liability insurance (not compulsory) and household insurance. As far as the latter is concerned, it is more expensive for homeowners because damage done by tenants is covered by private liability insurance[257].

One of the aspects having direct implications on the protection of the property rights of landlords is the possibility for the landlord to terminate the rental agreement in case he needs the dwelling for personal use, the use of close relatives or another economic use. In this aspect, regulations differ significantly among countries, and these four countries under analysis are no exception.

In DE, the landlord is able to terminate the rental agreement in case he proves that he needs the premises for himself, members of his family or his household[258]. This need may be personal or professional[259]. On the one hand, the BGH has been considering a broad notion of family for this purpose, which is an advantage for the landlord: On the other hand, however, regulations are tendentially protective of the tenant. Courts have held, for example, that the intention to use the dwelling only for a few months is insufficient[260] to have a justification to terminate the rental agreement. Also, in case the landlord has another suitable dwelling in the same house or housing complex which is available for rent, he is obliged to offer it to the tenant as replacement accommodation[261]. Moreover, termination for personal needs is finally regarded as an abuse of rights if the landlord could have foreseen his needs at the time of concluding the tenancy contract[262] (applicable only when notice is given within the first three years of the tenancy)[263].

In AU, whenever the MRG applies, subleases may be terminated by the main tenant in case he needs the dwelling for his own or his relatives.

In LU termination is only legally possible in the cases foreseen by Art. 12-2 of the LBUH with a notice of three months (Art. 1736 CC). The landlord is allowed to terminate the agreement based upon personal reasons (personal need or need of relatives by blood or affinity until third degree). As in DE, the concept of “relative” is a relatively broad one, and the landlord is allowed to terminate the agreement even when he (or his relatives) do not want to live but only occupy the dwelling (for example, through the deposit of furniture). However, although occupation must not be permanent, it must be effective[264]. Whenever the landlord intends to terminate the rental agreement based upon personal reasons, an extraordinary notice period applies, namely, of six months (Art. 12-3 LBUH). Besides the obligation of warning the tenant of his intention of

[256] Santos Silva – National Report for LU, sec. 2.4.
[257] „Der beste Schutz für Ihre Siebensache“, K-Tipp, 9/2002 (1 May 2002). WiP.
[258] Art. 573 II BGB.
[259] BGH, NZM 2005, 943; BGH, NZM 2013, 22.
[260] Cf. BayObIG, NJW-RR 1993, 979 (980): AG Cologne, WuM 1992, 250 (2 years not enough).
[261] BGH, NJW 2010, 3775; NJW 2003, 2604.
[262] BGH, NZM 2013, 419; to date 5 years were assumed: BGH, NJW 2009, 1139 (1140) with further references.
[263] Cornelius & Rzeznik – National Report for DE, sec. 2.4.
[264] Santos Silva – National report for LU, sec. 6.6.

terminating the contract a half of year in advance, the landlord must also occupy the dwelling within three months after the tenant vacates it. This period is however suspended in case of renovation or transformation works.

As in the other three countries, in CH the landlord can also terminate the agreement for personal reasons[265], based on art. 261 s 2ss a CO[266]. Such is also the case when the landlord needs to carry out renovation works.

The lack of performance of the rental agreement implies the opening of an eviction procedure, which is shorter in some cases than in others, depending on whether the particular national legislation is more or less protective of the tenant.

Besides the possibility to bring cases concerning tenancy law to courts[267], there are ways to get an out-of-court settlement (*Vergleich*) between tenant and landlord in DE. On the one hand, there are conciliation boards (*Schlichtungsstellen*) founded by tenants and landlords associations. On the other hand, practitioners offer mediation as a method to settle disputes amicably[268]. The results of these procedures, however, are not enforceable. Beyond that, § 15a of the Introductory Act to the Civil Procedure Code (*Einführungsgesetz zur Zivilprozessordnung*[269] empowers the *Länder* to establish a mandatory pre-trial conciliation process for pecuniary disputes if the amount in dispute is less than EUR 750. Certain cases, especially those which concern rent increases or accountings of service charges, lend themselves to conciliations, while claims for eviction are not really suitable[270].

In AU, in proceedings which have as their object rights *in rem*, immovable property or tenancies of immovable property, the ordinary court (*Bezirksgericht*, District Court) generally has exclusive jurisdiction *rationae materiae* (§ 49 par. 2 lit. 5 *Jurisdiktionsnorm* 1895 (JN), § 37 par. 1 MRG). In some municipalities arbitration boards for housing (*Schlichtungsstellen*) are authorized to settle specific tenancy law cases in first instance. These arbitrational boards are only competent to settle cases in which the MRG is fully applicable and which are explicitly listed there.

In LU tenancy disputes are usually handled by the court of peace (*tribunal de paix*) of the municipality where the rented dwelling is located (Art. 19 of the LBUH) with possibility of appeal to the District Court (*tribunal d'arrondissement*). At the municipal level, the Rents Commission (and, subsidiarily, the justice of peace) is competent for disputes on the determination of the rent.

In general, prior to litigation an attempt at conciliation before a conciliation authority is mandatory in CH (Art. 197 CPC). For disputes relating to the lease of residential (or business) premises, there are special joint conciliation authorities (*paritätische Schlichtungsbehörde*), including a representative of tenants and a representative of landlords (Art. 200 s. 1 CPC) providing legal advice to the parties (Art. 201 s. 2 CO).

Exceptions to the principle of attempting conciliation before litigation are listed in Art. 198 CPC, and among them are actions for eviction, which can be made without conciliation (Art. 257 CPC) and "financial disputes with a value in dispute of at least

[265] Boligøkonomisk Videncenter, The Private rental Sector in the New Century - A Comparative Approach, 193 & 195.
[266] Rohrbach, 12.
[267] Cornelius & Rzeznik – National Report for DE, sec. 6.1.
[268] *Mediationsgesetz* of 21-07-2012 (BGBl. I 1577).
[269] Gesetz, betreffend die Einführung der Zivilprozessordnung of 30-01-01 – 1877 (BGBl 244).
[270] Cornelius & Rzeznik – National Report for DE, sec. 6.8.

100,000 CHF" (Art. 199 CPC). The parties are also free to replace the conciliation proceedings by mediation (Art. 213 s. 1 CPC)[271].

A particular case which brings judicial specificities and usually (overly) complex procedures is that of eviction.

In CH there are two different procedures leading to eviction: the regular and the summary one, and the landlord can only access directly courts through the latter (257 s. 1 CPC)[272].

Both in DE and AU the access to the court to start an eviction procedure depends on the confirmation of legal enforceability of documents or court orders[273]. Local courts (district courts) are competent for deciding on these claims[274]. The practical enforcement is provided for by bailiffs, who enters and seizes the goods subject to compulsory enforcement and delivers or stores the remaining ones[275]. In DE the bailiff must warn the tenant three weeks in advance of his visit.

In LU, where – unlike the remaining countries of this group – the eviction procedure is regulated by only one legal document, the procedure for eviction is the most complex, because it depends on the grounds of termination, on whether the landlord had purchased the dwellings in the preceding three months and on whether the tenant had asked for a delay of the procedure. These conditions influence the time for which the tenant is authorized to obtain a delay, which can range from three to eighteen months.

Asking for a delay of the eviction procedure is a prerogative generally available to the tenant in all four countries.

In AU and in CH, this right should be exercised under the general terms[276].

Whereas when the MRG is not applicable, the tenant can ask for a delay of the eviction only after the eviction order is taken judicially, whenever the MRG applies partially or fully the tenant can already ask for a delay of up to nine months based on "important reasons" (§ 34, s. 1 MRG). A particular protective measure for tenants consists of the "snow-flake order" from the Ministry of Justice, which recommends that tenants are not evicted in winter months. Provided that DE, CH and LU are traditionally snowy countries from November to February, it would be advisable that similar measures be adopted also, even if – as in AU – they are not legally enforceable (yet).

In eviction procedures the movable goods seized by German and Austrian bailiffs are a relevant part of the security procedures related to rental agreements.

The question of securities is transversal to the field of tenancy law. It is one of the most important sub-topics, for it influences the real estate market and the decision of consumers in the time of buying or renting is the availability of mortgage credit.

In contrast to the EU tendency, the Swiss mortgage and real estate market has grown significantly for the last years, and one cannot say it suffered a real estate crisis. Nevertheless, two relevant restrictive measures on mortgages were registered. First, the Federal Council activated a counter-cyclical capital buffer in February 2013, which makes mortgage credit less attractive for banks, when compared to the provision of

[271] WiP.
[272] Wehrmüller – National report for CH, 2014, sec. 6.7.
[273] See, for DE, 574 ss BGB s. 708 (7) ZPO, 724 (I) ZPO.
[274] 764 (I) BGB and 764 II ZPO apply in DE. See, for AU, Tanczos, *Mietrecht Kompakt* 2012[2], 202.
[275] In AU, §§ 253 ss and 349 (1) apply. See also Tanczos, Mietrecht Kompakt (2012)[2], 211 ss and Lurger et al. EUI Tenancy Law project, AUn report (2004), 24. In DE, see 753 (I) ZPO.
[276] For AU see § 42 EO. See also Wehrmüller – National report for CH, 2014, sec. 6.7 for CH.

other credits. Second, since mid-2012 the banks can provide a mortgage loan only if the borrower invests at least ten percent of his own, non-pension fund assets[277].

