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

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### **Intra-team Comparison Report for BELGIUM, FRANCE, THE NETHERLANDS**

Author: Dr Fanny Cornette

Team Leader: prof. Dr Hendrik Ploeger

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**NOTICE.** This comparative report discusses various aspects of housing policies and legal framework of rental market in Belgium, France and the Netherlands. Substantial part of this report is based on the national reports available at <http://www.tenlaw.uni-bremen.de/reports.html>. For full list of sources please see respective national report.

## 1. The current housing situation

### 1.1. General Features

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

In Belgium, since the first Housing Act came into force in 1889, the aim of the central government and regional policies is to stimulate owner-occupation.<sup>1</sup> Therefore, nowadays home ownership dominates the market with 59% of houses being owner occupied.

After World War II, Belgium was confronted with a housing shortage. The 1949 Brunfaut Act made it easier to provide rental housing for households with a low income. Increases in the rate of construction failed to occur causing renting to become a preferred option. As some of the buildings constructed were of poor quality, the priority was to eliminate slums and to rebuild. In 1956 the National Institute for housing was created. In 1970 a Housing Code (*Huisvestingswet*) was established. After the introduction of the 1989 Housing Act<sup>2</sup>, policies encouraged the move from home ownership to social housing and from indirect to direct involvement. The specificities of Belgium are linked to the fact that it is a federal state<sup>2</sup> and therefore the responsibilities for housing were at different levels of government: the national level, but also the Administrative Regions of Flanders, Brussels and the Walloon Region.

Between 1948 and about 1988 total immigration more or less balanced total emigration with numbers lying between 40,000 and 80,000 persons.<sup>3</sup> Since that year immigration numbers (about 166,000 in 2010) increasingly surpassed emigration numbers (about 80,000 in 2010). Population growth in the last two decades was helped along by immigration.<sup>4</sup> The members of the population with EU-nationality is about twice as big as those with non-EU nationality. Nationalities that are called Ex-Yugoslavia are considered a minority.

The specificity of the system in the Netherlands is the importance of the social rental sector, which is the biggest in Europe at 34% of the market. Home ownership reached a market share of almost 60% in 2010. As a consequence, the private rental sector – renting without a public task – has been squeezed with its share being less than 10% in 2010.

In the 1980s government spending for 'social engineering' in housing continued to increase and was considered to be increasingly unaffordable. In the 1990s, the financial ties between the government and the landlords were cut and thus, the social rental sector became financially independent. Landlords were to operate as social entrepreneurs from then on running the risks of investment themselves while using the societal capital for the public task. Home-ownership grew strongly and became the largest tenure type in the Dutch housing market in 1981. The second oil crisis in 1978-

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<sup>1</sup> Peter Boelhouwer & Harry Van der Heijden, *Housing Systems in Europe: Part I. A Comparative Study of Housing Policy* (Delft: Delft University Press, 1992), 84 and 85.

<sup>2</sup> Boelhouwer & Van der Heijden, *Housing Systems in Europe: Part I. A Comparative Study of Housing Policy*, 96 *et seq.*

<sup>3</sup> Belgium Federal Government, 'Internationale migratie', <<http://statbel.fgov.be/nl/statistieken/cijfers/bevolking/migraties/internationaal/>>, 17 January 2013.

<sup>4</sup> KBC, 'De Belgische vastgoed- en hypotheekmarkt. Ontwikkeling, waardering & toekomstvisie', *Economic Research Notes* (23 juli 2012), 12.

1982 brought a halt to the construction of new owner-occupied housing. Better economic times allowed for a further growth of the number of home owners. As a result of the Internet bubble at the turn of the century, the prices of existing owner-occupied dwellings stagnated and turnover time increased. The demand for expensive owner-occupied dwellings fell sharply, hampering upward mobility. Production collapsed, and in 2004 it had not returned to pre-2000 levels. After a slight housing market stabilization, house prices have continued to rise up until the end of 2008 when the effects of the Global Financial Crisis (GFC) hit the housing market.

In the Netherlands, in the period between 1980-2000 the population had grown from 14.1 million persons to 15.9 million persons (+13%). On the 1st January 2013 the population almost totalled 16.8 million. Since 2005 the positive migration balance has been making a contribution, accounting for a little more than one quarter of estimated growth in 2012. The migration balance from the EU-26 (+19,300) in addition to the middle and East-European countries (+12,000) is affecting the positive migration balance (+12,900). The natural population growth is at an all-time low. By 1st January 2012 migration has contributed to almost five per cent of non-Dutch within population (786,057 persons). The members of the population with EU-nationality (EU-26) amount to almost 46% (360,847) of the non-Dutch population.

In France, in order to deal with the housing shortage, housing was included in the post-war national plans. Central government provided substantial subsidies and low-interest loans to builders of new homes, resulting in a building boom. Thus, a large social rental-housing sector has developed and home ownership was promoted through both production and personal subsidies. In the mid-1960s, the French government gradually reduced its interventions in housing. The market sector therefore started to take on a greater role. The production of dwellings for the owner-occupied sector decreased substantially in the 1980s. At the same time, the tightening of rent controls in the 1980s made it less attractive to invest in the private rental sector. Consequently, there was a clear fall in the rate of house building (from 500,000 building permits in 1980 to 356,000 in 1986). Thus, the government introduced a series of tax benefits that aimed to improve investment conditions for private rental landlords. These tax benefits are still in place, although the specific conditions have been changed regularly. In the 1990s French housing policy had a strong focus on urban renewal and restructuring but the basic characteristics of the housing finance system remained unchanged. After 2000, social rental landlords have become increasingly active in the urban renewal process. The principal housing aims are to improve housing quality, encourage the production of affordable rental dwellings and ensure that empty homes are put on the market. In recent years, the loans and fiscal concessions to promote investment in this sector have been improved<sup>5</sup>. Furthermore, there has been a general trend towards decentralization of housing policy. Since 2004, local authorities such as *départements* and groups of communities (*groupements intercommunaux*) were given more responsibility.

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<sup>5</sup> Ministère de l'emploi, de la cohésion sociale et du logement, 2006, *Aides Financières au logement*, [Financial support for Housing] (Paris: Ministère de l'emploi, de la cohésion sociale et du logement, 2006).

In France, the population growth was relatively high in the 1950s and 1960s. This is a specificity of France that is a result of the immigration of citizens from the former colonies (particularly in 1962; the year of Algerian independence). Since the 1970s, both the natural population growth and the migration balance have remained relatively stable. Immigrants constitute a significant proportion of tenants in social housing. Among them, there is a high proportion of large low-income families who experience some of the worst housing conditions.<sup>6</sup>

### *Conclusion*

In the three countries, but particularly in France and Belgium, there was a shortage after WWII and policies were focused on housing. First, policy has encouraged home ownership and the percentage is high. Second, policy moved to the social rental sector. There was also a tendency to reduce the risks for the central government. Whereas in Belgium and in France responsibilities were transferred to local authorities, in the Netherlands the risk for the social sector was transferred to the housing associations themselves.

In the three countries, immigration contributes to the increase of the population. In Belgium and in the Netherlands there is significant migration from people coming from other European countries, whereas in France, many people come from the former colonies.

### **1.1.2. Current situation**

In Belgium, between 1991 and 2001 the stock of occupied private dwellings increased to 9% at the national scale. Within the regions, there was an increase of 9,6% in Flanders, 9,5% in the Walloon Region and only 3,7 % in Brussels. In the period 1981-2009 the total housing stock is estimated to have increased by about 40%.

In the Netherlands, total occupied housing stock has grown from 5.3 million dwellings in 1985 to 7.2 million dwellings in 2010 (+36%). This growth has been brought about by the substantial increase in home ownership from 2.3 to 4.3 million dwellings (+89%), while the private rental sector decreased from slightly under one million dwellings to 646,000 dwellings (-34%) and the social rental sector slightly increased from 2.1 to 2.3 million dwellings (+11%).

In France, in 2011 there was a total of 33.8 million dwellings. Among those 28.2 million were principal residences, 3.2 million were secondary homes and 2.5 million were vacant.

Even if the data does not exactly correspond to the same period, one can see that the housing stock had increased by around 40% in Belgium and in the Netherlands between 1981 and 2009. The situation varies in each country and from one region to another resulting in market tension in the main cities: Amsterdam, Brussels and Paris.

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<sup>6</sup> J. Ball, *Housing disadvantaged people? Insiders and outsiders in French social housing* (London/New York: Routledge, 2012).

### 1.1.3. Types of housing tenures

In Belgium the type of landlord mainly determines whether social or private renting is being referred to.<sup>7</sup> If private people or companies let dwellings they belong to the private rental sector. If registered or accredited social housing landlords<sup>8</sup> let dwellings it is considered to be 'social rental dwellings. Local authorities and municipal welfare organisations such as OCMWs (*Openbaar Centrum voor Maatschappelijk Welzijn*) or groups of local authorities and OCMWs are also considered to be social landlords.<sup>9</sup>

In 2009 the main housing tenures are owner-occupation (59%), social renting or renting with a public task (34%) and private renting or renting without a public task (8%).

Concerning the quality of the housing stock, there is a discrepancy among the regions. The newest and biggest dwellings are over represented in Flanders, although but the biggest ones are in the Walloon region. Smaller dwellings can be found in Brussels. The oldest dwellings (pre-1945) are over represented in the Walloon Region<sup>10</sup>.

The basic facilities (bath/shower, toilet with flush, running water) are generally available inside the home. This is much less the case with central heating; especially in the Walloon Region where homes are lacking this facility. Also in the Walloon Region and in Brussels almost one in five homes seems to have problems with leaking, dampness or rot. The Flemish dwellings score better on these quality indicators, probably mainly because its stock is slightly newer.

In all regions the quality of owner-occupied dwellings on average is better than for tenants.<sup>11</sup> Specifically housing quality for the population living in private rental dwellings is worse than for those living in the other tenures.

One specificity of the Netherlands<sup>12</sup> compared to France and Belgium is the share of residential mortgage debt outstanding compared to GDP, which scores more than 100%. About 86% of home owners have mortgage debt outstanding. Cooperatives have not developed, as the fear was that as the tenant is also part owner and has more power than a normal tenant, the organization might be steered by individuals instead of societal preferences<sup>13</sup>.

Social landlords –with a public task – dominate the rental sector (34% of all dwellings). Within the private rental sector –without a public task – the group of private person landlords (more than 225,000 dwellings amounting to 3% of total housing stock) is slightly larger than an organisation being landlord (more than 189,000 dwellings also amounting to 3% of total housing stock). The last group is composed of people renting dwellings owned by the government, but also those rented from family or with an

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<sup>7</sup> This is taken from Haffner et al., *Bridging the gap*, 64.

<sup>8</sup> *Sociale Huisvestingsmaatschappij*; SHM in Flanders and Brussels; or *Openbare Vastgoedmaatschappij* (OVM) in Brussels; or *Sociétés de Logement de Service Public* (SLSP) in the Walloon Region.

<sup>9</sup> Vanneste, Thomas & Goosens, *Woning en woonomgeving*, 124.

<sup>10</sup> Dol & Haffner, *Housing Statistics*, 54.

<sup>11</sup> Winters & Heylen, *Kwaliteit en betaalbaarheid*, 24. See also: Heylen & Winters, *Woonsituatie in Vlaanderen*, 24 and 27.

<sup>12</sup> European Mortgage Federation, *Hypostat 2010* (Brussels: European Mortgage Federation, 2010), 69. Any savings in a savings account in the case of an endowment loan, are not deducted from the total; therefore, the total can be regarded as an overestimation of residential mortgage debt outstanding.

<sup>13</sup> Leo Gerrichhauzen, *Het woningcorporatiebestel in beweging; Volkshuisvesting in theorie en praktijk* 25, (Delft: DUP, 1990) 24.

unknown status (possibly including dwellings for which no rent is paid). Home-ownership represents 60% of the households.

All dwellings have a bath/shower (2009) and hot running water (2005). Heating which could be central heating and district heating among others is available in 94% (2009) of dwellings.<sup>14</sup> Generally, the characteristics of the rental dwellings of different owners are more alike than those of owner-occupied dwellings. The latter tenure generally is of better quality: more single-family dwellings, relatively new stock, more dwellings with more rooms and a larger surface area. The social rental stock is also relatively new compared to the stock of other landlords, while of the dwellings owned by private person landlords, almost half are from the pre-war period.

In France, owner-occupation is the largest tenure category (58%), followed by private renting (23%)<sup>15</sup> and social renting (19%).

A form of intermediate tenure used to exist with the *pass-foncier*<sup>16</sup> from January 1<sup>st</sup> 2007 to January 1<sup>st</sup> 2011. Furthermore, in the French social rental sector there is a scheme that allows tenants to (partly) become home owners: *Prêt Social Location Accession*<sup>17</sup>. France also has a small co-operative sector that consists of about 42.000 dwellings<sup>18</sup>. In terms of property rights, co-operative housing is usually placed somewhere on the continuum between full home ownership and renting.

On average, the biggest dwellings can be found in the owner-occupancy sector. Dwellings are relatively small in the social rental sector and particularly in the private rental sector (half of the dwellings have one or two rooms). Generally speaking, social rental dwellings are considerably 'newer' than owner-occupancy dwellings and private rental dwellings. Owner-occupancy dwellings are over represented in smaller municipalities whereas social and private rental dwellings are over represented in bigger cities. Most owner-occupancy dwellings are individual dwellings, whereas most social and private rental dwellings are located in a bigger block of apartments.

In the three countries, information about condominiums has not been found.

### *Conclusions*

The quality of houses is generally considered equally good in the three countries. However, in Belgium, the quality of dwellings is better for homeowners, while in the Netherlands, it is better for tenants. The size of the dwellings is bigger in owner occupancy in France and in the Netherlands. In the three countries, co-operative housing is not developed, even though in France it comprises a small sector. In all of the three countries, homeowner occupancy prevails with rates from 50 to 60%. In Belgium and the Netherlands, the social rental sector is more important than the private rental sector whereas in France the private sector prevails.

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<sup>14</sup> Dol & Haffner, *Housing Statistics in the European Union 2010*, 53.

<sup>15</sup> In this report, renting without a public task is either called private renting or market renting.

<sup>16</sup> See: <<http://www.anil.org/profil/vous-achetez-vous-construisez/achat-et-vente/accession-progressive/pass-foncierr/pass-foncier/>>

<sup>17</sup> <<http://www.developpement-durable.gouv.fr/AC00001-Dispositif-PSLA-Pret.html>>

<sup>18</sup> See: <<http://www.chfcanada.coop/icahousing/pages/membersearch.asp?op=country&id=6>>

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

##### *Vacancy*

As far as vacancy of dwellings is concerned, in Belgium, there is no data. In Flanders and Brussels, levies are used to stimulate building and non-vacancies.