The lack of (affordable) housing has been a major concern of public authorities who, particularly in the current times of crisis, are unable to finance on their own the necessary construction and rehabilitation projects. For such reason, there are public subsidies to allow privates to do so.

In all four countries there are public subsidies directed at promoting (re)construction and modernization of the housing stock.

While in AU these differ according to the states[278], in DE homeowners receive subsidies from the Reconstruction Credit Institute for doing special investments in the dwellings, such as energy-efficiency measures[279]. The concern with energy efficiency has been very present in Luxembourgish public policies too, which provide for particular subsidies for homeowners willing to improve their dwellings as far as energy use is concerned, besides other general construction grants[280]. In CH cooperatives receive indirect aid under the WFG, and home-owners benefit from a reduced tax on the financing funds[281].

The financing of housing, however, not only places difficulties on those who are investing in its construction and who are usually relatively financially stable collective or private entities. It affects particularly tenants as well, who often are people who cannot afford to purchase their own dwelling. Still, and particularly in the countries under comparison, rents can be significant as opposed to the available income, and thus some tenants attempt to convince landlords to pay, fully or partially, in kind, namely through reparations to the dwelling. Sometimes tenants are given a statutory right to such payment, but that is not the case in DE, AU, CH or LU.

Indeed, in all four countries under comparison, the tenant does not have a statutory right to performance in kind, e.g., through the rehabilitation of the contract, in lieu of payment of rent, but that is allowed provided that the landlord agrees[282].

Nevertheless, in DE the tenant is entitled in certain circumstances to a statutory right of set-off right against the claim for rent pursuant to § 556 b I BGB. This rule relates to the reimbursement of expenses in the case where the tenant remedied a defect because the landlord was in default in remedying the defect or because an immediate remedy was necessary to preserve or restore the state of the rented property (§ 536 II BGB).

This situation slightly resembles what happens also in CH, where, whenever the landlord would be obliged to repair a defect and fails to do so, the tenant may arrange for the defect to be repaired at the landlord‘s expense (259b s.b. CO). Moreover, the tenant may set off other claims he has towards the landlord against rent that he owes[283].

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[277] WiP.
[278] Hofmann – National Report for AU, sec. 3.6.
[279] See Cornelius & Rzeznik – National Report for DE, sec. 3.6.
[280] Santos Silva – National Report for LU, sec. 3.6.
[281] Wehrmüller – National Report for CH, 2014, sec. 3.6.
[282] See Cornelius & Rzeznik – National Report for DE, sec. 6.4; Hofmann – National Report for AU, sec. 6.4.; Santos Silva – National report for LU, sec. 6.4.; Wehrmüller – National report for CH, 2014, sec. 6.4.
[283] WiP.

3.2 Important evaluative criteria for the tenant

3.2.1. Affordability

Table 5[284]

	DE	AU	CH	LU
Regulation of initial rent	Freedom of contract Rent regulation for renting with public task	Freedom of contract Rent regulation when MRG does not apply when fixed flat rent agreed upon	Freedom of contract but unfair rents are revisable on initiative of tenant within a certain time frame	
Regulation of rent increase	Whenever not provided for by the contract[285], conditioned to: - Rent unchanged 15 months - Energy saving or improvement works - Written justification[286] - Approval of tenant[287]	General conditions on ABGB apply (MRG not applicable)	No conditions in open-ended contracts but revisable on initiative of tenant[288] Admitted in every contract after energy efficiency enhancement works	
Deposit[289]	No advanced payment			
	Covers all claims arising from tenancy			
	Payment in instalments a	Payment in instalments	Payment in instalments	

[284] For regulation of expenses and regulation of repairs see table 1.
[285] § 557a and 557b BGB.
[286] § 126 b BGB.
[287] Except § 558 b (I) BGB.
[288] § 20 a sec. 1 CO.
[289] In AU the regulation for agreements to which the MGR does not apply or applies partially is considered minimal and for CH it only exists for deposits in cash or negotiable securities. For further details see tables 6 ff.

	right of tenant	possible if landlord agrees	possible if landlord agrees (security deposit insurance as functional equivalent)	
	Up to three months rent (excluding accessory charges)	Up to six months rent including utilities and charges (case law), when MRG applies partially or does not apply	Up to three months rent (including accessory charges)	
	Upon performance no time limit for return	Upon performance returnable within reasonable delay	Upon performance returnable within a year	
	Landlord must deposit in *Treuhandkonto* or savings, usually in tenant's name put in pledge for landlord benefit	Landlord must deposit in savings account in tenant's name put in pledge for landlord benefit (*pignus irregulare*)	Landlord must deposit in bank savings or deposit account in tenant's name with lien of landlord over assets	
	Tenant entitled to income			
	Prescription of claim after three years	Prescription within 30 years[290] (MRG not applicable)	No prescription of claim	
Subsidies to worse-off tenants	See sec. "Subsidisation"	See sec. "Subsidisation"	See sec. "Subsidisation"	

[290] §1479 ABGB.

The main obligation of a tenant in a rental agreement consists of paying the rent. This is also the biggest regular expense that the tenant must make in order to perform the contract and not be evicted. Affordability for the tenant is tendentially boosted by national regulations which limit the amount of the rents or the respective increase, but these regulations are not found in every country in this group.

Initial rents have usually a different regime according to whether we are speaking of rental housing with or without a public task.

In DE, there is no system of rent control in housing without[291] a public task (private rental market plus cooperatives), and only general contract rules (as well as criminal rules) apply. This situation is similar in AU and CH, where rents can usually be determined freely by the parties but different from LU, where the initial rent may not surpass 5% of the capital invested by the landlord in the dwelling[292]. In DE tenancy contracts may include clauses on rent increase concerning future changes in the amount of rent. Those are the cases of stepped rent (557a) and indexed rent (557b). The first relates an automatic increase clause by which the rent is fixed in varying amounts for specific periods of time. The second is a written agreement by which the rent is determined by means of the price index for the cost of living of all private households in DE. While any of them are applicable, the rent must remain unchanged for one year.

In AU one must distinguish more specifically between cases where the MRG is not applicable or applicable partially, on the one hand, and the cases where the MRG is fully applicable. In the first group, whenever the parties have agreed on a fixed flat rent, the rent can only be exceptionally increased by request of the landlord if the general expenses and public charges have increased during several years. In the second group, i.e., when the MGR is fully applicable, only within the strict limits of § 16 MGR will a rent increase be possible; any part exceeding the regular amount would be void[293].

In LU the landlord can increase the rent and to do so must inform the tenant in writing of his reasons for the increase. Nevertheless, he cannot do so in the first six months of the contract (8, 1 LBUH) or in case two years have not elapsed since the last increase. The request for rent increase follows a specific procedure[294].

In CH, despite the free determination of the amounts of rents, an unfair rent is revisable within a certain period of time, but the tenant can challenge it whenever it is deemed “unfair”[295].

Tenants are expected to pay a deposit of similar forms of security in any of these countries[296] for the protection of the landlord against any claim he might have against

[291] In the housing with a public task, however, landlords can only demand rents which cover current expenditures with a maximum permitted amount determined by the premise to grant public funds. See Cornelius & Rzeznik – National Report for DE, sec. 6.4.

[292] Rents may be as well determined by the Rents Commission as far as private rental housing is concerned. To public rental agreements the LBUH does not apply: rents are calculated according to the available annual net income of the household and the main surface area. See Santos Silva – National Report for LU, sec. 6.4.

[293] For details see Hofmann – National Report for AU, sec. 6.4.

[294] Santos Silva – National Report for LU, sec. 6.4.

[295] Tenants can also challenge the initial rent in emergency situations and where the new rent is significantly higher than the previous one. For details see Wehrmüller – National Report on CH, sec. 6.4. WiP.

the tenant, including rent arrears. Paying a deposit is very often a significant financial burden on tenants, who often must invest several hundred or even thousand euros to be able to start living in a rental dwelling. Besides, as was referred to supra, the deposit does not serve as advance payment of rent in any of the countries compared here[297].

The security deposit is regulated for the private rental sector in all four legal systems[298], although regulation is minimal in LU (where only the maximum amount of the deposit is fixed)[299] and in AU, whenever the MRG does not apply or applies only partially[300].

From the perspective of affordability, there is no form of payment[301] which is generally considered as more affordable. Bank transfer or cash is usually the most economical way of guaranteeing a lease[302].

Instead of paying a deposit as security for the dwelling, recently the possibility to conclude a security deposit insurance policy grows in popularity in CH: Instead of paying a large sum at once, the tenant pays regular contributions to the guarantor, who, in return, guarantees free payment to the landlord up to the amount of the security deposit. Despite the name, the security deposit insurance is not an actual insurance but rather a guarantee (*Bürgschaft*) which often non-transparently and misleadingly implies costs for the tenant[303]: the tenant pays, but if the insurance company must pay to the landlord, it will return to the tenant asking that same amount. Tenant associations are thus very critical[304].