In the Netherlands<sup>19</sup>, on the 1<sup>st</sup> January 2010, the official vacancy rate is 6% (417,000 dwellings), however only for 290,000 dwellings it was certain that they were vacant.<sup>20</sup>

These are often found in typical tourist areas where they will most likely be rented out to tourists. In inner cities of the larger cities, dwellings above shops are often vacant.

Of these 290,000 vacant dwellings, 110,000 are designated as owner-occupied, the remainder as rental property. About half of the rental dwellings are owned by housing associations. Presumably this distinction refers to the situation that either an owner-occupier or a landlord is not able to find a new owner-occupier or new tenant to occupy the dwelling.

As in the Netherlands, in France, the vacancy rate (7.15%) is rather high, which can be explained by the continued rural to urban migration and the population decline in older industrial areas<sup>21</sup>. However, some homeowners also keep their dwelling(s) vacant for speculative reasons. No specific policy to reduce these rates can be highlighted.

##### *Black-market*

In Belgium and in the private sector of the Netherlands there is no information concerning the black market. However in the Netherlands<sup>22</sup>, there is data concerning a black market phenomenon in social renting. In the bigger cities with scarcity of dwellings, especially Amsterdam, social tenants rent out their social rental dwelling illegally for a high rent and live elsewhere where they pay cheaper rent. The Supreme Court confirmed in 2010 that this type of subletting must be considered as illegal.<sup>23</sup>

In France, a black market is associated with the rental of premises that do not meet the legal requirements to be considered suitable regarding health, safety and housing quality. The phenomenon concerns people called '*marchands de sommeil*' who rent small rooms or beds to people who have no other options in the housing market.

The phenomena are different in the two countries where there is data, but in both cases one can notice that the contracts do not abide by the law. In both cases, the targets might be weak tenants that cannot access the regular market or the social rental market as they agree to such conditions.

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<sup>19</sup> Centraal Bureau voor de Statistiek, 'Zes procent van woningen officieel niet bewoond', <<http://www.cbs.nl/nl-NL/menu/themas/bouwen-wonen/publicaties/artikelen/archief/2012/2012-3612-wm.htm>>, 22 February 2013.

<sup>20</sup> Of the 417.000 dwellings mentioned, 80,000 were vacant because they were used for other purposes (e.g. a day-care-centre) and for 50,000 it was not possible to determine whether they were vacant.

<sup>21</sup> Ball, *Housing disadvantaged people?*, 24

<sup>22</sup> Amsterdam.nl, 'Zoeklicht', <<http://www.amsterdam.nl/wonen-leefomgeving/wonen/opsporing-woonfraude/zoeklicht/>>, 22 February 2013.

<sup>23</sup> NRC, 'Uitspraak Hoge Raad 'doorbraak' in strijd verhuurders tegen illegale onderhuur', <<http://www.nrc.nl/rechtenbestuur/2010/06/25/uitspraak-hoge-raad-doorbraak-in-strijd-verhuurders-tegen-illegale-onderhuur/>>, 22 February 2013.



### *Tenant associations*

In all three countries exists a number of associations to represent and protect the tenants. In Belgium there are at least twelve umbrella organisations dedicated to the protection of tenants. Each of them can protect or defend or give advice to a specific type of tenant(s), even some only to associations of tenants, located in a specific place. As a result, the system is rather complex and it is not easy to understand what is the role of each association.

The system in the Netherlands and in France seems less complex than in Belgium. There is a limited number of umbrella associations (in France just four, and in the Netherlands five), each targeting a specific group: home owners, investors and housing associations.

## **1.2 Economic factors in comparison**

### **1.2.1. Comparative view of the housing market**

In Belgium, there is a strong pressure to become a homeowner, which has an impact on the rental market.<sup>24</sup> In Flanders, there is an issue with an increase of households with a weak social-economic profile in private rental sector that can neither find a home in the social rental nor the owner-occupied sector.<sup>25</sup> Therefore there is a demand for private rental dwellings. Another source states that the number of tenants is increasing in comparison with homeowners<sup>26</sup>, which can be explained by the larger numbers of immigrants and the strongly increasing house prices in the past fifteen years.

Data is only known for Flanders where on average 15,000 new households will be looking for a dwelling each year. Concerning the social housing need, the Flemish government estimated that it amounted to around 70,000 candidates in 2011.<sup>27</sup> Thus, they adopted rules<sup>28</sup> for the municipalities on how to determine the gap and to fight the undersupply of dwellings.<sup>29</sup>

In the Netherlands, in 2009 the number of dwellings being constructed (80,000) was enough to cover household growth.<sup>30</sup> Mostly as a result of the impact of the Global

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<sup>24</sup> De Decker, *Belgium: Between confidence and prudence*, 39.

<sup>25</sup> Winters, *Huurprijzen en richthuurprijzen*, 1. And: Pascal de Decker, 'Jammed between Housing and Property Rights: Belgian Private Renting in Perspective', *European Journal of Housing Policy* 1, no. 1 (2001): 20.

<sup>26</sup> KBC, 'De Belgische vastgoed- en hypotheekmarkt. Ontwikkeling, waardering & toekomstvisie,' 14.

<sup>27</sup> Vlaamse Maatschappij Voor Sociaal Wonen, *Statistisch bulletin kandidaat-huurders editie 2011. Versie 1.1* (Brussel: VMSW, 2011), 18 et seq.; Sien Winters et al., *Op weg naar een nieuw Vlaams sociaal huurstelsel?* (Brussel: Ministerie van de Vlaamse Gemeenschap, Departement RWO-Woonbeleid, 2007), 85.

<sup>28</sup> Departement RWO, 'Decreet Grond- en Pandenbeleid', <<http://www.rwo.be/Portals/100/PDF/Publicaties/decreet-grond-en-pandenbeleid.pdf>>, 26 January 2013; Staatsblad Moniteur, 'Vlaamse overheid', <<http://staatsbladclip.zita.be/staatsblad/wetten/2009/10/06/wet-2009035802.html>>, 26 January 2013.

<sup>29</sup> Ruimtelijke ordening, Woonbeleid, Onroerend erfgoed, 'Veelgestelde vragen', <<http://www.rwo.be/NL/RWOnieuwsbrief/Hoofdmenu/Veelgestelde vragen/Voorgemeenten/ActiveringsenL eegstandsheffing/tabid/12422/Default.aspx>>, 28 January 2013.

<sup>30</sup> ABF Research, 'Malaise in de woningbouw: woningtekort verdubbelt', <<http://www.abfresearch.nl/nieuws/woningtekort-verdubbelt.aspxL>>, 22 February 2013.

Financial Crisis (GFC) on the housing market, construction has plummeted since then. For 2013 no more than 50,000 new dwellings were forecast to be built. The number of households, however, is still increasing. The housing shortage has increased to about 50,000 dwellings in the past three years and the shortage will reach about 300,000 dwellings in 2020; this means a shortage of 4%. In cities like Utrecht and Amsterdam, the shortage is estimated to reach even 7% and more. In the long term, the national statistical office of the Netherlands expects the number of households to keep growing from about 7 million in 2013 to 8.0 to even 9.1 million in 2040.<sup>31</sup> Growth however will diverge across regions.<sup>32</sup> The central area – the so-called Edge City (*Randstad*) with the four largest cities of the Netherlands (Amsterdam, Rotterdam, Utrecht, The Hague) – is expected to maintain more than average growth at the cost of more peripheral regions.

In France, the effects of the GFC have been relatively limited. Although house prices have decreased somewhat between the end of 2008 and the beginning of 2010, they have been increasing again since then. In nominal terms, current house prices are already higher than the pre-GFC peak level<sup>33</sup>. However, since 2012 house prices are slowly decreasing again, due to deteriorating economic and credit conditions. The housing market situation in France strongly differs between areas. The pressure on this market is high in the Paris region and most of the major cities, whereas it is considerably lower in much of the countryside. The population of France is still growing. Between 2010 and 2020, the number of households is expected to increase by about 3 million, which implies that at least 3 million new dwellings are needed to house these households. It is estimated that 320.000 to 370.000 new dwellings a year will be needed up to 2020<sup>34</sup>.

### *Conclusion*

In the three countries, the need for new dwellings in the coming years is evident. Before the GFC the Netherlands appears to be the market that works the best in terms of supply and demand, as in 2009, the number of dwellings being constructed (80,000) was enough to cover household growth. The impact of the GFC has differed, being significant in Belgium and the Netherlands but with few effects in France. However, the three countries will face a housing shortage in the coming years and need to find specific policies such as subsidisation schemes in order to face it.

#### • **1.2.2. Comparative view on price and affordability**

In Belgium, two gaps can be observed. First, in Brussels rents on average are significantly higher than in the other two Administrative Regions. Second, rents in social renting are significantly lower than in private renting. The Belgian rent-to-income-ratio

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<sup>31</sup> Centraal Bureau voor de Statistiek, Statline, 'Regionale prognose huishoudens; 2013-2040', <<http://www.cbs.nl/NR/rdonlyres/54C923ED-5A6B-4B0C-8380-DC8F0A37FBC9/0/2013Regionaleprognose20132040art.pdf>>, 21 January 2014 ..

<sup>32</sup> Centraal Bureau voor de Statistiek, 'Forse bevolkingsgroei in de Randstad tot 2025', <<http://www.cbs.nl/nl-NL/menu/themas/bevolking/publicaties/artikelen/archief/2011/2011-064-pb.htm>>, 22 February 2013.

<sup>33</sup> Ball, *European Housing Review 2012*, 22.

<sup>34</sup> Ball, *European Housing Review 2012*, 30.

(corrected for housing allowances) averaged almost 29% in 2007/2008.<sup>35</sup> If unaffordability is defined as housing expenses taking a larger share than 30% of disposable household income (after housing allowances have been deducted from rent), 34% of Belgian tenants would pay an unaffordable rent in 2007/2008.<sup>36</sup> The increase in house prices has driven potential candidates towards the rental sector where rents have been rising relatively little between 2007 and 2010.

In the Netherlands, housing on average is more affordable in the owner-occupied sector than for the rental sector. The explaining variable is income and not the level of housing expenditure. For a tenant income is on average almost half (23,220 Euro per year) of the income of the owner-occupier (43,580 Euro per year). Average basic rent amounts to 441 Euro per month, while gross housing expenditure for owner-occupiers amounts to 692 Euro per month. Years of housing policies have slowly resulted in the marginalization by income of the rental sector.<sup>37</sup> Housing allowance has been attractive for tenants with a lower income and favourable income tax treatment has been attractive for home owners, especially for those home owners with a higher income. Home ownership has grown strongly since about 1990, due to stable economic growth, low interest rates and the favourable tax treatment of home ownership.<sup>38</sup> The GFC has had a strong impact on the owner-occupied market. Generally, construction numbers are not in line with increasing demand,<sup>39</sup> in addition, the sales of new dwellings have fallen, which has had an impact on the rental market.

In France, the highest housing costs can be found among tenants in the private rental In France, the highest housing costs can be found among tenants in the private rental sector and home owners with a mortgage. Home owners without a mortgage have the lowest housing costs. Housing costs are lower in higher income brackets than in the lower income brackets. In 2006, tenants in the French social rental sector paid on average 55 Euros annual rent per square meter and a monthly rent of a little more than 300 Euros. Tenants in the private rental sector on average pay much more: 90 Euros per square meter per year and a monthly rent of a little more than 500 Euros<sup>40</sup>. The differences in rental costs between the social rental sector and the private rental sector are greater in regions with considerable pressure on the housing market such as Ile de France.

The political stance towards social housing strongly depends on the political ideology of the government that is in charge. Whereas the Sarkozy government favoured the owner-occupancy sector above the rental sector, the current Hollande government wants to revive the social rental sector.

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<sup>35</sup> Marietta Haffner & Kees Dol, *Internationale Vergelijking van woonuitgaven met EU-SILC* (Delft: TU Delft, Onderzoeksinstituut OTB, 2011), 12.

<sup>36</sup> Haffner, Marietta, Christian Lennartz & Kees Dol. 'Housing'. In *Countries compared on public performance. A study of public sector performance in 28 countries*, ed. Jedid-Jah Jonker, (The Hague: The Netherlands Institute for Social Research, 2012b), 250.

<sup>37</sup> Marietta Haffner & Harry Boumeester, 'The Affordability of Housing in the Netherlands: An Increasing Income Gap Between Owning and Renting?' *Housing Studies* **25**, no. 6 (2010): 818.

<sup>38</sup> Mostly from: Haffner & De Vries, 'Dutch house prices and tax reform', 158 and 159.

<sup>39</sup> ABF Research, 'Malaise in de woningbouw: woningtekort verdubbelt', <<http://www.abfresearch.nl/nieuws/woningtekort-verdubbelt.aspx>>, 22 February 2013.

<sup>40</sup> Commissariat Général au Développement Durable, *Compte du logement 2011. Premiers résultats 2012*, (Paris : Commissariat Général au Développement Durable, 2012), 134

In comparison, in Belgium, the percentage of people who pay rent that would be considered unaffordable is relatively high compared to other EU-countries, such as the Netherlands where the percentage is a little more than 20% of tenants. One can also note that in the three countries, home ownership was favoured and that in the social rental sector prices are lower than in the private sector. Housing costs are lower in France and in the Netherlands for home owners.

- **1.2.3. Tenancy contracts and investment**

In Belgium, the private rental sector is mostly run by landlords who can be described as amateur landlords – private persons (and not businesses)–, which must be regarded as an indication of the unprofitability of the sector. Therefore, the return on investment is estimated as being relatively low for Flanders.<sup>41</sup> The GFC will not have affected the situation drastically as rising house prices indicate a continuing demand for owner-occupation (and a continuing indirect return on investment), instead of an abrupt switch in demand towards the rental sector.

As most landlords are private person landlords with small portfolios, the expectation is that Real Estate Investment Trusts (REIT's) based on or securitization of tenancy contracts will not play a role on the rental market.

In the Netherlands, by 2009 total returns on residential investment have plummeted to the lowest return since 1995. Since 2007 they have become negative.<sup>42</sup> Capital losses (negative indirect return) caused this outcome, while return from operation (direct return) stayed stable. However, when the trend is considered, direct return on average has decreased since 1995 as well. One technical explanation may be that it decreased only because of strongly increasing house prices at that time. But rent control largely based on inflation may also have contributed to decreasing direct returns. Decreasing direct returns will have made investors more dependent on returns from capital gains, possibly stimulating (precipitating) investors to sell off their property in order to make their desired return. Their business model would normally involve a sale of individual private rental dwellings after 15 to 20 years of operation, before large investments for renovation and modernisation became necessary.<sup>43</sup> A type of REIT's, called the "tax-free" investment trust (*fiscale beleggingsinstelling*; fbi) exists and can be quoted or not on the stock exchange.<sup>44</sup> The advantage of the trust as an organization is the zero tariff in corporate tax (no payment of corporate tax).

There are three main investors in the French rental sector: social landlords, individual private rental landlords, and institutional private rental landlords. After the start of the

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<sup>41</sup> Pieter Vandenbroucke et al., *Naar een aanbodbeleid voor de Vlaamse private huurmarkt* (Brussel: Ministerie van de Vlaamse Gemeenschap, Departement Ruimtelijke Ordening, Woonbeleid en Onroerende Erfgoed - Woonbeleid, 2007), 94.

<sup>42</sup> Vereniging van Institutionele Beleggers in Vastgoed, Nederland, *De vastgoedbeleggingsmarkt in Nederland 2008*, 9. And: Vereniging van Institutionele Beleggers in Vastgoed, Nederland, *Vastgoedwijzer*, 19.

<sup>43</sup> Priemus, 'Commercial rented housing: two sectors in the Netherlands', 275.

<sup>44</sup> Vastgoedvergelijker, written by Nick Blom, 'Niet beursgenoteerde fiscale Beleggingsinstelling (fbi)', <<http://www.vastgoedvergelijker.nl/nieuws/niet-beursgenoteerde-fiscale-beleggingsinstelling>>, 24 February 2013.

economic crisis in 2008, investment in the social rental sector, which is related to government incentives, has increased, whereas investment in the private rental sector has decreased. Social rental landlords do not have to make a commercial rate of return. Investment in the private rental sector<sup>45</sup> can be done by both individual and institutional private rental landlords. Traditionally, individual investors expected a rental yield of 5% per year, but recently, it has decreased by 3,5% to 4%. Potential capital yields (as a result of growth in property prices) may also be a strong incentive. Furthermore, investing in rental property can also be a way to prepare financially for retirement. Also for individual private rental landlords, the government provides financial incentives that aim to promote investment, mainly in the form of fiscal subsidies. The importance of institutional private rental landlords has significantly decreased in recent decades. The returns are dependent on both the returns from renting and the returns from capital growth (increase in property prices). The returns from letting were 3,3% in 2011, whereas the return from capital growth was no less than 8,2%, thus resulting in a total return of more than 11%. Over a longer time period the total returns show a positive picture as well; they were 9,8% over the last 10 years. France has recently developed specific fiscal regulations for REIT's. However, until now, the impact of such REIT's seems to be rather limited<sup>46</sup>. No information on securitization of rental incomes has been found.

### *Conclusion*

In the three countries, the return on investment has decreased in the past year, even though in Belgium it has always been low. In the Netherlands, the return from capital has plummeted whereas in France it is still higher than the return from letting. In the Netherlands and in France, Real Estate Investment Trusts have been created. The system is quite efficient in the Netherlands as they do not have to pay corporate taxes, which makes it rather attractive.

### **1.2.4. Other economic factors**

In Belgium, almost 30% (2005/2006) of Flemish tenants rented a dwelling from a private person landlord via an intermediary responsible for the management of the rental dwelling.<sup>47</sup> Almost 29% make use of the services of a commercial estate agent; the remainder 1%, are rented via Social Rental Agencies (*Sociale Verhuurkantoren*; SVK), which offers social rental houses or apartments to vulnerable households as an intermediary between private owner-landlords and these households. In the Walloon Region and in Brussels, Social Rental Agencies (*Agences Immobilières Sociales*; AIS) are also active<sup>48</sup>. In Brussels, 12 Social Rental Agencies active in 2001, were renting out 650 dwellings. For the Walloon Region 28 of these agencies are mentioned.

In the Netherlands, little is known about the utilization of the services of real estate agents in the rental market. One can assume that the smaller and part-time landlords

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<sup>45</sup> This paragraph is mainly based on: Hoekstra, *Country report France*, 9-10.

<sup>46</sup> Hoekstra, *Country report France*, 20

<sup>47</sup> Marja Elsinga et al., *Beleid voor de private huur*, 14. And: Pascal de Decker et al., *Eigenaars die woningen verhuren aan een sociaal verhuurkantoor. Profiel, motieven en tevredenheid* (Heverlee: Steunpunt Ruimte en Wonen, 2009), 20.

<sup>48</sup> Les Agences immobilières sociales, 'Les Agences immobilières sociales', <<http://www.arianet.irisnet.be/legislat/ais.htm>>, 27 January 2013.

tend to make use of the services of real estate agents.<sup>49</sup> Real estate investors would probably not manage their properties themselves, as their business would be to invest the funds they receive via their main business from their clients.

In France, in the last ten years a network of developers (often tied to banks and/or real estate agents) has emerged that sells dwellings (mainly apartments) that are meant to be let by individual private landlords (buy-to-let). They are sold as a package that includes management of the apartments and insurances for covering damage or rent arrears. The usual fee for such services is about 8% of the yearly rent but fees may range between 4,5% and 12%, depending on the kind of services included in the package. Management fees can be deducted from the rental income for taxes. It is difficult to estimate which percentage of the private rental dwelling stock owned by individual landlords is managed by professionals. It is clear however, that this phenomenon is especially visible in the larger cities where it could reach up to one third of the market<sup>50</sup>.

### *Conclusion*

Due to the lack of data for the Netherlands and Belgium, a comparison between the three countries is hardly possible. In Belgium, one can note the importance of agencies for the social rental sector whereas in France and the Netherlands they seem more important in the private sector as an intermediary between potential tenants and smaller or part-time landlord.

### **1.2.5. Effects of the current crisis in comparative perspective**

In Belgium<sup>51</sup>, even if the economy was affected by the GFC, the housing market appeared relatively unaffected. One of the indicators is the continuously rising house prices during the past fifteen years.<sup>52</sup>

The housing market will also have been steadily growing due to government intervention to avoid bankruptcy of the bank but also due to a risk-averse mortgage market and a limitation of the variable interests.

The structure of the housing market also plays an important role.<sup>53</sup> Households stay put once they become owner-occupied instead of moving along a housing ladder from a smaller to a larger dwelling. The market is therefore less prone to changing economic environments as house building will not be speculative but based on demand.

However, jobs have been lost in the construction sector and in an effort to overcome the crisis, the government decided to lower the VAT applicable to new constructions, from 21% to 6%. In Flanders the government promised to invest an extra 85 million Euro in social rental dwellings based on an earlier conclusion that the social rental sector was too small.<sup>54</sup> Furthermore, the requirements to be able to receive the free Flemish

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<sup>49</sup> Christian Lennartz, *Competition between social and private rental housing* (Amsterdam: IOS Press BV, 2013), 51 and 71.

<sup>50</sup> Hoekstra, *Country report France*, 9-10

<sup>51</sup> No information has been found concerning repossession in Belgium and the Netherlands.

<sup>52</sup> Winters & Heylen, *Kwaliteit en betaalbaarheid*, 5.

<sup>53</sup> Van der Heijden, Dol & Oxley, 'Western European housing systems and the impact of the international financial crisis', 302 et seq. And: Dol, Van der Heijden & Oxley, *Economische crisis*, 81-84.

<sup>54</sup> Dol, Van der Heijden & Oxley, *Economische crisis*, 21.

housing expense insurance were relaxed, such as the elimination of most of the income requirements.

In the Netherlands, the banks were affected by the GFC resulting in less availability of credit which will also affect a new supply of private rental dwellings, when the supply is dependent on debt capital. Distress sales have been falling again (less than 200/month) after peak values were reached in January and December of 2011 where the number of sales almost reached 400 per month.<sup>55</sup> In 2009 the government intervened in the housing market with six types of measures; two of those did not need government funds as they involved the increase of the guarantee limits for home ownership and social renting.<sup>56</sup> The third measure was the Temporary Stimulating measure Housing Construction Projects (*Tijdelijke Stimuleringsregeling Woningbouwprojecten*) which involved a budget of 351 billion Euro to aid the realization of promised projects that were stopped because of the crisis. Three other measures which focused on energy investments were allocated a budget of more than 350 billion Euro. Other measures were also taken, such as the facilitation of building procedures, the decrease of transaction tax, and allowing for the temporary renting out of owner-occupied dwellings which could not be sold. In the end, it must be concluded that the measures have not helped to prevent a crisis in the housing market.

In France, the GFC has had a relatively small impact on the mortgage credit provision. However, there are signs that lending conditions have worsened somewhat in 2012.<sup>57</sup>

Repossessions are not a big issue in France. Between 2008 and 2010, the number of doubtful loans increased from 0,92% to 1,28% of the total outstanding residential lending, which can be considered as low. In December 2008 the financial crisis prompted the French government to invest much more money in housing. About 100,000 extra new dwellings were financed, most of them in the social rental sector (30,000 dwellings) and the intermediate rental (40,000 dwellings) sector. Additionally, more money was invested in renovation and in the financial support for first-time buyers. The tax incentives for individual investment in the private rental sector were made more generous. Finally, a new scheme has also been launched to aid private rental projects being transformed into social rental programs and more money has become available for renovations in the existing housing stock<sup>58</sup>. Since the end of 2010 most of the crisis measures have been withdrawn or have expired, whereas others have been made less generous. Nowadays fiscal austerity is the order of the day, capital gains taxes and VAT have been increased and housing subsidies have been diminished<sup>59</sup>.

### Conclusion

The effects of the crisis seem to be stronger in the Netherlands than in the two other countries. This is due to the link between the Dutch and the American banks. Thus, the Dutch government had to adopt additional measures to deal with the crises, even if in

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<sup>55</sup> Kadaster, 'Scorecard: Executie Veilingen', <<http://www.kadaster.nl/web/pagina/Vastgoed-Dashboard.htm>>, 31 July 2013.

<sup>56</sup> Martin Koning & Michiel Mulder, *Evaluatie stimuleringspakket woningbouw* (Amsterdam: Economisch Instituut voor de Bouw, 2012), 7 and 37. And: Van der Heijden, Harry, Kees Dol & Michael Oxley. 'Western European housing systems and the impact of the international financial crisis'. *Journal of Housing and the Built Environment* **26**, no. 3 (2011): 300.

<sup>57</sup> Ball, *European Housing Review* 2012, 23

<sup>58</sup> Dol et al., *Inventarisatie crisismaatregelen op de woningmarkt in negen West-Europese landen*

<sup>59</sup> Ball, *European Housing Review* 2012, 23.

the end they were not considered as efficient. In France and in Belgium, the GFC has had a relatively low impact on the market. However investments were made by the government in order to overcome some effects of the crisis.

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

#### 1.3.1. Urban aspects in comparative perspective

In Belgium<sup>60</sup> the largest share of dwellings was found in the agglomerations in 2001. Though the growth in the period 1991-2001 took place in the suburbs (+15%) and not in the agglomerations (+5%). Single people are concentrated in agglomerations, while families with children were choosing less urbanized areas.

Most apartments can be found in large urban environments: five of six rental apartments and almost all owner-occupied apartments. The latter group of dwellings constitutes a clear minority in the housing market in Belgium.

The influence of gentrification on residual living is unclear. Apparently, concentrations of problems within vulnerable groups and housing will be found in cities. They are also confronted with the pressure that immigration<sup>61</sup> is causing on the housing market.

In The Netherlands, renting is relatively popular in the larger municipalities, while home ownership has a relatively stronger position in rural areas. To avoid gentrification urban policies<sup>62</sup> have generally consisted of diversification of housing stock by demolishing, upgrading, etc. of dwellings in order to achieve a tenure and population mix in city neighbourhoods.<sup>63</sup>

Even though squatting became illegal in 2010,<sup>64</sup> it seems that the new law has not yet had much effect.<sup>65</sup>

In France social rental dwellings are mainly concentrated in the medium-sized and larger cities and agglomerations. The market share of social rental housing is particularly high in formerly heavily industrialised areas, notably around Paris and in the north and the east of France. In the ZUS-areas (*Zone Urbaine Sensible*), social rental dwellings have a market share of about 60%<sup>66</sup>. The proportion of social rental dwellings is considerably lower in the south-east and west of the country, especially in the more rural areas. In many small municipalities there are simply no social rental dwellings

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<sup>60</sup> Statistics on the topics of gentrification and ghettoization and on the topic of squatting have not been encountered.

<sup>61</sup> T. Bircan, M. Hooghe & A. Kayaoglu, 'Inkomensongelijkheid, migratiepatronen en sociale ongelijkheid in Vlaanderen', in *De sociale staat van Vlaanderen*, ed. L. Vanderleyden, M. Callens & J. Noppe (Studiedienst Vlaamse Regering, 2009), 363-381.

<sup>62</sup> For data concerning the liveability of neighbourhoods, see <http://www.leefbaarometer.nl/>.

<sup>63</sup> Reinout Kleinhans, 'Social implications of housing diversification in urban renewal: A review of recent literature', *Journal of Housing and the Built Environment* 19, no. 4 (2004): 368. Citation on p. 371.

<sup>64</sup> Overheid.nl, 'Wet kraken en leegstand', <[http://wetten.overheid.nl/BWBR0028053/geldigheidsdatum\\_26-02-2013](http://wetten.overheid.nl/BWBR0028053/geldigheidsdatum_26-02-2013)>, 26 February 2013.

<sup>65</sup> NRC, 'Een jaar kraakverbod: wat heeft het opgeleverd?', <<http://www.nrcnext.nl/blog/2011/10/03/een-jaar-kraakverbod-wat-heeft-het-opgeleverd/>>, 31 July 2013.

<sup>66</sup> J.C. Driant, Social housing in France: a sector caught between inertia and changes. The HLM system in the early 2010s. In Houard, N. (ed.) *Social Housing across Europe*, (Paris : Ministère de l'écologie, du développement durable, des transports et du logement, 2011).



available. By requiring each municipality (*commune*) of a certain size to have at least 25% social rental housing the government is attempting to counterbalance the uneven geographical distribution of social rental dwellings.

Since the urban riots in 2005 preventing segregation is an important policy goal. The government strives for neighbourhoods that are mixed, both in economic and in ethnic terms. However, despite these policy efforts, segregation still persists in France.

Squatting certainly exists in France, especially in the bigger cities. It can be both politically or economically motivated. Even though squatting is illegal squatters also have particular rights and the expulsion of squatters has to be ordered by a judge<sup>67</sup>.

### *Conclusions*

In the three countries, home ownership is very popular in rural areas, whereas renting is relatively popular in the cities. France and the Netherlands try to fight gentrification by using several measures such as, obliging cities to have a minimum percentage of social housing or trying to mix the population. The various policies do not seem that efficient, especially in France where segregation still persists. Both in France and the Netherlands squatting is illegal but there seems to be no specific policy to oppose this phenomena.

### **1.3.2. Social aspects**

In Belgium, since the first Housing Act of 1889, the main objective of the central government has been to encourage owner-occupation, regardless of the political party in power.<sup>68</sup> Due to its dominant share of the market, it seems to be that home ownership, can almost be forced onto households, who can afford it, because of social pressure.<sup>69</sup> Renting is seen as 'throwing away money'<sup>70</sup> and is considered an unstable situation<sup>71</sup> On the contrary, buying is seen as an investment and a security in times where welfare states and pension systems are under pressure.