In all legal systems except AU when the MRG applies and in LU when the rental agreement concerns a luxurious dwelling, the deposit cannot surpass the amount equivalent to three months' rent (including accessory charges in CH and AU and excluding them in DE)[305]. The MRG does not provide any limits for the legal amount of the deposit, and, if it is fully applicable, the amount of the deposit has to be in an adequate relation to the guarantee interests of the landlord[306], depending on the property value and the size of the dwelling. An amount of deposit up to six months' rent including utilities and taxes has been accepted by the OGH.[307]

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[296] That is the case of liens in movable things (*Verpfandung von Wertsachen*), government bond (*Bundesanleihe*), bank guarantee (*Bankbürgschaft*) in DE (see § 232 BGB and Cornelius & Rzeznik – National Report for DE, 2014, sec. 6.4.), joint or several liability, contract of surety, etc. in CH (Wehrmüller – National report for CH, 2014, sec. 6.4) and third party guarantee in LU (Santos Silva – National Report for LU, 2014, sec. 6.4). See table 9.

[297] See table 6.

[298] See table 4. In the case of CH, only deposit in cash or negotiable securities is regulated. See Wehrmüller – National Report for CH, 2014, sec. 6.4.

[299] Santos Silva – National Report for LU, 2014, sec. 6.4.

[300] Legal limits for extraordinarily high deposits exist only with reference to general provisions of private law (§ 879 I and III ABGB).

[301] See table 5.

[302] See Santos Silva – National Report for LU, 2014, sec. 6.4.

[303] "Das Geschäft mit klammen Mietern", Neue Bürcher Zeitung, 16.09.2014, http://www.nzz.ch/finanzen/das-geschaeft-mit-klammen-mietern-1.18383561 (last retrieved: 30.09.2014).

[304] See "Kaution garantiert, Geld garantiert weg", derstandard.at, http://derstandard.at/1319182294678/Neue-Variante-Kaution-garantiert-Geld-garantiert-weg (last retrieved: 30.09.2014), on the services provided by a AUn start-up.

[305] § 551 I BGB (DE); 5 II of the Tenancy Act (LU) and Art. 257e CO § 8 (CH). See table 7.

[306] See OGH 9 Ob160/02y; OGH 6 Ob13/08t.

[307] *Prader*, MRG[4.01] § 16 b Anm 1.

In DE the tenant is entitled to pay the deposit in three equal monthly instalments. This is also possible in the remaining countries but under the condition that the landlord agrees. DE is thus more tenant-protective in this regard.

A functional equivalent to the payment in instalments is to be found in CH, through the already mentioned "security deposit insurance".

Particular attention is also given to the way that landlord shall preserve the deposit.

In DE, when the deposit is paid in cash, the landlord must invest it in a separate bank account (at the usual rate of interest) with a notice period of three months[308].

Usually the savings is in the name of the tenant but put in pledge for the landlord's benefit. The tenant is also entitled to receive all the information on the account[309]. Other forms of investments are allowed if kept separate from the assets of the landlord, usually in the form of a trust account (*Treuhandkonto*). The tenant is entitled to the income[310]. Moreover, in the event of insolvency of their landlord, tenants are allowed to suspend rent payments until the amount of the deposit paid is safe from bankruptcy[311].

In AU when the MRG applies fully and the deposit is paid in cash, the landlord is obliged to invest the money in a bank savings account (in name of the tenant but in the property of the landlord as *pignus irregulare*). There is no such thing as a deposit account. The tenant is entitled to receive all the information on the account[312]. The deposit in AU is invested in the name of the tenant who also receives the interest. Other forms of investments are allowed if these forms offer at least the same guarantees and interest for the invested money as a bank savings account and a separation of the property[313] of the landlord is possible in case of bankruptcy[314].

In CH the deposit shall be invested in a bank savings or deposit account (*Mietzinskautionskonto*) in the tenant's name (and thus belonging to the patrimony of the tenant)[315]. The security deposit is considered a "deposit with a third party (the Bank) made as a precaution". The landlord then has a lien (*Pfandrecht*) on these assets.[316] It is therefore not an irregular lien (by which the debtor transfers to the creditor a *vertretbare Sache*). The interest on the deposit is owed to the tenant.[317]

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[308] 551 (III) BGB.

[309] According to the *Verbraucherzentrale Mecklenburg-Vorpommern* (Schwerin). See "Bessere Zinsen für Mietkaution", Süddeutsche.de, 10.05.2010, http://www.sueddeutsche.de/geld/produktvergleich-bessere-zinsen-fuer-mietkaution-1.558782 (last retrieved: 30.09.2014). See also "Mietrecht. So zügelt die Kaution mit Ihnen", *Beobachter* http://www.beobachter.ch/wohnen/umzug/artikel/mietrecht_so-zuegelt-die-kaution-mit-ihnen/ (last retrieved: 30.09.2014).

[310] "Wann muss der Vermieter die Kaution zurückzahlen?", in Süddeutsche.de, 11.05.2010, http://www.sueddeutsche.de/geld/-frage-wann-muss-der-vermieter-die-kaution-zurueckzahlen-1.562482 (last retrieved: 30.09.2014). This is not so, however, when the tenants are students.

[311] Bundesgerichtshof Karlsruhe (Az.: VIII ZR 336/08). "Zahlen nicht um jeden Preis", Süddeutsche.de, 17.05.2010, http://www.sueddeutsche.de/geld/mietkaution-zahlen-nicht-um-jeden-preis-1.47969 (last retrieved: 30.09.2014).

[312] § 16b I sentence 2 MRG.

[313] See table 8.

[314] § 16b I sentence 3 MRG.

[315] Before the expiry of the time period, the bank may only release the security (to the tenant or to the landlord): with the consent of both parties; in compliance with a final payment order; or in compliance with a final decision of the court (art. 257e III CO). See Wehrmüller – National report for CH, 2014, sec. 6.4.

[316] Heinrich, *CHK Miete*, Art. 257e CO § 4; Weber, *BSK OR*, Art. 257e CO § 4.

[317] Lachat et al., *Mietrecht für die Praxis*, 264.

In LU and AU (whenever the MRG does not apply or applies only partially) the law does not regulate the way that the landlord shall manage the deposit. So, this will depend on the terms of the tenancy agreement, but in LU, the tenant is most of the time not entitled to interests.

Tenancy law imposes that the return of the deposit (plus interest from a bank deposit) should occur as soon as the deposit fulfilled its role: that usually happens when the tenant paid all rents and costs and no losses (or only use-related losses) to the premises where caused.

As for that same recovery upon regular performance of the rental agreement by the tenant, there is no time limit for the landlord to return the amount in DE (except for when a new tenant takes possession of the premises, in which case the deposit must be returned to former tenant first[318]) and in LU. This is not the case in CH, where the landlord must return the deposit at the latest within a year (and usually occurs within a month)[319], and in AU, where he or she must do it *immediately* upon termination of the contract[320], which shall be understood as "within a reasonable delay". After the deposit is paid back to the tenant, the latter can no longer be asked to return the deposit[321].

In case there were losses irregularly caused to the premises, the landlord writes a losses protocol. Only after obtaining the authorisation of the tenant, the landlord may invest the deposit or part of it to repair such losses. If the tenant does not authorise it, the deposit will remain blocked up to the moment where an arbitration committee will intervene on the case.

In case the landlord irregularly retains the deposit, the tenant may resort to arbitration mechanisms (competent District Court *Bezirksgericht*). In CH, the tenant can be made to wait for up to one year after the termination of the contract, after which he or she may withdraw it without consent of the landlord (if no claim has been brought against the tenant by the landlord within this time period). In AU, in case the tenant provided the deposit in cash, he or she can submit a claim aimed at determination of the amount which should be paid back within non-adversarial proceedings in court (*Ausserstreitverfahren*).

The return of the deposit is an important aspect which very often influences the ability of the tenant to enter into another tenancy agreement. Indeed, a significant number of tenants attempt to pay the deposit of the new rental dwelling with the deposit of the old rental dwelling[322]. In this regard, it would be advisable that a deadline be established for the return of the deposit.

The tenant's claim for return of the deposit prescribes after three years[323] calculated not from the end of the contract but from the emergence of the right to

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[318] This seems to be so in practice (see "Wann muss der Vermieter die Kaution zurückzahlen?", in Süddeutsche.de, 11.05.2010, http://www.sueddeutsche.de/geld/-frage-wann-muss-der-vermieter-die-kaution-zurueckzahlen-1.562482 [last retrieved: 30.09.2014]) but so far there is no case law available in the topic).

[319] Wehrmüller – National Report for CH, 2014, sec. 6.4.

[320] Hofmann – National Report for AU, 2014, sec. 6.4. See table 9.

[321] Wann muss der Vermieter die Kaution zurückzahlen?", in Süddeutsche.de, 11.05.2010, http://www.sueddeutsche.de/geld/-frage-wann-muss-der-vermieter-die-kaution-zurueckzahlen-1.562482 (last retrieved: 30.09.2014). For further references see 3.2.1 Affordability, Regulation of deposit.

[322] "Kein Geld zurück", in Süddeutsche.de, http://www.sueddeutsche.de/geld/einbehaltene-mietkautionen-kein-geld-zurueck-1.171728 (last retrieved: 30.09.2014).

[323] General prescription period, § 195 BGB.

repayment of the deposit, i.e. when the landlord can conclude whether he is entitled to the deposit[324]. This, however, does not happen in CH. Indeed, as the deposit belongs to the patrimony of the tenant, he or she does not have any claim against the landlord which could prescribe. The tenant has a claim against the bank, as does any other person who has a savings account. In AU, according to general rules, contractual claims prescribe after 30 years according to § 1479 ABGB (non-applicability of MRG) and after 3 years according to § 27 par. 3 MRG (full or partial applicability of the MRG). Finally, in LU there is a special prescription of 5 years for rents and charges (the common prescription foreseen by the Civil Code is 30 years).
For the credit on the deposit, there is no special prescription indicated specifically in the tenancy law, but it would be advisable to not wait more than 5 years for such a claim.

Table 6 – Forms of payment of deposit when asked by landlord

<table>
<tr><td></td><td colspan="2">Private rental agreement</td><td>Social rental agreement</td><td colspan="2">Private rental agreement with a public task</td></tr>
<tr><td>DE</td><td colspan="5">Unregulated; tenant entitled to interests</td></tr>
<tr><td>CH</td><td colspan="5">Deposit in bank savings account in tenant’s name + lien on assets; tenant entitled to interests</td></tr>
<tr><td>LU</td><td colspan="5">Unregulated (usually landlord entitled to interests)</td></tr>
<tr><td rowspan="3">AU</td><td colspan="2">Rental tenancies with a public task</td><td colspan="3">Rental tenancies without a public task / private rental tenancies</td></tr>
<tr><td>Limited-profit rental housing tenancies</td><td>Municipal rental tenancies</td><td>MRG fully applicable</td><td>MRG partially applicable</td><td>MRG not applicable</td></tr>
<tr><td colspan="4">Cash, surrender of bankbook (16b MRG) or bank guarantee (tenant entitled to interests)</td><td>Unregulated (tenant entitled to interests)</td></tr>
</table>

Table 7 - Advance payment?

DE	No advance payment
CH	
LU	
AU	

[324] OLG Düsseldorf, NZM 2005, 783. Landgericht Oldenburg (Az.: 4 T 93/13).

Table 8 - Regulation of amount

	Private rental agreement		
DE	3 months of rent excluding charges – right to instalments		
CH	3 months (including charges)		
LU AU	3 months; no limit for luxurious residences		
	Rental tenancies without a public task / private rental tenancies		
	MRG fully applicable	MRG partially applicable	MRG not applicable
	6 months (including utilities and taxes) "adequate relation to the guarantee interests of the landlord"	No limits except general contract law exist (usuary, *laesio enormis* etc.)	

Table 9 - Preservation of amount

	Private rental agreement		
DE	Bank savings account in name of tenant with lien of landlord on assets[325] Other investments if separate assets Interests to tenant		
CH	Bank savings account or deposit account in name of tenant with lien of landlord on assets Interests to tenant		
LU	Freedom of contract Interests to landlord		
AU	Rental tenancies without a public task / private rental tenancies		
	MRG fully applicable	MRG partially applicable	MRG not applicable
	Bank savings account in name of tenant with lien of landlord on assets Other investments if separate assets Interests to tenant		

Table 10 - Return deposit: timeframe

	Private rental agreement		
DE	No time limit (usually <6 months)		
CH	One year (usually 1 month)		
LU	No time limit		
AU	Rental tenancies without a public task / private rental tenancies		
	MRG fully applicable	MRG partially applicable	MRG not applicable
	Immediately (i.e. within reasonable delay)		

Another aspect which influences affordability concerns the regulation of expenses. In this field, national statutory provisions which provide that the landlord shall be responsible for assuming the dwelling related expenses are often merely a façade.

[325] In case of a deposit in cash.

In DE, for example, statutes regulate that the landlord must, in principle, bear all the costs for utilities, but in practice it is the tenant who bears them through allocation of costs. The same happens in AU, and expenses may even be freely determined by the landlord whenever the MRG applies partially or does not apply.

In LU the tenant is usually expected to pay every expense related to his consumption.

In CH regulations seems to be tendentially more beneficial as far as affordability is concerned. Indeed, the landlord shall pay the expenses connected to the use of property without being authorized to profit from them. Moreover, any expense which is not specified in the contract shall be considered as integrated in the rent.

The regulation on the obligation to provide repairs (both maintenance and improvement repairs) follows a certain similar pattern when we compare it to the regulation of expenses.

In DE, for example, the landlord is theoretically responsible for all kinds of maintenance works and repairs, but in practice the tenant bears a portion of those costs as far as minor maintenance costs and cosmetic repairs are concerned.

In AU, freedom of contract rules in relation to housing without a public task, and thus the landlord or the tenant will be responsible according to what was provided for in the contract.

The regulation of CH and LU is identical. In both countries it is the landlord's responsibility to ensure that the dwelling is in fit conditions for renting, and the tenant will be responsible only for minor defects or whenever the defects are attributable to him. In the private housing with a public task sector in LU, which is the sector where the *Agence Immobilière Sociale* operates, the latter assumes every maintenance and improvement work necessary in the dwelling to which the celebrated rental agreement respects[326].

4.2. Stability

Table 11

	DE	**AU**	**CH**
Demand of written form for the validity of rental agreements	No	No	No
Demand of registry for the validity of rental agreements	No	No	No

[326] WiP for other fees and rent subsidies for poor tenants (particularly in DE).

Black market practises	Existence of unofficial rental agreements Dwellings illegally rented as tourist accommodation of housing for workers	Existence of unofficial rental agreements Miscalculation of rents (*Richtwertgesetz* 1994)	Unknown
Admissibility of unlimited rental agreements	Yes	Yes	Yes
Requirements for landlord to terminate rental agreement	Both ordinary (justification necessary) and extraordinary termination possible (ordinary not possible for agreements in § 549 II III)	Both ordinary and extraordinary (§ 30 par. 2 MRG) termination possible	Notice must meet formal requirements and is challengeable (e.g. when done in bad faith)
Defences of tenant	Protections for tenant (§ 712 ZPO) 1 year to vacate dwelling (s. 721 (I 1 and VI), 794 a (I 1, III 1) ZPO Attempt to good morals or serious condition of tenant may lead to reserve, prohibition or temporarily suspension of eviction procedures (§ 765 (I 1) ZPO) Enforcement costs paid in advance by landlord	Not specified	Requirement of extension of tenancy possible Old or ill tenants or tenants who cannot find an apartment can challenge termination
Emption non tollit locatio	Yes (I 21 § 358 ALR)	Yes but landlord is not bind by length of the agreement)	Yes If sold or transferred in public auction, with extraordinary termination right for landlord

One may draw a few conclusions on the whether the position of the tenant is stable[327].

One the one hand, insecure instruments such as licences instead of leases are not usual in any of the countries.

On the other hand, the fact that in every country under comparison, rental agreements may be both verbal or written (i.e., the freedom of contract applies) may have concerning implications for the tenant, particularly in the case of agreement related disputes, where the tenant will not be able to easily prove what was agreed upon[328].

The fact that a rental agreement is not registered does not necessarily affect the stability of the tenant in the tenancy relationship. In AU there is no duty of registration (except for tax law, cf. § 15 ss and 33 TP5 *Gebührengesetz* 1957). Even in LU, where every written rental agreement shall, in principle, be registered within the three months which follow its conclusion the agreement is still valid *inter partes.* Under the LU Civil Code, the tenant in relation to whom the rental agreement was not registered runs the risk of being expelled by the new purchaser of the dwelling, in case it was sold (art. 1743 CC). However, for the agreements to be regulated by the LBUH, tenants do not run such risk because this law provides a right to oppose the rental agreement against a potential purchaser. For this reason, even in relation to third parties, the non-registration of a rental agreement raises risks to the stability of the tenant[329].

The question of registration is a particularly delicate one, provided that most people ignore that rental agreements must be registered.

One phenomenon which often occurs in the field of housing and which is capable of menacing the stability of a tenant in a rental agreement is that of black market practices. Among the four countries under comparison – and despite the fact that all except CH know some black market practices, i.e., conclusion of unofficial, "secret" agreements – the origin of black market phenomena in AU can most clearly be traced to the national regulations.

Indeed, in 1994 a new form of rent regulation was introduced. According to the new regulation, a standard premise is defined by a special statute (*Richtwertgesetz* 1994) and for this standard premise, each state fixes a certain basic rent per m^2. Surcharges and deductions to this basic rent, depending on size, kind, location, maintenance, condition and furniture must be taken into account. In virtue of the circumstance that landlords cannot freely determine the rents to be paid for their dwellings, the illegal practice of miscalculating rents in favour of landlords widespread[330].

In DE, due to the lack of available dwellings particularly in the biggest cities, such as Berlin and Hamburg, and some state regulations (*Zweckentfremdungsverordnung*), some dwellings are illegally rented[331].

In CH, as tenancy contracts do not have to be registered and there are few formal requirements (the compliance of which does not have influence on the rights of the tenant), there are no important housing black market phenomena[332]. Finally, in LU there

[327] WiP.
[328] WiP.
[329] WiP.
[330] See Kammer für Arbeit und Angestellte Wien, Die Praxis des Richtwert – Mietzinsszstems (2010), available in http://www.arbeitkammer.at/bilder/d142/Richtwert.mietenzall.pdf (09.06.2013). See also Hofmann – National report for AU, 2014, sec. 1.5.
[331] Cornelius & Rzeznik – National Report for DE, 2014, sec. 1.5.
[332] Wehrmüller – National Report for CH, 2014, sec. 1.5.

seems to be a few unofficial rental agreements aimed at saving the payment of real estate taxes to landlords.