In the Netherlands, research conducted in Breda in 2011 shows that the present tenure plus income explained preferences for social or private renting: the higher the income the better the attitude towards private renting and the less the likelihood of a move towards social renting. The lower the income the better the attitude towards social renting will be, and if living in a private rental dwelling, there is more likelihood to change tenure.<sup>72</sup> The views of social renters were similar but with stronger negative perceptions about private renting than the other way around. On average, both forms of renting were perceived to be socially accepted, though the housing associations were perceived to be the better landlords providing better services. The majority of people entering the housing market will prefer a rental apartment (more than 250,000 households), while a majority of those moving to subsequent dwelling state a preference for owner-occupied

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<sup>67</sup> <<http://www.macsf.fr/vous-informer/vie-pratique-professionnel-sante/immobilier-professionnel-sante/expulsion-d-un-squatter.html>>

<sup>68</sup> From Haffner et al., *Bridging the gap*, 63 et seq.

<sup>69</sup> De Decker, 'Belgium: Between confidence and prudence', 39.

<sup>70</sup> Vicky Palmans & Pascal de Decker, *Households' perceptions of old age and housing equity: the case of Belgium* (Hogeschool Gent, 2009), 48 and 41.

<sup>71</sup> De Decker, 'Jammed between Housing and Property Rights: Belgian Private Renting in Perspective', citations on page 17 and page 20.

<sup>72</sup> Lennartz, *Competition between social and private rental housing*, 28, 192, 201 and 202.

single-family dwelling (more than 600,000). Research showed that in 2008 households between the ages of 50 and 64 were more likely to have used mortgage products to increase consumption in retirement than in the 90's.<sup>73</sup>

In France, the majority of households have a preference for buying a dwelling rather than renting one. As for Belgium, renting is often considered as throwing away money. Research has shown that 74% of all owner-occupiers and 41% of all tenants have a preference for an owner-occupied dwelling. Being the owner of their principal residence is also a way to improve the standard of living of retired people. Some of them are also owners of rental dwellings in order to increase their incomes.

### *Conclusions*

In the three countries, even if renting is not considered as socially inferior, many people regard home ownership as a goal. In Belgium, becoming an owner seems to be particularly important due to the social pressure. Both in France and in Belgium, renting is considered as a waste; moreover, in Belgium it is also considered as an unstable situation. In the Netherlands, due to their work, housing associations are considered to be better landlords than private ones and social housing is not stigmatised.

## **2. Housing policies and related policies in comparison**

### **2.1. Introduction**

Belgium's welfare state<sup>74</sup> is classified as a corporatist welfare regime.<sup>75</sup> It means that households can largely provide for their own social welfare via social policies of the state, independent of labour market income. It also is associated with a relatively high degree of stratification implying that the position of citizens and the differences between (hierarchies) them will remain. The mix of state, market and family in the provision of and intervention in housing will be based on consensus, cooperation and coordination between social partners and the government. Policy will thus have an incremental, problem-solving and framework type of character. The starting point of social policy is the so-called equivalence principle – the preservation of the standard of living – basing social rights and amounts on salary earned.<sup>76</sup> The aim was that income inequalities among groups of beneficiaries would be reduced. Furthermore, as in France, the Belgian welfare system is differentiated according to occupational groups and is based on the family with increased rights for the recipients because of dependents. On the other hand, the share of Belgian home owners is relatively high as it has always been encouraged.

In the Netherlands,<sup>77</sup> housing policy can be considered as a mix between corporatist and social democratic welfare state regime at the end of the 1980s.<sup>78</sup> The traits relating

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<sup>73</sup> Janneke Toussaint & Marja Elsinga, 'Mortgage-equity release: the potential of housing wealth for future Dutch retirees', *Journal for Housing and the Built Environment* (2012 on I-first): no page numbers.

<sup>74</sup> Gøsta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Cambridge, Polity Press, 1990), 1 et seq.

<sup>75</sup> Winters & Heylen, *Kwaliteit en betaalbaarheid*, 2.

<sup>76</sup> Winters & Heylen, *Kwaliteit en betaalbaarheid*, 6.

<sup>77</sup> Gøsta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Cambridge, Polity Press, 1990). Own elaboration based on: Joris Hoekstra, 'Housing and the Welfare State in the Netherlands: an Application of Esping-Andersen's Typology', *Housing, Theory and Society* 20, no. 2 (2003): 58 et seq.

to the former regime were mainly based on the types of subsidies for the owner-occupied sector, which were aimed at starters in owner-occupation with certain income levels. In the 1990s, many of the social-democratic traits of the housing system had disappeared, while the corporatist characteristics had gained importance. The main instruments were kept largely intact though, and the country still had the largest social rental sector in the European Union. The direct involvement of the government in housing, however, faded with the abolition of all periodic bricks-and-mortar subsidies for new construction and the paying off of the annual future operation subsidies in the 1990s. Direct involvement switched to a more indirect governance of housing by defining the policy framework within which local governments, social landlords and private actors have to operate.

France is known as a corporatist welfare state. However, the government interventions are more extensive and directly related to the general economy. One could say that housing policy is being used in a deliberately Keynesian manner to manage demand in the economy, which is a stated goal of housing policy in a way that is rare elsewhere<sup>79</sup>. French housing policy not only houses people on the fringes of the property market, but also serves urban planning strategies and irons out economic cycles by protecting jobs in the construction sector.<sup>80</sup>

The three countries are considered as corporatist welfare states, even though in the 80s the Netherlands was a mix between a corporatist and social-democratic state. In a corporatist welfare state, the State has very little influence in the field of housing and intervenes to correct undesirable consequences of the market.<sup>81</sup>

In Belgium and in the Netherlands, the Constitution contains provisions related to the right to housing: Right to decent housing, art. 23 of the Belgium Constitution<sup>82</sup> and the responsibility of the government to encourage adequate housing supplies, art 22.2 of the Dutch Constitution, *Grondwet*.<sup>83</sup> In both cases, the provision has no direct effect but has an influence on the tenancy law. On the contrary, France has no provision in its Constitution but created an enforceable right to housing (*Droit au logement Opposable: DALO*). The DALO can be considered a real improvement in the rights of home seekers as it has direct effects. It implies that people who are not offered decent housing have the option of going to a mediation committee, or ultimately, to court. Since 2008, more

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And: Joris Hoekstra, 'Is there a Connection between Welfare State Regime and Dwelling Type? An Exploratory Statistical Analysis', *Housing Studies* 20, no. 3 (2005): 475 et seq.

And: Joris Hoekstra & Agnes Reitsma, *De zorg voor het wonen. Volkshuisvesting en verzorgingsstaat in Nederland en België* (Delft: DUP Science, 2002), 1 et seq.

<sup>78</sup> Text mostly taken from: Haffner, 'The Netherlands', 49-50.

<sup>79</sup> Ball, *European Housing Review 2008*, 32.

<sup>80</sup> Driant, *Social housing in France : a sector caught between inertia and changes*.

<sup>81</sup> J. Hoekstra, Housing and the welfare state in the Netherlands. An application of Esping-Andersen's typology (*Housing, Theory and Society*, Vol. 20, No.1, pp. 58-71, 2003)

<sup>82</sup> M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, Reeks Huurrecht, vol. 1 (Brugge: die Keure, 2006), 76; B. Hubeau & R. de Lange (eds), *Het grondrecht op wonen, De grondwettelijke erkenning van het recht op huisvesting in Nederland en België*, (Antwerpen – Apeldoorn: Maklu Uitgevers, 1995), 40.

<sup>83</sup> Rijksoverheid, 'Grondwet', <[http://wetten.overheid.nl/BWBR0001840/geldigheidsdatum\\_13-02-2013#Hoofdstuk1](http://wetten.overheid.nl/BWBR0001840/geldigheidsdatum_13-02-2013#Hoofdstuk1)>, 13 February 2013.

than 140.000 households have demanded decent housing on the basis of this new law<sup>84</sup>. However, despite the DALO, some of these households did not receive a housing offer within the appropriate legal term due to housing shortages<sup>85</sup>.

## 2.2. Policies and actors

### 2.2.1. Governmental actors

In Belgium, the 1970 National Housing Code (*Huisvestingscode*) established the legal basis for housing policy.<sup>86</sup> Since then, regionalisation has taken place and the three regions (Flanders, Walloon and Brussels) are now mainly responsible for housing policies; especially since the 1<sup>st</sup> of July 2014 when a part of the federal government's responsibilities were transferred to the regions. In addition to these levels<sup>87</sup>, there are also two other levels of government, the provincial level (five Flemish and five in the Walloon Regions) and the local (municipalities) level.<sup>88</sup> The 589 municipalities and cities (308 in Flanders, 262 in the Walloon Region and 19 in Brussels) also have some housing responsibilities.

In the Netherlands, central government steers housing policy via the policies of rent regulation, housing allowances and tax relief for owner-occupiers. Local governments (425 municipalities in 2012) are still able to promote affordable rental housing supplied by social landlords via the provision of favorably-priced development sites.

The local housing policies will often be in agreement on "co-governance" between local governments with the housing associations.<sup>89</sup> Therefore it allows municipalities to have a relatively strong influence in the implementation of national housing policies. Municipal legislation is sometimes also created with the cooperation of the local tenant association. The tier of government in-between the central and local level consists of twelve provinces. One of their key tasks is the responsibility for a sustainable spatial development, which includes housing and urban renewal.<sup>90</sup>

France is known for its rather centralised administration and the far-reaching powers of its central government<sup>91</sup>. Since 1983 some decentralisation has occurred and this process has continued to make steady progress<sup>92</sup>. At present France comprises 22 *régions*, 96 *départements* and over 36,000 municipalities. Recently, many municipalities have entered into partnerships (*établissements publics de coopération intercommunale*) and currently there are about 2,500 of them. The municipalities or the partnerships in

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<sup>84</sup> B. Rolland, *Les Politiques du logement en France* [Housing policy in France], OECD Economics Department Working Papers, No. 870 (Paris : OECD, 2011).

<sup>85</sup> Rolland, *Les Politiques du logement en France*, 7.

<sup>86</sup> Winters, 'Belgium-Flanders', 61. And: Haffner et al., *Bridging the gap*, 74-75.

<sup>87</sup> There are also three communities (the French-speaking community, the Flemish-speaking community and the German-speaking community) but without responsibilities concerning housing.

<sup>88</sup> Portaal Belgium.be, 'de gemeente', <[http://www.belgium.be/nl/over\\_belgie/overheid/gemeenten/](http://www.belgium.be/nl/over_belgie/overheid/gemeenten/)>, 8 February 2013.

<sup>89</sup> Marja Elsinga & Gerard van Bortel, 'The future of social housing in the Netherlands', in *Social Housing across Europe*, ed. Noémie Houard (Paris: La Documentation française, 2011), 100.

<sup>90</sup> Interprovinciaal Overleg, 'De zeven kerntaken van de provincies', <<http://www.ipo.nl/over-de-provincies/de-zeven-kerntaken-van-de-provincies/>>, 8 February 2013.

<sup>91</sup> Blanc, *The changing role of the state in French housing policies: a roll-out without roll-back*.

<sup>92</sup> A. Cole, 'Decentralization in France: Central Steering, Capacity Building and Identity Construction', (*French Politics*, No. 4, 31-57).

which they are involved, have been charged with responsibility for local housing and building plans and the provision of building permits.<sup>93</sup> Central government is still the main influence on housing policy as providing funding for housing (production subsidies, housing allowances, fiscal concessions) is still predominantly its task<sup>94</sup>.

In the three countries, housing policy is divided between national and regional level and it seems that the regional level is getting a greater amount of responsibility. France is the most centralised one as the central government still has important responsibilities concerning housing. In Belgium on the contrary, the responsibilities of the central government were transferred to the regions. The system in the Netherlands seems more balanced as responsibility is shared between the regional and the national levels.

### • 2.2.2. Housing policies

In Belgium, the aim of housing policy has been to aid as many households as possible and not only the neediest households, which can be demonstrated by the focus on facilitating home ownership. Mostly, housing policy has been characterised by a relatively low financial commitment from the government.<sup>95</sup> The housing policies of the regions only differ slightly from each other, even nowadays,<sup>96</sup> as the regions continue using the procedures that were applied at the time of regionalization, but with varying degrees of implementation.<sup>97</sup> Thus an important part of the housing market is market-dominated. Concerning the targeting of specific populations, at a regional level, the Flemish policy<sup>98</sup> aims to protect the elderly from adverse economic issues and discrimination.

In the Netherlands policy concerns the rental sector and its priority is implementing a framework that stimulates (the privatized) housing associations to provide affordable housing and liveable neighbourhoods. It aims also to provide housing allowances to lower-income tenants. Finally, housing policy is about protecting tenants and giving them a stronger position in negotiations with landlords. In more recent years the government has tried also to create a balance in the rental market.

Concerning the targeting of specific populations, since 2007 the National Program for the Care of the Elderly (*Nationaal Programma Ouderenzorg*)<sup>99</sup> has been implemented to help the elderly to live independently. But an umbrella organisation indicated in 2012

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<sup>93</sup> Van der Heijden, Haffner and Reitsma, *Ontwikkeling van de woonuitgaven in zes West-Europese landen*, 123 ; Tutin, *Social Housing: another French Exception?*.

<sup>94</sup> Kirchner, *Wohnungsversorgung für unterstützungsbedürftige Haushalte. Deutsche Wohnungspolitik im Europäischen Vergleich*, 175.

<sup>95</sup> De Decker, 'Belgium: Between confidence and prudence', 35.

<sup>96</sup> Winters & Heylen, *Kwaliteit en betaalbaarheid van wonen: een vergelijking tussen de drie Belgische gewesten als case voor het testen van de samenhang tussen huisvestingssystemen en woonsituatie van huishoudens met een laag inkomen*, 2.And: Vanneste, Thomas & Goossens, *Woning en woonomgeving*, 21.

<sup>97</sup> Vanneste, Thomas & Goossens, *Woning en woonomgeving in België* (Brussel: FOD Economie, 2007), 20.

<sup>98</sup> Departement Welzijn, Volksgezondheid & Gezin, *Het Vlaams Ouderenbeleid* (place of publication not given, 2012), 1 *et seq.*

<sup>99</sup> Overheid.nl, 'Ouderenzorg', <<http://www.rijksoverheid.nl/onderwerpen/ouderenzorg/kwetsbare-ouderen>> 3 March 2014.

that this policy was considered inefficient as it was missing strategy and active government policy.<sup>100</sup> To assist the integration of immigrants that have received a residence permit<sup>101</sup> central government will set a task biannually for each municipality of estimating the number households to be housed. Municipalities will usually make use of the social rental stock to house them.