When one speaks of stability in the rental relationship, one of the most important aspects relates to the security of tenure, which exists only if the tenant knows that, if he respects the contract, he will be allowed to stay for as long as he would like.

In all four countries under comparison, it is possible to conclude both limited and unlimited rental agreements[333].

In DE both extraordinary and ordinary termination are possible. For terminating the contract ordinarily, the landlord must have a justification. However, this is not possible as far as tenancies in art. 549 II III are concerned, as these – tenancies for residential space that have been rented from a legal person under public law or recognized private welfare work against because of an urgent need of accommodation – are excluded from security of tenure.

In AU extraordinary and ordinary termination are possible as far as the MRG regulation does not apply (§ 1118 ABGB). In case it does, fully or only partially, only extraordinary termination is possible (§§ 29 I and 30 MRG). In AU there are no statutory restrictions on notice for specific dwellings or tenants[334].

In CH, as in LU[335], the tenant has the possibility of requesting an extension of the tenancy, and this both in open-ended and limited rental agreements.

In CH notice by the landlord must observe formal requirements[337], and, under 271 a s.1 ff c. CO a notice of termination may be challenged as unfair whenever it is given for the sole purpose of "forcing" the tenant to purchase the dwelling. But there are other situations where the tenant can defend himself from termination. That is the case in situations of old age or illness, as well as when the tenant cannot find a new apartment. Finally, whenever the notice contravenes the principle of good faith it can be challenged by the tenant.

As far as open-ended leases are concerned, the landlord would always have to have a grounds for terminating the contract[338]. There are no specific statutory restrictions on notice for specific types of dwelling, but the LBUH includes a particular protection in benefit of the spouse, partner, cohabitee, or their members of the deceased tenant. Indeed, for the people who cohabited with the deceased tenant, the contract persists and the contractual relatives continue in the tenancy[339].

The principle that purchase is subject to existing tenancy (*emptio non tolit locatum*) has a particular, different regulation in all four countries under comparison. It is relevant whenever the rented dwelling changes landlords through sale or inheritance.

In DE this principle was introduced by I 21 § 358 ALR, and it comes from the Prussian Civil Code. It means that the new owner is due to respect the tenancy agreement, and, among other duties, he takes over rights and duties created by a rent security deposit.

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[333] See 542 BGB (DE), 255 s. 1 CO (CH) and 12, 2 LBUH and 1737 CC (LU).

[334] Hofmann – National Report for AU, sec. 6.6.

[335] See Wehrmüller – National Report for CH, 2014, sec. 6.6 and Dos Santos Silva – National Report for LU, 2014, sec. 6.6.

[337] For details see Wehrmüller – National Report for CH, 2014, sec. 6.6.

[338] For details, see Dos Santos Silva – National report for LU, 2014, sec. 6.6.

[339] ULC – Le bail à loyer*,* 2009, p. 13. WiP - Fixed term leases possible so as to circumvent the protection of the tenant in case of open ended leases & Protected periods effective and long enough (are there adequate prolongation rights?).

In AU, as far as the sale of the dwelling one must distinguish, on the one hand, whether the MRG applies fully or not (namely, applies partially or does not apply) and, on the other hand, on whether it corresponds to a private sale or a public auction.

In the case the MRG fully applies (§ 2, 1, sent. 2), the singular successor of the landlord is bound to all the clauses of the previously existing tenancy agreement including the length of the contract. Therefore, termination is impossible, and thereby the position of the tenant is clearly safeguarded. Whenever the MRG does not apply fully, the acquirer is generally bound by the previous tenancy agreement. However, the landlord is not bound by the length of such agreement.

Whenever the dwelling was sold through public auction (both when the MRG applies and when it does not apply or only applies partially), the acquirer is placed in the position of landlord. If the MRG does not apply fully, however, there is a need for registration[340].

DE is apparently the country where tenants have more social defences against eviction at their disposal.

First, the tenant benefit of the provisions provided for in art 712 ZPO. Second, the tenant is usually given a period of up to one year to vacate the dwelling (s. 721 (I 1 and VI), 794 a (I 1, III 1) ZPO. Finally, art. 765 (I 1) ZPO reserves, prohibits or temporarily suspends eviction procedures whenever these would be against good morals, as would be the case of an important, life-threatening psychological condition of the tenant. In this particular situation, the law does not provide for a time limit for the eviction to take place. Moreover, German regulations are less landlord-friendly in the fact that they – despite the *Berliner Räumung*[341] – must pay the enforcement costs in advance, which would then ultimately be paid by the tenant.

3.2.3. Flexibility

The main reason for which people rent – particularly when they would be in financial conditions to purchase a dwelling as well – is the flexibility which this alternative provides.

One may see flexibility from at least two angles, namely, whether the tenant can leave the rental relationship within a reasonable delay and whether he can sublet the dwelling in case of interest or need.

As for the first, in all four countries the tenant must observe the terms of the contract which provide for the notice delay[342].

Whenever the parties did not provide for that aspect, the subsidiary applicable regime differs according to whether the rental agreement was celebrated for an undetermined length or if it is limited in time.

In DE, for the agreements concluded for an indefinite period of time, the ordinary notice of three months applies (573 BGB), and this is also the case in LU[343], AU (when

[340] Hofmann – National Report for AU, 2014, sec. 6.4. WiP. WiP: Right of first refusal (call option) of the tenant in cases of sale of the house to a third party; Indirect impediments: if massive rent increases allowed, the tenant may be forced to leave.
[341] For details, see Cornelius & Rzeznik – National Report for DE, sec. 6.7.
[342] See, for AU, § 560, p. 1 fig 1. ZPO.
[343] ULC, *Le bail à loyer*, p. 14.

the MRG applies partially or fully[344]) and CH, although a different rule for furnished room applies. The tenant does not need to invoke a reason for terminating. Whenever the agreement is limited in time, however, the tenant must invoke extraordinary reasons ("good cause" in CH[345]) for terminating the agreement and can only do it, at the earliest, one year after the beginning of the contract (550 (1) BGB). It shall be noticed, however, that if those reasons relate to the use of the dwelling, termination might be done without a notice period (543, 569 BGB). In LU, on the other hand, the tenant can only leave the rental relationship limited in time if the landlord so agrees[346].

In AU, whenever the parties did not provide for a specific notice period, the law applies subsidiarily. Whenever the MRG does not apply, it is enough that the tenant warns the landlord one month ahead of his intention to leave the rental relationship (§ 560 1 fig. 1 ZPO), at least for tenancies in which the rent is paid on a monthly basis. Whenever the rental agreement is of definite duration, the tenant is allowed to terminate before the end of the term under two conditions: first, if at least one year has passed since the conclusion of the contract (§ 29, par. 2 MRG), as in DE; and for important reasons connected to the use of the dwelling (1117 s. 1 ABGB), as in DE but here there is a restriction: if the tenant is to blame for such conditions of use he cannot invoke this as a grounds for termination.

All in all, we may say that regulations are similar and all aim at allowing the tenant to leave the rental agreement within a reasonable period of time if he has reasons to do so.

An advantageous alternative to termination for some tenants, particularly for reasons of finances or old age, is to sublet one room or several rooms of their rented property.

The regimes on subletting in the four countries are diverse, but some form of total or partial subletting is allowed in each country.

In DE and in CH, the tenant can only sublet with the consent of the landlord[347]. In both countries there are some restrictions to the power of the landlord. Indeed, in DE the tenant can sublet independent from the authorization of the landlord whenever the conditions on 553 (I 1) apply, as is the case of personal or economic need of the tenant[348]. In CH, on the other hand, the landlord can only refuse his consent for reasons stated in art. 262 s. 2 CO. This article is semi-mandatory for the benefit of the tenant: The landlord cannot exclude or restrict the tenant's right to sublet the dwelling by contract[349].

In AU (1098 ABGB, whenever the MRG does not apply) and LU (1717 CC), the tenant has a right to sublet provided that the rental agreement does not preclude subletting (and that it is not disadvantageous for the landlord)[350]. This means that in LU, if the first owner of the house did not prohibit subletting in the rental agreement, the

[344] § 29, par. 2, par. 3 lit. B) and par. 4
[345] 266 g CO.
[346] ULC – *Le bail à loyer*, p. 13.
[347] 540 (1) BGB for DE and 262 s. 1 CO for CH.
[348] For case law references, see Cornelius & Rzeznik – National Report for DE, sec. 6.4. See also Blank in Schmidt – Futterer, S. 553 BGB rec. 4 et seq. with further examples.
[349] Weber, BSK OR Art. 262 CO § 2 Honsell, OR BT 228; BGE 134 III 300 E.3.
[350] Oberhamme/Domej in Rainer, Miet-und WohnR Kap 2.7.4. Stand April 2013, rbd at. for details.

second owner and landlord, if that is the case, will not be able to refuse subletting either[351].

It shall be noticed that in LU, in great contrast to the solution in force for the private rented dwellings, subletting is a serious legitimate reason for termination of the contract[352].