French housing policy aims first to ensure that all households are housed in accommodation that corresponds with their needs and financial means. Second, the French government encourages home ownership by offering financial support or advantageous fiscal regime, for example the so-called ‘imputed rent’ that homeowners enjoy is not taxed in France<sup>102</sup>. However, homeowners do have to pay the local property tax (*taxe foncière*).

### *Conclusion*

Contrary to Belgium and the Netherlands where there is policy targeting the elderly, and in the case of the Netherlands some migrants, there is no such policy in France. Whereas Dutch policies aims to protect the tenant, French policy is more favourable to home owners than to tenants. Belgium appears to have a more balanced system even if home ownership is strongly encouraged.

## • 2.3. Urban policies

Belgium is well known for its ribbon development along the roads<sup>103</sup>. However there are also efforts by municipalities to increase density with the support of the government.<sup>104</sup> Generally, urban policies consist of diversification incurring the change of tenure mix in neighborhoods by demolishing, upgrading, etc. the stock.<sup>105</sup> Flemish cities usually still have plots of land to be filled by the process of urbanization.<sup>106</sup> This is also the case for the land behind the “ribbons”. The regions also actively stimulate urban policies. The term ghettoization has not been used in the documents that have been consulted and policies seem to be about achieving a pleasant living environment.<sup>107</sup>

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<sup>100</sup> Algemeen Nederlandse Bond voor Ouderen, ‘Nederland mist actief ouderenbeleid’, <<http://www.anbo.nl/belangenbehartiging/participatie/nieuws/nederland-mist-actief-ouderenbeleid>>, 3 March 2014.

<sup>101</sup> Overheid.nl, ‘Huisvesting vergunninghouders’, <<http://www.rijksoverheid.nl/onderwerpen/asielbeleid-en-immigratie/huisvesting-vergunninghouders>>, 12 February 2013.

<sup>102</sup> Rolland, *Les Politiques du logement en France*, 18.

<sup>103</sup> Joost Tennekes & Arjan Harbers, *Grootschalige of kleinschalige verstedelijking? Een institutionele analyse van de totstandkoming van woonwijken in Nederland, Vlaanderen en Noordrijn-Westfalen* (Den Haag: Planbureau voor de Leefomgeving, 2012), 62.

<sup>104</sup> Freya van den Bossche, *Wonen in Vlaanderen 2050. Krijtlijnen van een toekomstvisie* (Brussel: Wonen, Energie, Sociale Economie en Steden, 2012), 6-7.

<sup>105</sup> Reinout Kleinhans, ‘Social implications of housing diversification in urban renewal: A review of recent literature’, *Journal of Housing and the Built Environment* 19, no. 4 (2004): 368.

<sup>106</sup> Joost Tennekes & Arjan Harbers, *Grootschalige of kleinschalige verstedelijking?*, 42 and 63.

<sup>107</sup> Freya van den Bossche, *Wonen in Vlaanderen 2050. Krijtlijnen van een toekomstvisie* (Brussel: Wonen, Energie, Sociale Economie en Steden, 2012), 6-7.

As the housing stock is relatively old, concerns about the quality of the stock can be found in the policies of the regions. In the 1991 the Belgian Housing Rent Act contained for the first time the concept of a level of quality so ‘that a rental dwelling must satisfy some basic requirements with regard to safety, health and habitability.’<sup>108</sup>. Each region has its own policy. For example, in Flanders, administrative procedures to carry out checks on the dwellings as well as criminal prosecutions are among the main measures that have been implemented.

In the Netherlands, urban policies generally consist of diversification of housing stock by demolishing, upgrading, etc. of dwellings in order to achieve a tenure and population mix in city neighbourhoods.<sup>109</sup> In order to improve diversity in a neighbourhood, the 2006 Law on Special Measures for Metropolitan Problems offers the opportunity to give priority to households with a higher income instead of giving priority to households with a lower income when allocating social rental housing (in urban renewal areas). The law allows a municipality to develop rules with central government consent. Up until now, only the city of Rotterdam has applied this law in four neighbourhoods and will extend its application to five new ones for four more years.<sup>110</sup>

In relation to housing quality generally, it is the Building Decree (*Bouwbesluit*) together with the Building Regulation that regulates the minimum quality of construction, renovation and demolition of buildings.<sup>111</sup>

In France, a significant urban policy objective is the encouragement of social diversity and to increase social cohesion and economic integration of disadvantaged households, especially since the urban riots of 2005<sup>112</sup>. The goals of these policies are twofold. First, they try to limit the concentration of disadvantaged people in particular neighbourhoods by attracting better-off people to these neighbourhoods. Second, they try to aim for the possibility of disadvantaged people finding a suitable and affordable dwelling in more affluent areas (*Loi SRU*). Amongst other things, the policies that are developed within this framework focus on the building of new dwellings, the demolition of the worst social housing and the renovation of the remaining dwellings. These physical operations are integrated into a broader urban strategy that also includes socially oriented projects in the field of job creation and the improvement in the quality of education<sup>113</sup>. Many of the urban renewal projects are managed by *Agence Nationale pour la Rénovation Urbaine* (ANRU); the national agency dedicated to urban renewal.

Concerning the quality of the dwelling, the government tries to combat the so-called “Marchand de sommeil” who are renting rooms or very small apartments that do not

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<sup>108</sup> De Decker, ‘Jammed between Housing and Property Rights: Belgian Private Renting in Perspective’, 30; And from: Haffner et al., *Bridging the gap*, 74-75.

<sup>109</sup> Kleinhans, ‘Social implications of housing diversification in urban renewal: A review of recent literature’, 368. Citation on page 371.

<sup>110</sup> Liesbeth Spies, *Evaluatie en wijziging Wet bijzondere maatregelen grootstedelijke problematiek* (Den Haag: Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, Kamerstukken II, 2011-2012, 33 340, nr. 1), 2.

<sup>111</sup> BRISbouwbesluit online, ‘Bouwbesluit 2012’, <<http://www.bouwbesluitonline.nl/Inhoud/docs/wet/bb2012>>, 12 February 2013.

<sup>112</sup> Rolland, *Les Politiques du logement en France*, 14

<sup>113</sup> C. Droste, C. Lelevrier, and F. Wassenberg, Urban Regeneration in European Social Housing Areas, in *Social Housing in Europe II. A review of policies and outcomes*, ed. K. Scanlon and C. Whitehead (London: London School of Economics and Political Science, 2008).

meet the minimum standards for decency, for a very high rent. These landlords can be prosecuted and sentenced to jail or be fined. Minimum requirements concern the size of the dwelling, the access to water, electricity and central heating for example. Various controls are possible to combat the non-compliance with minimum standards. Lots of abuses are made public through associations who denounce them in the newspapers.

### *Conclusion*

In the three countries, policies aim to create diversity among the households and use the same means, such as demolition of buildings, changes in the allocation of social housing etc.

It is not possible to determine if one of the countries achieved their targets better than the others in this respect as in the three countries lots of changes are being made. Each country has regulations concerning the quality of the dwellings, even if in France it seems that many abuses are denounced publicly and that the government is making an effort to fight against the black market.

## **2.4. Energy policies**

In the three countries, it is not known to what extent European energy policies affect housing. However, each of them has adopted policies, which aim to stimulate environmentally-friendly behaviour. In Belgium, rules have been implemented to encourage such behaviour. In the Netherlands, agreements have been signed between the government and actors in the housing market to improve the sustainability of existing dwellings and of newly built ones. In France, promoting sustainability and enhancing energy-efficiency have become significant policy goals in housing policy, not only for environmental reasons but also to dampen the energy costs that French households pay.

## **2.5. Subsidisation**

In the three countries, the system of subsidisation is very complex and there is a broad variety of subsidies.

Subsidies can be focused on demand or on supply, they can target the occupier or the owner, and they can be connected to the dwelling or to persons.

They can be given as deductions on interest or price, as a reduction on loan interest rates, as grants, as a monthly income supplement or via the tax system. They can be given by different levels of government.

In Belgium, the regions are responsible for subsidizing housing, as housing is under their management. The system is rather complex as there are a huge number of subsidies, each with different conditions, different aims and they are not delivered by the same authority. For details see tables 1, 2 3.



• **Table 1 Typology of subsidization of landlord in Belgium\*, 2013**

	Social renting	Private renting
Subsidy before start of contract (e.g. savings scheme)	Aid with pre-financing	Aid with pre-financing for social dwellings
Subsidy at start of contract (e.g. grant)	Subsidization for production of social rental dwelling	<ul style="list-style-type: none"> <li>• Subsidization for production of social rental dwelling</li> <li>• Renovation, improvement, adaptation subsidies for private person landlords with contract with Social Rental Agency</li> </ul>
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee)		

\* Differences between Administrative Regions; not all subsidies exist in all regions.

• **Table 2 Typology of subsidization of tenant in Belgium\*, 2013**

	Social renting	Private renting
Subsidy before start of contract (e.g. voucher allocated before find a rental dwelling )	None	None
Subsidy at start of contract (e.g. subsidy to move)	None	None
Subsidy during tenancy (in e.g. housing allowances, rent regulation)	Income-based rent Grants for renovation, etc.	<ul style="list-style-type: none"> <li>• Housing allowance for low-income tenant for move to better suitable dwelling or to dwelling let out by Social Rental Agency</li> <li>• Grants for renovation, etc.</li> </ul>

\* Differences between Administrative Regions; not all subsidies exist in all regions.

• **Table 3 Typology of subsidization of owner-occupier in Belgium\*, 2013**

Subsidy before start of contract (e.g. savings scheme)	None
Subsidy at start of contract (e.g. grant)	Grants for renovation, etc.
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee, housing allowances)	Social loans Social owner-occupied dwelling Free regional loan insurance Social land plot Grants for renovation, etc.

\* Differences between Administrative Regions; not all subsidies exist in all regions.

In the Netherlands, compared to the situation up to the 90s little is left nowadays of the supply side subsidization in the rental sector and the owner-occupied sector.<sup>114</sup> Generally, a subsidy before the start of the tenancy contract or the acquisition of the dwelling is not available, except in the social rental sector where the municipality will usually lower the price for land. Housing allowances for tenants are the only type of subsidy that is directly paid for by central government. In 2010, 1/3 of tenants (15% of Dutch households) received housing allowances.<sup>115</sup> On average the amount per recipient of housing allowances was 173 Euro per month; implying an average reduction of 41% of rent.

The other types of subsidies are indirect subsidies, i.e. not directly paid for by government. For example, the government and the local authority can act as a safety net of funds by offering loans with reduced interest rates or putting rent regulation into effect limiting the amount of rent that can be charged. These can be considered an indirect subsidy. For details see tables 4,5,6.

**Table 4 Typology of subsidization of landlord in the Netherlands, 2013**

	Social renting	Private renting
<b>Subsidy</b> before start of contract (e.g. savings scheme)	Cross-subsidization of land costs within project development may take place	No
<b>Subsidy</b> at start of contract (e.g. grant)	No	No
<b>Subsidy</b> during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee)	Lower debt interest rate than market interest rate possible because of guarantee on loan	No

**Table 5 Typology of subsidization of tenant in the Netherlands, 2013**

	Social renting	Private renting
<b>Subsidy</b> before start of contract (e.g. voucher allocated before finding a rental dwelling )	No	No
<b>Subsidy</b> at start of contract (e.g. subsidy to move)	Possible in the case of forced move in the case of urban renewal	No
<b>Subsidy</b> during tenancy (e.g. housing allowances, rent regulation)	Housing allowance possible for tenant in regulated rental sector	Housing allowance possible for tenant in regulated rental sector

**Table 6 Typology of subsidization of owner-occupier in the Netherlands, 2013**

<b>Subsidy</b> before the purchase of the house (e.g. savings scheme)	No
<b>Subsidy</b> at start of the tenancy (e.g. grant)	No
<b>Subsidy</b> during tenancy (e.g. lower-than market interest	No general subsidies Lower interest rate than market interest rate possible because of

<sup>114</sup> Haffner et al., *Bridging the gap*, 205, 214-219.

<sup>115</sup> Marion van den Brakel & Linda Moonen, 'Huurtoeslag: wie krijgt hoeveel?', *Sociaaleconomische trends* (1<sup>e</sup> kwartaal 2012), 10, 11, 15. Estimates, as income data were not final at the time of publication.

rate for investment loan, subsidized loan guarantee, housing allowances) <b>Subsidy</b> at end of tenancy	mortgage loan guarantee Starter's loan possible in some municipalities  Negative equity may be waived in the case of a mortgage loan guarantee
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In France, loans and subsidies have always played a major role in housing policy. One specificity of French policies concerns the support for social rental landlords that is provided through an unusual financial system in which household savings (accumulated in the state-regulated *Caisses d'épargne*) are used to provide loans to landlords who build social rental housing<sup>116</sup>. There are currently four different loans that can be used for the construction, acquisition, or renovation of social rental dwellings<sup>117</sup>: Prêt Locatif à Usage Social (PLUS), Prêt locatif aidé d'intégration (PLA-I), Prêt locatif social (PLS) and Prêt Locatif Intermédiaire (PLI). Each loan focuses on a specific segment of the social rental market.

Some subsidies are also dedicated to the improvement of the quality of the rental housing stock: Prime à l'amélioration des logements locatifs sociaux (Palulos)<sup>118</sup>, Prêt à l'Amélioration (PAM),<sup>119</sup> grants for refurbishment granted by the Agence Nationale de l'Habitat (ANAH)<sup>120</sup>:

• **Table 7 Overview of the different loans and subsidies that are available for landlords**

<b>Subsidization of landlord</b>	<b>Social rental landlords</b>	<b>Private rental landlords</b>
Subsidy before start of contract (e.g. savings scheme)	PLUS, PLA-I, PLI, PLS, PAM	PLI, PLS
Subsidy at start of contract (e.g. grant)	PLUS, PLA-I, PLI, PLS, Palulos	ANAH-grant
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee)	PLUS, PLA-I, PLI, PLS, PAM	Fiscal measures (see also section on taxation)

Concerning subsidies for the tenant, the housing allowances are called *aides à la personne* and are paid by an organisation called *Caisses d'Allocations Familiales*. They are available to both tenants and owner-occupiers. There are different allowances but all are based on the income of the household combined with the composition of the family and the housing costs: Aide personnalisée au logement (APL), Allocation de logement familiale (ALF) or allocation de logement sociale (ALS). In 2011, about 6.12 million French households were receiving a housing allowance (5,03 million tenants, 540,000 households in *foyers* and 550,000 owner-occupiers). In total, these households received a sum of € 16,350 billion, or an average of €2,670 per household<sup>121</sup>.

<sup>116</sup> M. Amzallag and C. Taffin, *Le logement social* [Social Housing] (Paris: Collection Politiques Locales, 2003).