4. Comparison of tenures with a public task

4.1. Generalities

One of the aspects which exists in all four countries under comparison, but which has a very different dimension and importance in each of them is rental housing with a public task, which may be considered the umbrella term for non-profit or public owned housing allocated primarily to the households in need.

In CH and in LU, rental housing with a public task is less representative than in AU and DE. In CH the stock of dwellings owned by the state is 2.4% of the full housing stock and 3.4% of the rental stock. In LU the social housing stock is very recent and even smaller than in CH: It represents a mere 2% of the full housing stock[353]. There is a concern that this supply does not meet demand in LU. As the construction costs of more social housing would represent an unbearable investment from the State, alternatives have been studied and promoted, among them the solution of engaging social rental agencies to meet demand for affordable housing.

In CH the sector is composed of housing co-operatives in particular, but also foundations and public limited companies. In LU the sector comprises public promoters, housing associations and the *Agence Immobilière Sociale* or AIS. In both countries the rental agreements concluded by these entities are subject to different regulations[354]: In LU the LBUH applies except for rents and rental expenses law 25 February 1979 concerning housing aid.

Rental housing with a public task appears in different forms, and one of them is municipal tenancies.

Municipal rental housing in dwellings owned by municipalities or non-profit municipal bodies is one of the three types of rental housing in DE, LU and AU, and in the latter municipalities often provide a rent level which is lower than the rent limits provided for the MRG[355].

Besides municipal tenancies, there are also housing association tenancies. In DE, the contracts concluded by these are regulated by the same rules as private rental agreements, while in AU the MRG fully applies, even though it was derogated by special rules[356].

[351] See ULC, Le bail à loyer, 2009, p. 6; Krieger – Le bail d'habitation, 2009 p. 69.
[352] RGD 16 November 1998.
[353] Santos Silva – National report for LU, 2014, sec. 1.2.
[354] Wehrmüller – National report for CH, 2014, sec. 4.3.
[355] WiP.
[356] WiP.

In DE social tenancies are understood as the legal relationships which bind landlords and tenants who fulfil the conditions of the Housing Promotion Act, which applies together with regular tenancy law (partly in the BGB)[357].

A phenomenon which also has a very different significance in each of the countries under comparison is that of social housing agencies. Indeed, in AU and CH they are nonexistent. In DE the *Soziale Wohnraumhilfe* exists in a few German cities, most of the time in cooperation with religious-based charitable organizations. In LU there is so far only the *Agence Immobilière Sociale*, which is funded 100% by national public funds. In both cases there is so far a lack of legal regulation on the national level, and these initiatives remain local ones[358]. In LU the government has already recognized the potential of these agencies and intends to multiply them and provide them with a legal regime, so that they would be able to fight lack of offer of affordable dwellings.

Privatized and restituted housing with social restrictions does not exist in any of the countries under analysis: in DE private investors usually put the commercial interests above social commitments[359].

This is also the case of public entities taking over private contracts, typically for poor tenants to counteract homelessness, with the exception only of DE. Here, municipalities are obliged under police and regulatory law to counteract homelessness. For that purpose, they can either assign a homeless person to a particular dwelling or purchase the occupancy rights through contract between the landlord and the municipality. The tenancy is regulated under the general tenancy law of the BGB, but this model is not very widely practised[360].

4.2. Evaluative criteria for public/social/private subsidized landlords

Public subsidization of landlords does not exist in all of the four countries under comparison, and when it does, it exists in different proportions and has a different impact on the decision of the landlord of investing.

In DE and in CH, there is no public subsidization of landlords. In DE, real estate is particularly financed by bank credits, but this shall change soon because professional investors are searching for better alternatives, such as mezzanine capital, private equity, equity-like forms, issue corporate bonds, etc[361]. In CH there is currently no state promotion for either profit-oriented professional or commercial landlords or for private landlords, because early withdrawal or pledging of pension fund assets is only possible for self-inhabited property[362].

In AU and in LU, on the other hand, there are some subsidies to private landlords. These are the cases of interest subsidy in LU[363] and subsidies for construction and modernization of dwellings in AU[364].

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[357] Cornelius & Rzeznik – National Report for DE, sec. 4.3. Data so far not available for AU in the national report.
[358] Cornelius & Rzeznik – National Report for DE, sec. 4.3.; Santos Silva – National report for LU, 2014, sec. 1.2.
[359] Cornelius & Rzeznik – National Report for DE, sec. 4.3.
[360] *Ibid*. WiP: collection of material to analyse the effectiveness.
[361] Bettink – Immobilien finanzierung ändert sich gravierend, Börsen-Zeitung 05.10.2013, available online. See Cornelius & Rzeznik – National Report for DE, sec. 4.2.
[362] Wehrmüller – National report on CH, 2014, sec. 4.2.
[363] Santos Silva – National report for LU, 2014, secs 3.6. and 4.2.

Besides own equity, inheritance, endowments of family members of friends, which represent in most cases a small part of the investment in housing, most of the landlords resort to mortgage loans[365], personal loans[366], fixed-term loans[367], etc.

As compared to LU, in CH and DE one may generally consider that investors feel less willing to invest in the letting of a dwelling. In the first case, this is because the risks and efforts associated with the investment in non-owner occupied dwellings for private, small investors are considered high when compared to the expected net return[368]. In the latter case, this is especially because it is no longer possible (since 2006) to make tax deductions in the first years of the investment[369].

In LU, on the other hand, investors are allegedly positive about the attractiveness of their market as a location for real estate investment[370]. In case the dwelling is rented for private aims, the owners are allowed to amortize it, i.e., they benefit from a tax reduction connected to the depletion caused by normal use (which ranges between 2% and 7%)[371].

4.3. Evaluative criteria for the tenant

4.3.1. Access

The lack of affordable dwellings to meet demand seems to be a problem in all of the countries under analysis except AU. In DE there is a massive shortage of affordable dwellings in the conurbations[372], and this is also the situation in LU[373]. In 2011 the supply was lower than demand in CH, as well[374].

The criteria of access to housing with a public task vary according to the national regulations, but low income[375] is apparently one criterion which is present in all four countries.

Besides low income, in LU and DE there is a system of points which provides that certain applicants will be given *priority* over other applicants. In DE, although no such system exists, certain categories have priority in accessing housing with a public task: low income households, children, single parents, pregnant women, elderly, handicapped, homeless and other people in need. The targets of housing with a public task are households who are incapable of supplying themselves with an adequate living space and those households who are dependent from public aid[376].

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[364] Hofmann – National report for AU, 2014, se. 1.4.
[365] Wehrmüller – National report on CH, 2014, sec. 1.4.
[366] Hoffmann – National report for AU, 2014, sec. 1.4.
[367] Cornelius & Rzeznik – National Report for DE, 2014, sec. 1.4.
[368] Wehrmüller – National report on CH, 2014, sec. 2.3.
[369] Cornelius & Rzeznik – National Report for DE, sec. 4.3.
[370] Ernst & Young – European real estate assets, 2013, p. 24.
[371] Santos Silva – National report for LU, 2014, sec. 2.3. WiP: “typical contractual arrangements and regulatory interventions into rental contracts” (national reports).
[372] Cornelius & Rzeznik – National report for DE, 2014, sec. 2.1.
[373] See Santos Silva – National report for LU, 2014, sec. 2.1 and BIPE – Les politiques publiques, 2000, p. 541 and 559; Norris & Shields – Housing Developments, 2012, p. 91.
[374] Wehrmüller – National Report for CH, 2013, sec. 2.1.
[375] For CH see Blumer – Vermietungs Kriterien der gemeinnützigen Wohnbauträger, 4.
[376] S. 1 (II) WoFG.

In LU at least two aspects might be envisaged as unfair in terms of allocation of housing with a public task. The first relates to the allocation of social dwellings to homeless people, which cannot happen unless the homeless person is accompanied by an association. The second relates to the fact that the dwellings of the AIS are allocated for a fixed period of three years, which has two potentially worrying consequences. On the one hand, when the household dramatically improves its financial condition, it would still be able to live in a dwelling of the AIS, thus "taking the place" of another household that is really in need. On the other hand, if the household does not manage to improve its financial condition by the end of the three years, it will be forced to leave, which may ultimately result in a situation of homelessness[377].

4.3.2. Affordability

Rental housing with a public task involves, by nature, more affordable rents. Nevertheless, the calculation method varies according to the country.

In DE, the Law on commitments regarding rent and rent increases and occupancy (WoBidG) applies. The landlord can only demand a rent which covers the current expenditures or a rent with a maximum permitted amount determined by the promise to grant public funds[378].

In AU one must distinguish between rental agreements where the MRG does not apply and those where the MRG applies partially or fully. As for the former, only general restrictions from the ABGB apply. As for the latter cases, a further distinction must be made, namely between limited-profit rental housing in dwellings owned by limited-profit housing associations and municipal rental housing in dwellings owned by municipalities or non-profit municipal bodies. In the first, rent is limited by provisions of the WGG, and the criteria for subsidies for construction and modernization of dwellings, which had been in force at the time of application for the subsidies. In the second, rent is limited by provisions of the MRG or former MG. Municipalities often provide tenants with a rent level below rent limits[379]. As the MRG is strongly tenant-protective, some landlords try to circumvent its norms to increase income[380].