<sup>117</sup> A new loan that is not dealt with in this discussion is the *Prêt Social de Location-Accession* (PSLA).

<sup>118</sup> Although in specific cases, this percentage can be much higher (up to 40% of the renovation costs).

<sup>119</sup> Ministère de l'égalité des territoires et du logement, *Les aides financières au logement*, 24-25.

<sup>120</sup> Agence nationale de l'habitat (Anah), *Les aides de L'Anah. Le Guide*, (Paris: Anah, 2013).

<sup>121</sup> Commissariat Général au Développement Durable, *Compte du logement 2011. Premiers résultats 2012*.

**Table 8 Overview of the subsidies for tenants that are available**

<b>Subsidization of tenant</b>	Rental dwellings with a contract	Rental dwellings without a contract	Owner-occupiers
Subsidy before start of contract (e.g. voucher allocated before find a rental dwelling )	No	No	No
Subsidy at start of contract (e.g. subsidy to move)	No	No	No
Subsidy during tenancy (in e.g. housing allowances, rent regulation)	APL	ALF (ALS in case of social housing)	ALF (APL in the case of an PC or PAS-loan)

Concerning the subsidies for owner-occupiers, the most important financial incentive for starters in the homeownership market is the zero interest loan (*Prêt a taux zéro*: formerly PTZ, now PTZ+). It can be used for the acquisition of new dwellings or existing dwellings that social rental landlords sell to their tenants.<sup>122</sup> In addition, there are also other loans that can be used for the purchase of, or the renovation of, existing dwellings, as well as for the acquisition of new dwellings (*Prêt Accession Sociale, Prêt Conventionné*). These loans are designed for lower-income groups and can be taken out as principal loans. They give entitlement to the APL housing allowance<sup>123</sup>. Homeowners that do not qualify for the APL housing allowance may still apply for the AL housing allowance. Furthermore, future homeowners may save for their down payment with the help of subsidized loans (*prêts épargne-logement*)<sup>124</sup>.

**Table 9 Overview of the subsidies for tenants that are available**

<b>Subsidization of owner-occupier</b>	
Subsidy before start of contract (e.g. savings scheme)	prêts épargne-logement
Subsidy at start of contract (e.g. grant)	ANAH-subsidies
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee, housing allowances)	PTZ+, PC, PAS, AL, APL

### *Conclusion*

Concerning subsidization, the primary conclusion is the complexity of the various systems in the three countries. There are many different subsidies making it impossible to have a complete overview. The systems of all three countries seem to stimulate home ownership and tenants with lower incomes. They use different mechanisms such as loans and direct grants. In the Netherlands, indirect subsidies such as implementing rent

<sup>122</sup> Ministère de l' égalité des territoires et du logement, *Les aides financières au logement*, 30-37.

<sup>123</sup> Ministère de l' égalité des territoires et du logement, *Les aides financières au logement*, 38-39.

<sup>124</sup> Rolland, *Les Politiques du logement en France*, 17-18.

regulation to support households with a lower income appears to be more common than in the other countries.

## 2.6. Taxation

In Belgium, owner-landlords or owner-investors are the actors in the housing market that owe taxes. This implies that tenants do not pay any taxes at any moment in time related to the tenancy contract, but only related to maintenance and improvement.

Taxation at the point of acquisition of real estate (thus also a dwelling) is focused on the purchaser or builder (investor in) of the dwelling. The investor, regardless of whether it will be the owner-landlord, the owner-occupier or the owner-builder, will have to pay either VAT or a tax called registration rights or duties (*registratierechten*).<sup>125</sup> If the acquisition concerns a new social dwelling, lower VAT-rates are applicable. A lower rate is also applicable when a dwelling is bought for the purpose of demolition and rebuilt as a privately-used dwelling in one of thirty-two designated cities in Belgium. Finally, a lower rate is also applicable to construction on dwellings that are older than five years.<sup>126</sup> Registration duties, which are regional taxes and differ by region,<sup>127</sup> are to be paid, usually effectively by the buyer, in the case of the purchase of land or of an existing dwelling. They are calculated based on the purchase price and a certain number of purchase costs.

During the period of occupation, owners of dwellings may be liable for income, wealth and property taxes.<sup>128</sup> Belgian tax authorities are responsible for personal income tax and corporate income tax. Owners of immovable property are liable for national income tax and regional immovable property tax on the income that the dwelling earns.<sup>129</sup> For private person owners (owner-occupiers and private person landlords), this income is called cadastral income (*kadastraal inkomen*) and is an imputed rent income that the dwelling would deliver, if it were rented out. As of 1 January 2005, the owner-occupied dwellings are exempted, except for dwellings for which a loan has been taken out before that date (i.e. most of them). Owner-occupiers can also benefit from an income tax deduction<sup>130</sup> based on mortgage payments (both interest and repayment), referred to as the 'housing bonus' (*woonbonus*). For owner-occupied dwellings that do not qualify for the *woonbonus*, the previous system of mortgage interest and capital repayment deductions is still applicable (i.e. most of them). Certain tax deductions are also available for works concerning safety and security, in addition to the interest costs of a 'green' loan and costs for the roof insulation. These deductions are for the owner or the landlord, depending on who has had the work done in his name.<sup>131</sup> Finally, note that for owners organized as firms (*vennootschappen*) actual rent income is always taxed as

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<sup>125</sup> Federale Overheidsdienst FINANCIËN, *Wegwijs in de fiscaliteit van uw woning*, 9 et seq.

<sup>126</sup> Information provided by country expert.

<sup>127</sup> Haffner et al., *Bridging the gap*, 93.

<sup>128</sup> Haffner, 'Fiscal treatment of owner-occupiers in six EC-countries: A description', 50-52.

<sup>129</sup> Federale Overheidsdienst FINANCIËN, *Wegwijs in de fiscaliteit van uw woning*, 101 et seq.

<sup>130</sup> Federale Overheidsdienst FINANCIËN, *Wegwijs in de fiscaliteit van uw woning*, 61 et seq.

<sup>131</sup> Federale Overheidsdienst FINANCIËN, *Fiscaal Memento Nr. 25* (Brussel: Stafdienst Beleidsexpertise en –Ondersteuning, 2013), 17, 41 et seq.

corporate income tax<sup>132</sup> and that the rate is lower for social landlords than the standard rate.

The Administrative Regions are responsible for the taxation of the ownership of immovable property (*onroerende voorheffing*)<sup>133</sup> that all owners of immovable property have to pay. The basic regional levies are increased with the levies (*opcentiemen*) of the provinces, agglomerations and municipalities. The tax amount cannot legally be charged to the tenant.<sup>134</sup>

Generally no transaction taxes are due on a sale by the seller of the dwelling, but only by the buyer at the point of acquisition. Any gains (and losses) linked to the sale are to be included in the total income of the taxpayer. Owner-occupied dwellings are exempted from capital gains tax.

Finally, one can note that tax evasion is regarded as a problem in Belgium mainly because tax authorities often are not able to check the data that they get from taxpayers.<sup>135</sup>

In the Netherlands, as in Belgium, tenants do not pay any taxes at any time related to the rental agreement; there may be costs, like administration costs, but no taxation.

At the point of acquisition of real estate taxation is focused on the purchaser or builder (investor in) of the dwelling. He first has to pay either VAT or a tax called transfer tax (*overdrachtsbelasting*). A reduced rate is applicable to painting, plastering and insulation works<sup>136</sup> of immovable property where it is older than 15 years. A transfer tax is applicable to the acquisition of existing dwellings (only dwellings) with land. This rate has been 2% since 15 June 2011<sup>137</sup>.

During the period of occupation, income and property taxes may be relevant for owners of dwellings.<sup>138</sup> Dutch tax authorities are responsible for the personal income tax and the corporate income tax, while the municipalities are responsible for the property taxation within the national framework.<sup>139</sup> The income tax paid by private landlords differs, according to the type of landlord.<sup>140</sup> Professional landlords, including social ones, pay corporate income tax, with a deduction of costs. Two kinds of organizations are exempt from corporate income tax: pension funds and institutions called Fiscal Investment Institutions (FBIs), which invest exclusively in real estate (provided they pay a dividend to the shareholders).

Private individual landlords can be first taxed on their income more or less as a professional entrepreneur.<sup>141</sup> If they are considered as a professional (under 65 and a

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<sup>132</sup> Elsinga, et al., *Beleid voor de private huur*, 20.

<sup>133</sup> Haffner et al., *Bridging the gap*, 93.

<sup>134</sup> According to Art. 5 of the Housing Rent Law or art. 29 of the Lease Law. Information provided by country expert.

<sup>135</sup> HUMO.be, The Wild Site, 'Belastingontduiking in België', <<http://www.humo.be/humo-archieef/72083/belastingontduiking-in-belgie>>, 28 January 2013.

<sup>136</sup> Rijksoverheid, 'BTW-tarieven en btw-vrijstellingen', <<http://www.antwoordvoorbedrijven.nl/regel/btw-tarieven>>, 5 February 2013.

<sup>137</sup> Frans Weekers, *Overdrachtsbelasting. Verlaging tarief bij verkrijging woningen. Besluit van 25 mei 2012, nr. BLKB 2012/863M*, (Den Haag: Ministerie van Financiën, 2012), 1.

<sup>138</sup> Marietta Haffner, 'Fiscal treatment of owner-occupiers in six EC-countries: A description', 50-52.

<sup>139</sup> Oxley & Haffner, *Housing taxation and subsidies*, 49-68.

<sup>140</sup> From: Haffner, 'The Netherlands', 71 and 72.

<sup>141</sup> For director-large shareholders, there would be a different personal income tax treatment.

certain number of hours to run the business), they will benefit from entrepreneurs' deduction depending on the profits achieved. Second, they can be considered as an investor and thus taxed on the income from their properties in the same way as owners of other personal wealth. The tax liability is calculated regardless of the actual income and costs to the landlord in relation to wealth components. There is no separate capital gains tax.

For home owners an imputed rent is taxed in income tax for as long as mortgage interest is being deducted (maximum of thirty years). The amount of imputed rent taxed can never be higher than the amount of interest deducted.

Municipal property tax is payable by the owner of the dwelling on the estimated market value of a dwelling.<sup>142</sup> Municipalities can determine the rates but need to take the total increase of local levies into account.

No transaction taxes are due on a sale by the seller, only by the buyer at the point of acquisition. Any gains (and losses) are to be included in the total income of the taxpayer. Capital gains from owner-occupied dwellings are not included as income in determining income tax.

In France, as in Belgium and the Netherlands there are no specific taxes for tenants. However, households that live in a social rental dwelling and who have an income that is at least 120% above the income ceiling have to pay a supplement (*supplément de loyer de solidarité: SLS*) on their rent in order to 'compensate' for their good financial situation, unless they live in vulnerable area (*Zones Urbaines Sensibles: ZUS* or *Zones de Revitalisation Rurale: ZRR*)<sup>143</sup>.

Owner-occupiers have to pay local land and property taxes such as the *taxe foncière* (only to be paid by property and land owners) and the *taxe d'habitation* (to be paid by all residents, i.e. tenants as well). These taxes are based on the rental value of the dwelling (*valeur locative cadastrale*)<sup>144</sup>. Furthermore, owner-occupiers with assets that exceed € 800.000 have to pay a wealth tax: *l'Impôt de Solidarité sur la Fortune* (ISF).

A transfer tax has to be paid when a home owner buys an existing dwelling. Finally, France has a capital gains tax that taxes capital gains on both moveable and immovable possessions. However, capital gains that are made on the primary dwelling of owner-occupiers may often be exempt from this rather complex tax<sup>145</sup>.

Social rental landlords are not required to pay corporation tax or local business taxes (*contribution foncière des entreprises*). They also pay a lower VAT rate than the standard rate and they may be exempt from land and property tax.<sup>146</sup>

Private companies doing business are subject to corporation tax<sup>147</sup> (*impôt sur les sociétés*). Depending on their legal status, certain types of companies are (partially) exempt from corporation tax, including the *Sociétés d'Investissement Immobiliers*

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<sup>142</sup> Rijksoverheid, 'Wat is de onroerendezaakbelasting (OZB)?', <<http://www.rijksoverheid.nl/onderwerpen/koopwoning/vraag-en-antwoord/wat-is-de-onroerendezaakbelasting-ozb.html>>, 5 February 2013.

<sup>143</sup> <[www.anil.org](http://www.anil.org)>

<sup>144</sup> Elsinga, Marja, et al., *Beleid voor de private huur. Een vergelijking van zes landen*. [Policies for the private rental sector. A comparison of six countries] (Ministerie van de Vlaamse Gemeenschap, 2007).

<sup>145</sup> <<http://www.french-property.com/guides/france/finance-taxation/taxation/capital-gains-tax>>

<sup>146</sup> In the first 25 years after they have taken up a PLUS, PLA-I or PLS loan ; Donner, *Housing Policies in the European Union*, 272, Amzallag and Taffin, *Le logement social*, 9

<sup>147</sup> C. Parkinson, *Taxation in France 2004. A foreign perspective* (Guernsey: PKF Limited, 2004), 41.

*Cotées*: Real Estate Investment Trusts. In addition to corporation tax, companies of which 50% or more of their total assets in France consist of real estate, also have to pay a tax of 3% on the market value of this property<sup>148</sup>. French institutional market rental landlords also have to pay capital gains tax on their real estate sales, even if certain exemptions exist.<sup>149</sup>

Finally, both institutional and individual rental landlords have to pay the *taxe d'enlèvement des ordures ménagères*. This tax, which is based on the rental value of the dwelling (*valeur locative cadastrale*), is used for garbage collection and cleaning of public spaces. The landlord may charge this tax to the tenants by including it in the rent<sup>150</sup>.

Individual market landlords have to pay income tax on rental income (with the deduction of some costs). They also have to pay capital gains tax on their house sales unless they have possessed the dwelling concerned for more than 22 years<sup>151</sup>.

The French governments have the tendency to use tax as an incentive or disincentive. The incentives generally entail a yearly deduction of a percentage of the rental income and of the investment costs (depreciation).

Tax incentives aim to provide more, better and affordable rental housing and some of them target middle-class households (with criteria regarding the income of the tenant and a maximum rent). According to the French government<sup>152</sup> the tax incentives have clearly had a positive effect on the production of private rental housing, making the private rental housing market less tight.

Other incentive taxes exist in France: tax relief on home improvement for individual private rental landlords (deduction of the cost of refurbishment), Lower VAT (*taxe sur la valeur ajoutée*) on home improvements, deduction in the case of investment in energy efficiency, and reduced VAT on the purchase of newly built dwellings in vulnerable areas.

### *Conclusion*

In Belgium, home owners and social landlords receive more favourable treatment than private landlords as tax rates are lower and there are more exemptions or deductions. In the Netherlands, home owners benefit from a tax deduction, which does not exist for renters. There is no clear advantage in this country for a particular segment of the population. However, we can note that pension funds and FBIs do not pay corporate taxes. In France, there is a more favourable regime for social landlords that do not pay taxes and benefit from reduced VAT rates.

The specificity of the French system is the use of taxes as incentive or disincentive to stimulate the construction sector, the market or to avoid vacancy.

The three tax systems seem to be neutral towards tenants. Tenants do not have to pay specific taxes and do not benefit from tax incentives because they are not investors.

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<sup>148</sup> European Property, Freeman Business Information plc (<[www.efreeman.co.uk](http://www.efreeman.co.uk)>)

<sup>149</sup> Elsinga et al., *Beleid voor de private huur. Een vergelijking van zes landen*, 58.

<sup>150</sup> Elsinga et al., *Beleid voor de private huur. Een vergelijking van zes landen*, 60.

<sup>151</sup> <[http://www.french-property.com/news/tax\\_france/capital\\_gains\\_tax\\_proposals\\_sept\\_2013/](http://www.french-property.com/news/tax_france/capital_gains_tax_proposals_sept_2013/)>

<sup>152</sup> République Française, *Rapport évaluant l'efficacité des dépenses fiscales en faveur du développement et de l'amélioration de l'offre de logements* [Report evaluating the efficiency of fiscal expenditures that seek stimulate and improve the supply of dwellings] (Paris : République Française, 2012), 17.



### 3. Comparison of tenures without a public task

#### 3.1. Evaluative criteria for the landlord

##### 3.1.1 Profitability

In Belgium, the fact that the private rental sector is mostly run by landlords who can be called amateur landlords – private persons (and not businesses) with an average of a little more than two dwellings – must be regarded as an indication of the unprofitability of the sector. Therefore the return on investment is estimated as relatively low.

In the Netherlands, by 2009 total returns on residential investment had plummeted to the lowest return since 1995 and have even become negative since 2007.<sup>153</sup> With the GFC there has been a significant effect on the Dutch market, lots of owners, especially investors tried to sell off their properties. The situation shows that investment is not really profitable due to rent control based on inflation and a decrease in house prices during the crisis.

In France,<sup>154</sup> traditionally, individual investors in the French private rental sector expect a rental yield of 5% per year. Recently, however, rental yields of 3,5% to 4% are mentioned in the advertisements of developers that are trying to encourage individuals to invest in the private rental sector. Potential capital yields (as a result of growth in property prices) may also be a strong incentive. For institutional investors in the private rental market the returns are dependent on both the returns from renting and the returns from capital growth (increase in property prices). According to the IPD France Annual Property Index, the returns from letting were 3,3% in 2011, whereas the return from capital growth was no less than 8,2%, thus resulting in a total return of more than 11%. Over a longer time period, the total returns show a positive picture as well; they were 9,8% over the last 10 years.

The costs that the landlord has to bear are explained in question 3.2.1 affordability for the tenant and the taxation advantages/disadvantages in question 2.6.

##### *Conclusion*

In all three countries, profitability seems quite low and is even considered unprofitable in Belgium. The GFC has had an impact in the Netherlands and in France, even in the latter it is still worth investing as the return from capital growth is still significant.

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

##### *Non-payment of the rent/ Eviction procedure/ delays in payment*

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<sup>153</sup> Vereniging van Institutionele Beleggers in Vastgoed, Nederland, *De vastgoedbeleggingsmarkt in Nederland 2008*, 9.And: Vereniging van Institutionele Beleggers in Vastgoed, Nederland, *Vastgoedwijzer*, 19.

<sup>154</sup> This paragraph is mainly based on: Hoekstra, *Country report France*, 9-10.

In all three countries the landlord has to follow specific procedures that are quite formal to evict a tenant, to obtain unpaid rent or to cover the cost of repairs due to damages caused by the tenant.

In Belgium, in the case of non-payment of rent, the landlord must first demand payment. Then, if the tenant still fails to pay he can bring a lawsuit either to obtain a reconciliation procedure or a judge statement. The landlord may request: payment of the overdue amount, termination of the tenancy contract, payment of compensation and interest, unblocking the deposit and the tenant's eviction. The relevant justice of the peace is, by law, obliged to first make an attempt to have the parties reach a settlement.<sup>155</sup> Each Public Centres for Social Welfare<sup>156</sup>, i.e. OCMW has to help in order to avoid an eviction. The OCMW will be informed as soon as a claim for eviction is requested in court. It must be notified of any claim of judicial eviction and provides, in the most appropriate manner, help within its legal mandate.<sup>157</sup> The period within which the tenant is supposed to leave can be extended or reduced at the request of the tenant or the landlord based on exceptional circumstances. The judge has to take into account the possibility for the tenant of finding a new residence, his financial means and his family's needs.<sup>158</sup> Regional funds against evictions were created for the purpose of paying a tenant's rent temporarily, (e.g. *Fonds ter bestrijding van de uitzettingen*).<sup>159</sup>

According to Dutch law, the landlord can have the lease terminated if the tenant does not pay the rent for three months or more, but not if payments are delayed. In the contract, provisions stating that the tenant has to pay a penalty if he does not pay the rent or if he is late are legal. If the landlord wants to evict the tenant he has to go to court. The local government can also evict tenants if they are causing a severe nuisance (either related to drugs or criminal behaviour) or if it is dangerous to live in the house. The sole legal basis for the eviction is that the tenant no longer has a legal right to live in the dwelling. Obtaining a court decision to terminate the contract is the only way for a landlord to terminate a contract that the tenant does not want to end, this because of the general rule of Dutch tenancy law that leases for living space are closed for an unlimited period.

As in the other countries, in France, if the tenant does not pay the rent or is late, the landlord has to follow a specific procedure. He has a choice between going to the *Commission départementale de conciliation* or to the judges (*Tribunal d'Instance*). A notice of payment must be sent to the tenant. If after two months the tenant does not pay, the landlord can go to court. Article 24 of the 1989 Act allows the parties to introduce in the contract a provision stating that if the tenant does not pay the rent he can be evicted, before going to court. The landlord has to serve through a bailiff a demand of payment (in French: "*Commandement de payer*") giving the tenant a two months to pay. If there is a guarantor, the bailiff has to notify him of the demand of payment. If the tenant does not pay he can go to court. If there is no provision in the

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<sup>155</sup> Art. 1344septies (Art. 2 Wet of 18 June 2008), Belgium Official Journal 14 July 2008.

<sup>156</sup> Wet van 30 november 1998 ter humanisering van de uitdrijvingen, Belgium Official Journal 29 January 2001.

<sup>157</sup> Art. 1344ter Judicial Code.

<sup>158</sup> [http://www.belgium.be/nl/huisvesting/huren\\_en\\_verhuren/geschillen/uithuiszetting/](http://www.belgium.be/nl/huisvesting/huren_en_verhuren/geschillen/uithuiszetting/), 19 May 2013.

<sup>159</sup> 4 October 2013 Besluit van de Vlaamse Regering houdende instelling van een tegemoetkoming van het Fonds ter bestrijding van de uithuiszettingen, Belgium Official Journal 25 November 2013.

contract, the landlord can immediately bring the dispute before the judges to ask for the termination of the contract and the expulsion of the tenant. The landlord can ask the tenant before taking him to court but he is not obliged to do so. The tenant can take the dispute to tribunal to ask for more extensions or apply to the special fund (in French: “*Fond de solidarité pour le logement*”). Before ordering the expulsion and the termination of the contract, the tribunal checks if the tenant is seriously enough at fault to justify this action. If the judge considers that the tenant is able to pay, he can decide a payment deadline. Otherwise, the judge has to terminate the contract. After the judgement, the landlord has to appoint a bailiff to send the tenant an order to leave the dwelling within two months.

If a notary wrote the lease agreement, there is no need for the landlord to go to court as the contract is directly enforceable. If the tenant does not pay the rent the landlord can directly appoint a bailiff for the execution of the contract.

According to the law, no expulsion is allowed (except in the case of squatting, if the building is dangerous or in the case of rehousing) during a period called “*trêve hivernale*”, from the 1st November to the 31th March. The landlord is permitted to start a procedure but he will have to wait until the end of the period for the execution.

If the tenant is late in paying the rent, the landlord may not be able to ask for eviction. But the landlord is also allowed to include in the contract a provision called in French “*clause pénale*” which determines the penalty for the tenant if he does not pay on time. However, if the amount of the penalty is too high the judges may reduce it<sup>160</sup>.

### *Conclusion*

In the three countries, specific procedures have to be followed to evict a tenant and most of the time the landlord has to go to court. Only in France is eviction without the intervention of a judge possible and only in limited cases. But at the same time, the French procedure seems to be the lengthiest as it takes at least months to evict a tenant, especially if the procedure starts in the winter. All the procedures are very formal in order to protect the tenant’s rights. The Belgian procedure seems to be the more balanced one, as there is first an attempt is to reach an agreement between the parties.

### *The deposit*

The deposit is one of the safeguards for a landlord. In Belgium, according to Article 10 of the Housing Rent Act parties may agree that the tenant pays a security deposit at the beginning of the tenancy. Most landlords do, in fact, require such a deposit. The payment can be made in cash (maximum of two months' rent)<sup>161</sup> or be a bank guarantee, (maximum of three months' rent)<sup>162</sup> or a deposit in kind (such as jewelry, shares, gold, without any maximum). The tenant can also have access to social assistance (*sociale bijstand*) through the local OCMW (i.e. the Public Centre for Social Welfare).<sup>163</sup> The bank can issue a bank guarantee (maximum three month's rent) through the intermediary of the OCMW and it will stand surety for the tenant. The

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<sup>160</sup> For a reduction of the amount: CA Paris 28 June 1994, *Loyer et copr.* 1994 n°464; CA Paris, 26 June 2008 *AJDI* 2008 p. 932; CA Angers 12 April 2011 *AJDI* 2012 p. 108. For a refusal to reduce the amount: Civ. 3rd 27 November 2007 *Rev. Loyer* 2008 p. 100; CA Paris, 22 September 2004 *AJDI* 2005 p. 25.

<sup>161</sup> Art. 10 § 1 Housing Rent Act.

<sup>162</sup> Art. 10 § 1 Housing Rent Act.

<sup>163</sup> See for the tasks of the OCMW: [http://en.wikipedia.org/wiki/Public\\_Centre\\_for\\_Social\\_Welfare](http://en.wikipedia.org/wiki/Public_Centre_for_Social_Welfare)

deposit has to be managed by the landlord following specific rules. The deposit may be used to restore personal property or repair damage beyond normal wear and tear. It may also be used in case the tenant is in breach of contract. Furthermore, it can be used in settlement of the rent due and payable.

In the Netherlands, the landlord usually requires a security deposit at the beginning of the contract. An agreement concerning a security deposit is valid unless the amount is unreasonably high, generally it is one month's rent.<sup>164</sup> It can be used to cover future claims of the landlord or even against the outstanding rent.

In France, there is no mandatory deposit. If there is no provision requesting a deposit in the contract, the landlord does not have any rights to ask for a deposit. If there is a provision in the contract, conditions are fixed by the law. The amount cannot exceed one month of the rent.<sup>165</sup> The amount is transferred either by the tenant himself or by a specific organisation (e.g. *Avance loca-pass*<sup>166</sup> or the "*Fond de solidarité pour le logement*") to the landlord when the lease agreement is signed. There is no provision in the law stating what the landlord is supposed to do with the deposit. When the contract terminates, the deposit is given back to the tenant within a maximum of two months after the return of the key. The reimbursement by the landlord at the end of the lease is calculated using the inventory but also taxes and charges the landlord has to pay in the name of the tenant. The landlord has to give a justification for the amount deducted from the initial amount.

### *Conclusion*

In the three countries, the landlord can ask the tenant for a deposit. Whereas in Belgium and in France it is very regulated to protect tenants, in the Netherlands, landlords seem to have more freedom. In Belgium, rules are very strict about the management of the deposit by the landlord, whereas in France they are stricter about the return of the deposit. In all cases, the landlord can use the deposit in order to pay for repairs due to damages caused by the tenant.

### *The liens and pledges/the existence of personal securities*

In Belgium as well as in France, the tenant is obliged to furnish the rented dwelling.<sup>167</sup> It serves as a security for the rent payment. In France the landlord is required to go to court to obtain a decision to seize the furniture, whereas in Belgium it is not necessary.

<sup>168</sup> In Belgium, this obligation lapses if the tenant pays the full rent for the entire rental period in advance or pays it over the course of the lease.<sup>169</sup>

This lien might not be really efficient as the procedure to seize goods is expensive and the value of furniture may not be high enough. It might be easier for a landlord to go to court to terminate the contract and to ask the tenant to pay the amount due.

In the Netherlands, the landlord has no lien.

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<sup>164</sup> Art. 7:264 CC; S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 11.11

<sup>165</sup> Act 2008-111 of the 8 February 2008 concerning buying power, (in French: "*Loi n°2008-111 du 8 février 2008 pour le pouvoir d'achat*").

<sup>166</sup> Art. R441-20 to R441-30 and Art. R313-19-1 IV and V Building and Housing Code.

<sup>167</sup> Art. 1752 of the Belgium Civil code; art. 2332 of the French civil code

<sup>168</sup> Art. 1461 Judicial Code; M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 381.

<sup>169</sup> M. Dambre, B. Hubeau & S. Stijns (eds), *Handboek Algemeen Huurrecht*, 402.

The French law contrary to Dutch and Belgian law organises a system of surety. The landlord can ask, only in specific cases, the tenant to find someone to act as a guarantor<sup>170</sup> for the payment of the rent. The landlord is not allowed to ask for a guarantor if he subscribes to a special insurance that can be private or the “*garantie des risques locatifs*”, a guarantee against rental risks, unless the tenant is a student or an apprentice. In fact if the landlord decides to ask a guarantor to pay in the tenant's name the procedure will be easier for him than to seize his furniture for the purpose of selling it. Therefore, the French law appears to be more protective of the rights of the landlord, whom can be compensated due to the fact that the eviction procedure seems to be more complicated.

### *Insurance*

Contrary to France, in Belgium and in the Netherlands it is not mandatory to have insurance for the dwelling. However, fire insurance, theft insurance, insurance against flood damage and third-party liability are the most used ones.

In France, insurance of the dwelling is mandatory (article 7, g of the 1989 Act). This insurance covers at least all of the risks that the tenant is liable for, such as fire or water damage. In the case of absence of insurance, the lease agreement can be considered null and void. French private landlords can insure themselves against non-payment by tenants by means of a government-backed insurance scheme: ‘*La Garantie universelle des Risques Locatifs: GRL*’<sup>171</sup>.