In LU social rents and charges are calculated according to the available annual net income and main surface area of the dwelling (Art. 18 of the amended RGD 16 November 1998). The limits on rent and charges provided for in the LBUH do not apply to these agreements except for rental dwellings provided for in art. 28 (4) of the amended Law 25 February 1979. As far as rents of the rental agreements concluded by the AIS, they are agreed upon between the AIS and the landlord and are always lower than the private rent which would have been sought for the same dwelling[381].

Finally, in CH public authorities will authorize the rents admissible for a certain apartment according to the actual costs[382]. Residential premises made available with public sector support – for which rent levels are set by a public authority – are not subject to the provisions governing challenges to unfair rents (253 b s. 3 CO).

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[377] WiP for analysis of selection procedure and whether it is fair, transparent and effective.
[378] Cornelius & Rzeznik – National report for DE, 2014, sec. 6.4.
[379] Hofmann – National report for AU, 2014, sec. 6.4.
[380] See Hofmann – National report for AU, 2014, sec. 6.4.
[381] Santos Silva – National report for LU, 2014, sec. 6.4.
[382] For further references see Wehrmüller – National report for CH, 2014, sec. 6.5.

As in the private sector, there is a possibility for social landlords to increase the rent amount under certain conditions.

In DE increases in rent due to increases in the current expenditures or due to structural alterations may be based on a new calculation of profitability. Dwellings promoted by public funds before and after 31 December 2012 must be distinguished: The BGB provisions apply only to those promoted after that date[383].

In AU, as for the determination of the level of rents and for rent increases, one must distinguish between municipal housing and limited-profit housing. In the first, the MRG is fully applicable, and therefore the rent increase is valid only under the limits of § 16 MRG. Regarding limited-profit housing, § 14 of the WGG and 16 s. 12 MRG apply[384].

In LU the RGD governs the increase of rents. According to art. 33, the public promoter calculates the annual rent to be paid by the tenant based upon the presentation by the tenant of a certificate of income from the previous year. Based on this certificate, a new rent is established. In case the tenant does not provide proof of income, the landlord will increase the rent by up to 10% of the invested capital. In the rental agreements concluded by the AIS (private renting with a public task) the rent will stay the same during the three years that the rental agreement lasts[385].

Regulations on deposits apply almost uniformly both to private and social rental agreements. Indeed, they are equally regulated[386], and in both kinds of rental agreement the deposit is aimed at guaranteeing the landlord against damage to his property or non-performance of obligations related to the rental agreement. Here, the landlord can subtract the tenant's arrears from and up to the amount of the deposit, but the tenant cannot use the deposit for the purpose of paying the rent or other charges[387].

As far as the regulation of the deposit's amount is concerned, whereas in LU it is in the private rental market (albeit in luxury housing only) that we find that the amount can be freely determined by the landlord, in AU the tendency is the contrary, as it is in the private rental market where an average, case-law defined[388], limitation to six months of rent is to be found[389].

Also, in the management of the deposit, regulations in both the private and social rental markets are similar. In AU, whenever MRG applies, security deposits may be legally paid in cash or in the form of a savings account[390].

As for the return of the deposit upon regular performance of the rental agreement, the same regulations as in the private rental agreement apply. However, in DE the guarantee is narrower within social rental agreements, where the deposit is aimed at covering only damage in the dwelling or forborne cosmetic repairs[391]. This means that in case of non-payment of rent social landlords cannot subtract the overdue rent payment from the amount of the deposit.

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[383] Cornelius & Rzeznik – National report for DE, 2014, sec. 6.5.
[384] Prader, MRG[4.01] § 16 E164.
[385] Santos Silva – National report for LU, 2014, sec. 6.5. WiP for procedure to be followed by rent increases.
[386] See fig. 10.
[387] See table 11.
[388] See Hofmann – National report for AU, 2014, sec. 6.4.
[389] See table 12.
[390] § 16b par. 1 sentence 1 MRG.
[391] See sec. 9V WoBindG and Cornelius & Rzeznik – National Report for DE, sec. 6.4.

Table 11 - Existence of regulation

	Social rental agreement	Private rental agreement with a public task
DE	Regulated	
CH	Deposit in cash or negotiable securities is regulated	
LU	Regulated	
AU	Rental tenancies with a public task	
	Limited-profit rental housing tenancies	Municipal rental tenancies
	Regulated	

Table 12 - Advance payment?

	Social rental agreement	Private rental agreement with a public task
DE	No advance payment	
CH	No advance payment	
LU	No advance payment	
AU	Rental tenancies with a public task	
	Limited-profit rental housing tenancies	Municipal rental tenancies
	No advance payment	

Table 13 - Regulation of amount

	Social rental agreement	Private rental agreement with a public task
DE	3 months of rent / Instalments possible	
CH	3 months (including charges) / “security deposit insurance”	
LU	3 months	
AU	Rental tenancies with a public task	
	Limited-profit rental housing tenancies	Municipal rental tenancies
	None	

Table 14 - Preservation of amount

	Social rental agreement	Private rental agreement with a public task
DE	Investment in savings account in name of tenant (separated from remaining assets)	
CH	Investment in savings account in name of tenant	
LU	Freedom of contract	
AU	Rental tenancies with a public task	
	Limited-profit rental housing tenancies	Municipal rental tenancies
	Investment in name of landlord (separated from remaining assets)	

Table 15 - Return deposit: timeframe

	Social rental agreement	Private rental agreement with a public task
DE	No time limit (usually <6 months)	
CH	One year	
LU	No time limit	
AU	Rental tenancies with a public task	
	Limited-profit rental housing tenancies	Municipal rental tenancies
	Immediately	

Table 16 - Further possible kinds of guarantee

	Social rental agreement	Private rental agreement with a public task
DE	Yes	
CH	Yes	
LU	Yes	
AU	Rental tenancies with a public task	
	Limited-profit rental housing tenancies	Municipal rental tenancies
	No	

The regulation of expenses, such as utilities and repairs is in DE and CH the same for rental agreements with a public task.

Indeed, in DE also within social rental agreements (as agreements celebrated by cooperatives) the landlord must bear the costs for utilities and is responsible for all maintenance work and repairs, even though these costs are transferred to the tenant through rent[392]. In CH all services defined as “accessory charges” can be charged to the tenant in addition to the rent, and any charge which is not provided for in the contract is considered to be covered by the rent. Moreover, the costs for keeping the dwelling fit for the designated use must be borne by the landlord and are thus covered by the rent. Tenant must only repair defects that are attributable to him and minor defects.

In AU and LU, on the other hand, different rules apply to rental agreements with a public task.

In AU, for the rental agreements where the MRF fully applies, rent includes general expenses (21 par 1. 1 MRG) and public charges (15 § 1 fig. 1 and 2 MRG). As far as maintenance works are concerned, § 3 of the Austrian MRG defines them as works which keep the condition of the building, the rented dwelling and the plants serving the common use of the residents of the building unchanged and prevent severe damage. Improvement works, on the other hand, are, under sec. 4 par. 1 MRG, works that lead to useful improvements of the building or the rented dwelling. Both of the works are responsibility of the landlord[393].

[392] Cornelius & Rzeznik – National report on DE, sec. 6.4.
[393] Hofmann – National report on AU, sec. 6.1.

In LU, as far as public housing with a public task is concerned, wear and tear shall be paid by the landlord, whereas damage caused by the tenant should be at his expense. For private housing with a public task, it is the AIS which supports the expenses related to maintenance works and repairs.

It is not always clear who – the landlord or tenant – shall support other expenses. In AU public charges (namely, taxes on land and buildings and taxes on the states), as well as extraordinary costs, are expenses which shall be borne by the landlord (21, § 1) but which, according to § 21 § 2 MRG, may be passed on to the tenant[394]. In LU the question often arises in this regard of whether the administrative expenses may be included in the costs charged to the tenant, even though it is generally considered that the landlord shall support them. On the other hand, it appears to be undisputed that expenses for technical assistance can be included in the costs charged to the tenant.

5.2.2. Stability

One may consider that the position of the tenant in the rental agreement concluded with a provider of housing with a public task is relatively stable. Nevertheless, in LU, as far as rental agreements celebrated by the AIS are concerned, this stability lasts only for the period of three years. This means that for as long as three years, the tenant has a guarantee to stay as long as he respects the contract. However, after that period expires, he must leave the dwelling, even if he regularly performed his contractual obligations and also even if he proves that he has no possibility of affording a rental dwelling in the private rental market, as is expected after that period expires. For such reason, the tenant cannot buy the dwelling in any circumstance.

In DE, besides the possibility of providing for such right in the contract, there is a statutory pre-emption right for tenants under 577 (1) BGB, which the tenant can exercise within two months after the notice of the intention of sale of the rental dwelling (577 (I 3), 469 (II) BGB). In AU, within limited-profit housing and whenever the WGG is applicable, the tenant has a statutory right of subsequent transfer of ownership for dwellings in condominiums. CH is the only country which does not allow for a right of pre-emption, and in this regard, the tenant's position is less stable compared to the position of tenants in the other three countries.

5.2.3. Flexibility

Tenants envisage housing with a public task as a good housing option when they cannot afford the costs of dwellings in the private rental sector. Nevertheless, there might be the case that, provided that their condition is improved, they would like to move to another dwelling, namely a private rental dwelling, and the question is whether the regulations allow them the flexibility to do so.

An interesting particularity in the regulation of the notice period required of tenants who wish to terminate their rental agreement is found in AU. There, whenever the MRG

[394] Lurger/Haberl/Waß, EUI Tenancy Law Project – AUn eport (2004), 36 et seq. WiP for other fees in CH and DE. WiP for "Rent subsidies for poor tenants [if relevant, a reference to the above findings is sufficient]"

applies partially or fully, 560 ZPO also applies for contracts limited in time. This means that the notice period provided for in the contract applies, and in the case that no such period is provided for, the notice period for the tenant is one month in case rent is paid every month. Whenever the contracts are unlimited in time, the notice period should be three months, according to 2, par. 3, par. 3 lit. b and par. 4 MRG.

Another important aspect related to flexibility is the right of subletting the dwelling. First, it should be highlighted that whenever the MRG applies in AU, an agreement restricting the subletting capacity of the tenant is only valid if the "important reasons" described in § 11, par. 1, figs. 1-4 are present. Subletting of dwellings with a public task is expressly prohibited in LU and may lead to immediate termination of the contract.

5. Conclusion

As preliminary conclusions we may say that as far as regulatory aspects are concerned, the MRG in AU brings a particular complexity to the regulation of tenancy law cases and has no equivalent in either the countries under comparison or, apparently, any other European state.

As far as effective practices, the example of the AIS in LU should be highlighted. It has been an effective mechanism in allocating housing to people who are not eligible for social housing but cannot rent in the private market, and it is expected to expand in numbers in a near future. Its legal regulation, which is currently being prepared by the Housing Ministry, will promote expansion and contribute for more equal security as far as these contracts are concerned[395].

[395] WiP: Selective interesting features of the countries under review at the choice of the author of the comparative report; In particular: legal solutions and factual practices working particularly well or badly; Statement on which countries perform best and/or have promising solutions in the various large fields (i.e. housing with and without a public task etc).

Abbreviations (to be completed)

AIS	*Agence Immobilière Sociale*, social rental agency	LU
AU	Austria (country code)	AU
BBV I Zürich	*Besondere Bauverordnung I Zürich* (Special Building Regulation of Zürich)	CH
BGB	*Bürgerliches Gesetzbuch*	DE
BMVBS	Federal Ministry of Transport, Building and Urban Development	DE
BPG Basel	*Bau- und Planungsgesetz Basel* (Planning and Building Regulation of Basel)	CH
BV Berne	*Bauverordnung Berne* (Building Regulation of Bern)	CH
CH	Switzerland (country code)	CH
CO	Code of Obligations	CH
Const.	Federal Swiss Constitution	CH
DE	Germany (country code)	DE
GBV	*Gemeinnützige Bauvereinigungen*	CH
LBUH	*Loi du 21 septembre 2006 sur le bail à usage d'habitation* (Law of 21 September 2006 on residential rental agreements)	LU
LU	Luxembourg (country code)	LU
MRG	*Mietrechtsgesetz* 1982 (Law on rental agreements)	AU
OGH	*Oberster Gerichtshof* (Supreme Court of Judicature)	AU
PBG Zürich	*Planungs- und Baugesetz Zürich (*Planning and Buildung Act)	CH
RGD	*Règlement Grand-Ducal* (Grand-Ducal Regulation)	LU
sec.(s)	section(s)	
STATEC	*Institut national de la statistique et des études économiques du Grand-Duché du Luxembourg* (National Institute of Statistics and Economic Studies of the Grand-Duchy of Luxembourg)	LU
v.	version	
WoBindG	*Wohnungsbindungsgesetz* (Law on Commitments regarding Rent Increases and Occupancy)	DE
WoFG	*Wohnraumförderungsgesetz* (Law on State Funding of Housing and Housing Construction)	DE
WW	World War	

Cited literature (to be completed)

Books

Boligøkonomisk Videncenter – Private Rented Sector, 2012	Boligøkonomisk Videncenter – *The Private Rented Sector in the New Century – A Comparative Approach*. Copenhagen: University of Cambridge, 2012.
Krieger – Le bail d'habitation, 2009	Georges Krieger – Le bail d'habitation/ Der Mietvertrag. Luxembourg: Saint-Paul, 2009.

Contributions in journals

Newspaper articles

Online-only published reports

Bank Austria – Österreich	http://www.bankaustria.at/files/Real_Estate_Country_Facts_Oesterreich_9_2013.pdf (last retrieved: 21.03.2014).
BMVBS – Werkstattgespräch, 2012	BMVBS, *Werkstattgespräch – Wohnungsmarktpolitik in Wachstumsregionen*, 2012, available at: http://www.bmvi.de//SharedDocs/DE/Anlage/BauenUndWohnen/werkstattgespraech-wohnungsmarktpolitik-in-wachstumsregionen.pdf?__blob=publicationFile (last retrieved: 26.05.2014).
Credit Suisse – Swiss Real Estate Market, 2013	Credit Suisse. 'The Swiss Real Estate Market 2013, Structures and Prospects'. *Swiss Issues Real Estate*, March 2013, available at https://marketdataresearch.credit-suisse.com/cs/mdr/p/d/qrr/research/publication/swiss.do?publicationType=598&previousColumn=0&previousSortOrder=descending&startIndex=0&cmd=apply&isChanged=true (last retrieved: 26.05.2014).
Cornelius & Rzeznik – National Report for DE, 2014	Julia Cornelius & Joanna Rzeznik – Deliverable No. 3.2: National Report for DE, TENLAW: Tenancy Law and Housing Policy in Multi-level Europe, Grant Agreement No.: 290694, Lead beneficiary Universitat Rovira y Virgil, 2014, available at http://www.tenlaw.uni-bremen.de/reports/DEReport_09052014.pdf (last retrieved: 30.10.2014).
Destatis – Einkommen und Lebenbedingungen	*Einkommen und Lebensbedingungen in Deutschland und der Europäischen Union* (Wiesbaden: 2012), available at: https://www.destatis.de/DE/Publikationen/Thematisch/Einko

, 2012	mmenKonsumLebensbedingungen/LebeninEuropa/EinkommenLebensbedingungen2150300117004.pdf;jsessionid=4CE9AC7C01A6EE05A09DF8A0851C6955.cae1?__blob=publicationFile, 39 (last retrieved: 06.03.2014).
Eurostat	Eurostat, http://appso.eurostat.ec.europa.eu/nui/show.do?dataser=ilc_luho08a&lang=de (last retrieved: 30.05.2014)
Eurostat	Eurostat, http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Glossary:Overcrowding_rate (last retrieved: 16.12.2013).
Hofmann – National Report for AU, 2014	Raimund Hofmann – Deliverable No. 3.2: National Report for AU, TENLAW: Tenancy Law and Housing Policy in Multi-level Europe, Grant Agreement No.: 290694, Lead beneficiary Universitat Rovira y Virgil, 2014, available at http://www.tenlaw.uni-bremen.de/reports/AUReport_18062014.pdf (last retrieved: 30.10.2014).
Leiser – Die Mietpreise, 2011	Albert Leiser – "Die Mietpreise liegen heute oft unter den Kaufpreisen" in *UBS Magazine*, 25 July 2011, available at https://magazin.ubs.com/de/home/immobilien/%C2%ABdie-mietpreise-liegen-heute-oft-unter-den-kaufpreisen%C2%BB.aspx (last retrieved: 16.12.2013).
Santos Silva – National report for LU, 2014	Marta Santos Silva – Deliverable No. 3.2: National report for Luxembourg, TENLAW: Tenancy Law and Housing Policy in Multi-level Europe, Grant Agreement No.: 290694, Lead beneficiary Universitat Rovira y Virgil, 2014, available at http://www.tenlaw.uni-bremen.de/reports/LUReport_26052014.pdf (last retrieved: 30.10.2014).
Statistics explained	*Statistics explained*, Eurostat, available at (last retrieved: 30.10.2014).
UniCredit Bank AU	UniCredit Bank AU – *Der österreichische Immobilienmarkt – Klein aber fein. Country facts*, available at http://www.bankAU.at/files/Real_Estate_Country_facts_Oesterreich_9_2013.pdf (last retrieved: 30.10.2014).
Wehrmüller – National Report for CH, 2014	Anna Wehrmüller – Deliverable No. 3.2: National report for CH, TENLAW: Tenancy Law and Housing Policy in Multi-level Europe, Grant Agreement No.: 290694, Lead beneficiary Universitat Rovira y Virgil, 2014, available at http://www.tenlaw.uni-bremen.de/reports/CHReport_09052014.pdf (last retrieved: 30.10.2014).
Zulliger – Die	Jürg Zulliger – „Die Rendite kann man mit der Lupe suchen"

Rendite, 2006 — in *K-Geld* 5/2006 (25 October 2006), available at http://www.ktipp.ch/themen/beitrag/1026236/Die_Rendite_kann_man_mit_der_Lupe_suchen (last retrieved: 26.05.2014)

Zulliger – Vermieter werden, 2012 — Jürg Zulliger – "Vermieter werden, Mit Wohnbesitz Geld machen?" in *Beobachter* 8/2012 (11 April 2012), available at http://www.beobachter.ch/wohnen/eigentum/artikel/vermieter-werden_mit-wohnbesitz-geld-machen/ (last retrieved: 26.05.2014)