### *Termination of the contract by the landlord*

In Belgium, for standard privacy contracts (9 years), and for longer term contracts (more than 9 years), the landlord can terminate the contract early for his own or his family's use (Article 3 § 2 Housing Rent Act.) The list of the family members concerned is identified precisely by the law. A termination in the first three years is only possible for relatives in the first and second degree. The termination is subject to specific conditions (6 months notice with information concerning the identity kinship with the landlord and an explanation, otherwise the termination is null and void<sup>172</sup>). If the dwelling is not occupied within a year, or if the conditions are not met, the tenant is entitled to compensation of 18 months' rent, unless there are exceptional circumstances<sup>173</sup>. The second possibility to terminate a private tenancy contract early in Belgian law is if the landlord wishes to refurbish (*renoveren*), rebuild (*verbouwen*) and/or reconstruct (*wederopbouw*) (a part of) the dwelling.<sup>174</sup> For short-term contracts (less than 3 years), early termination is excluded by law.<sup>175</sup> However, in the literature it is still disputed whether it is possible to stipulate this by contract.<sup>176</sup> Some contracts can last for the tenant's life. In such cases, termination by the landlord is possible only if stipulated in the contract.

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<sup>170</sup> B. Vial-Pédroletti, “Cautionnement : étendue de l'engagement de caution”, *Loyers et copr.*, p. 17.

<sup>171</sup> Hoekstra, *Country report France*.

<sup>172</sup> Federale overheidsdienst Justitie, ‘De huurwet’, [http://justitie.belgium.be/nl/binaries/Loyer-2012-NL\\_BD-DEF\\_tcm265-138431.pdf](http://justitie.belgium.be/nl/binaries/Loyer-2012-NL_BD-DEF_tcm265-138431.pdf), 14 February 2013, 22.

<sup>173</sup> Art. 3 § 2 Housing Rent Act.

<sup>174</sup> Art. 3 § 3 Housing Rent Act.

<sup>175</sup> Art. 3 § 6.

<sup>176</sup> A. van Oevelen (ed.), *Woninghuur*, 155.

In the Netherlands, the general rule is that a lease contract can only be terminated by the landlord under specific and very limited grounds. If the contract has a clause called a diplomat clause<sup>177</sup>, this states that the landlord can have his flat back if he wants to move in. The tenant might have to leave in case of an emergency<sup>178</sup>, i.e. if the landlord needs the dwelling for such an urgent reason for his own needs that his interest should prevail over that of tenants or sub-tenants. In this situation he will have to provide an alternative for his tenant.

In France, the landlord can only terminate the contract at its end (3/6years) and for specific reasons. One of the reasons can be the fact that he wants to occupy the dwelling as his main residence or to have one of his relatives live in the dwelling. As for Belgium, the law defines which relatives are concerned. The notice must be served to the tenant at least 6 months before the end of the lease either by registered letter with acknowledgement of receipt, by a judicial officer, or hand-delivered against a signature. It must specify the reasons and include the names and addresses of the beneficiaries. Otherwise, the termination is not valid and the lease is renewed. After leaving the dwelling, the tenant may contest the reasons given by the landlord but has to be proven that the conditions were not met.

### *Conclusion*

In the three countries, the faculty of the landlord to terminate the lease is very limited and subject to a series of conditions in order to protect tenants. In the Netherlands it is very hard, even sometimes impossible for a landlord to terminate the lease agreement. Therefore, this country does not protect the property rights of the landlord, whereas the France and Belgium seem to have a more balanced system.

### *Payment in kind*

In the three countries, payments in kind are allowed but the tenant does not have a statutory right to replace the rent by a payment in kind. In France and the Netherlands it has to be precisely defined in the contract (kind of repairs, amount of reduction of the rent etc.) In France, if the tenant performs improvements in the dwelling without the agreement of the landlord, he may be obliged to restore the dwelling as it was at the date of the inventory. In the Netherlands if after being asked by the tenant, the landlord does not perform required repairs, the tenant can have the defects repaired and settle the reasonable costs against the rent. If he chooses to do so without court-order, the tenant risks a procedure by the landlord who may claim that there wasn't any defect to be repaired or that the costs claimed by the tenant were unreasonably high.

## **3.2. Important evaluative criteria for the tenant**

### *3.2.1. Affordability*

#### *Determination and increase of the rents*

In Belgium, the rent is freely determined among the parties for standard contracts (9 years). It is not the case for short-term contracts (less than 3 years). The purpose is to

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<sup>177</sup> Art. 7:274 §1 sub b CC.

<sup>178</sup> Art. 7:274 §1 sub c CC.

prevent systematic new short-term tenancy contracts that are concluded between the same parties or with another tenant, each time at a higher rent.<sup>179</sup>

Concerning the increase of the rent, there is no distinction between open-ended contracts and time-limited contracts. If the contract is in writing, the landlord may index the rent every year.<sup>180</sup> Contrary to France and the Netherlands, there is no need for a specific provision in the contract but an automatic indexation is not allowed. The possibility to index the rent should be requested in writing by the landlord and it has a retroactive effect limited to three months. This means that the landlord's request may be carried out after the date on which the rent can be indexed, but it will only have an effect for the last three months. According to Article 2273 CC, rents will be time-barred (*verjaren*) after one year. The time limit will begin on the day on which the request has been sent to the tenant.

Dutch tenancy law qualifies living space in an objective manner. The government applies a quality points system to determine the maximum price that is applicable to all rentals that fall within the regulated regime. This means that the applicability of the legal regime depends on the qualities of the object (such as the floor space, the availability of central heating, the EU energy class, but also access to local amenities like public transport, shops, etc.). Therefore the nature of landlord is irrelevant. As a result, most of the rents are regulated by the national government. Only if a dwelling that is qualified as an independent living space has more than 142 points, it falls in the liberalised category. An excessive rent in Dutch tenancy law can have two definitions. The first definition would be rent that is more than the maximum rent (€ 681,02 in April 2013) based on the points system, whereas the quality of the house does not reach the 142-points benchmark. Another definition of an excessive rent could be a rent that is more than what can be asked for based on the points system while not exceeding the maximum rent. In such a situation, the rent would (for example) be € 500 whereas it should be € 400, based on the points system. Initially when parties agree to an excessive rent, the tenant has six months to go to the Rental Commission. If he does, the Rental Commission will set the rent for the apartment. If he fails to do so, the excessive rent stands as it is. In the second situation, the tenant can go to the Rental Commission whenever he wants.

In the regulated sector, the rent can be increased once per year (normally July 1<sup>st</sup>)<sup>181</sup>, but in the first year of the contract it can be increased twice<sup>182</sup>. The Ministry of Housing sets the maximum amount. The proposal for the rent increase has to be sent two months in advance and should contain the present price, the percentage of increase, the date of increase and the way in which the tenant can object to the increase.<sup>183</sup> Since 2013, the landlord is allowed to increase the rent of their tenants because of their income. If specific facilities have been added to the dwelling by the landlord, the rent can be increased in accordance with the costs of those facilities.<sup>184</sup> The tenant can object to all of the increases before the Rental Commission following specific procedures.

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<sup>179</sup> A. van Oevelen (ed.), *Woninghuur*, 194.

<sup>180</sup> Article 1728*bis* CC and Article 6 Housing Rent Act

<sup>181</sup> Art. 7:250 CC.

<sup>182</sup> Art. 7:250 §1 sub a CC.

<sup>183</sup> Art. 7:252 CC.

<sup>184</sup> Art. 7:255 CC.

For houses that fall within the liberalized regime, there are no general rules for the maximum price increase or the way in which the tenant has to be notified of the increase. The rule of one price increase per year does apply to dwellings that fall within the liberalized regime in addition to the exception that an extra price increase is allowed when the quality of the dwelling is improved by the landlord.

In France as in Belgium, in principle, the rent is freely determined by the parties (article 17 of the 1989 Act). However, in some areas where the market is tense, the price of the rents is regulated in order to protect the tenant from abuse. In practice, this concerns the cities of the thirty-eight conurbations with more than 50,000 inhabitants located in France (twenty seven of them) and overseas (eleven of them). It means that approximately 40% of the French population is protected by rent regulation.

The revision of the rent is only possible if there is a provision in the contract allowing for the increase of the rent<sup>185</sup>. If there is no provision, the rent stays unchanged for the complete duration of the contract. The conditions for increasing the rent are limited: once a year an increase shall be based on a benchmark index for rent (In French: “*IRL*” for “*Indice de reference des loyers*”).

### *Conclusion*

In Belgium and in France, the determination of the rent is free, except for certain areas in France. In the Netherlands, the quality points system seems more objective and in that sense more favourable to the tenant. The regulated sector in the Netherlands offers strong protection for tenants, but not the liberalized sector concerning rent and rent increase. On the contrary, the rules concerning the increase of rent appears more favourable to the tenant in France and in Belgium (e.g. increase of rent being allowed only once a year).

### *Utilities*

In Belgium, the usual kinds of utilities are water, gas, electricity, lighting and heating. Other types of utilities can be: maintenance, Internet, waste collection and anti pollution tax. Both the tenant and landlord can conclude contracts for water, gas, electricity and Internet, which are governed by private law.

Taxes concerning the use of property, such as waste collection, and anti pollution tax are payable by the tenant. Owner's charges, such as property tax must be paid by the landlord.<sup>186</sup> There is no legal provision that specifies a complete list of services, which the landlord should provide to his tenant.

The general utilities category of Dutch tenancy law is referred to as service costs; they consist of the reasonable costs that are related to a dwelling and concern goods or services for which the landlord has to be reimbursed. Utilities are costs and expenses associated with a service or performance of advantage to the tenant, mainly heating, electricity and gas. Common practice is that the tenant concludes a contract of supply with a utility company. But in some cases it happens that the landlord concludes a contract and charges these costs to the tenant. In 2014 a new statute came into force,

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<sup>185</sup> Art. 3 of the 1989 Act, Civ. 3rd 4 October 1995, dealing with the 1986 Act but the same article is also in the 1989 Act.

<sup>186</sup> Art. 5 Housing Rent Act.



the Heating Act (*Warmtewet*),<sup>187</sup> which determines the prices that landlords (mostly housing corporations) can charge to tenants that are connected to a shared heating system. Sewerage charges (*rioolrechten*), pollution levy (*verontreinigingsheffing*), waste collection levy (*afvalstoffenheffing*), refuse collection charges (*reinigingsrechten*), and immovable property tax (*onroerende-zaakbelasting*) are not considered to be a cost for which the landlord has provided a service but as levies. These costs are directly charged to the landlord or user of the dwelling. The landlord may charge the tenant these costs separately, if the tenant hasn't received an assessment (*aanslag*) and paid the amount due. The landlord can charge the tenant for the costs that are concerned with the provision of services.

In France, the division of the cost between the tenant and the landlord is organized by a Decree adopted the 26th August 1987<sup>188</sup>. The list of charges is limited and fixed by this decree. Expenses, which are not mentioned in this text, shall be paid by the owner and cannot be charged to the tenant. The rules concerning the division of costs are different regarding if the apartment is in a building where there are several owners or just one, in order to respect the specific rules concerning co-ownership. To justify the amount of the charges, a statement of charges is sent to the tenant one month prior to the annual adjustment. The statement indicates the different categories of expenditure, which the charges are related to and where relevant, the amount consumed, for example, water and energy. The landlord can ask the tenant to pay an advance for the charge regularly, e.g. monthly or quarterly and an adjustment is done every year to adjust the payment to the real expenditure. The landlord can also ask the tenant to reimburse him for expenses that he has incurred. Every year, the landlord makes what is called a regularization of expenses. It means that the landlord has to make a comparison between the money he received from the tenant for the payment of service costs and the actual expenses. If the tenant paid too much, the landlord has to reimburse him. If he did not pay enough, the landlord can claim for the difference.

In the three countries, the utility cost contracts are the same and if the landlord pays for the utilities he can ask the tenant to reimburse him. The proceedings vary from one country to another but the idea is the same.

### *Repairs*

In Belgium, the tenant must, by nature of the contract and without the need of any particular stipulation, maintain the dwelling in order so that it can serve the use for which it has been let.<sup>189</sup> Legal provisions concerning maintenance, repairs and improvements are regulatory provisions. Parties may conclude otherwise, but if not, both are responsible for certain repairs and maintenance as described below.<sup>190</sup> During the term of the contract, the landlord is responsible for damages due to normal wear and tear, including normal use, old age, major repairs, major maintenance, force majeure and

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<sup>187</sup> Warmtewet, 17 June, 2013, Stb. 2013, 325

<sup>188</sup> See Decree n°87-713 of the 26th August 1987 establishing the list of recoverable costs, (in French: "Décret n°87-712 du 26 août 1987 pris en application de l'article 7 de la loi n° 86-1290 du 23 décembre 1986 tendant à favoriser l'investissement locatif, l'accession à la propriété de logements sociaux et le développement de l'offre foncière et relatif aux réparations locatives")

<sup>189</sup> Art. 1719 CC.

<sup>190</sup> The regions may have additional regulations. A. Hanselaer, B. Hubeau (eds), *Sociale Huur*, 117-122 and 261.

hidden defects.<sup>191</sup> Furthermore, he must make all necessary repairs, other than those incumbent upon the tenant.<sup>192</sup> Finally, keeping the wells and cesspools clean is also the landlord's responsibility.<sup>193</sup> The tenant is responsible for day-to-day repairs and routine maintenance, which is not considered to be major repairs or major maintenance.<sup>194</sup> He is also responsible for a list of repairs included in the code.<sup>195</sup>

In the Netherlands, the tenant can only be held responsible for small repairs.<sup>196</sup> This rule cannot be set aside. If the tenant carries out any work other than small repairs this must be considered as in-kind payment of rent. There is a Decision on Small Repairs (*Besluit Kleine Herstellingen*) that comes under the Minister of Housing<sup>197</sup>. The appendix to this document contains a list outlining the limits to small repairs that the tenant can carry out or for which he can be charged.

In France, according to article 7 d) of the 1989 Act "The tenant is obliged (...) to deal with the maintenance of the dwelling, with the equipment specified in the contract and with minor repairs as well as all the rental repairs defined by a decree (*Décret en Conseil d'Etat*), unless they are caused by decay, defect, construction defect, unforeseen events or "force majeure". A very precise list of what can be considered as rental repairs, i.e. in French "*réparations locatives*", is given by a Decree adopted on the 26<sup>th</sup> of August 1987<sup>198</sup>. This list is divided into six sections: External areas exclusively for the use of the tenant, Openings, Interior parts, Plumbing, Electrical equipment, and other equipment mentioned in the lease.

### *Conclusion*

The three countries have rules concerning the division of repairs to be performed by the tenant and the landlord. The idea is to protect tenants against significant cost and in all cases the tenant is only responsible for small repairs. Where the French law makes a very precise distinction, the Dutch law only refers to small repairs elaborated by the Minister of housing in the Decision on Small Repairs.

The regulations concerning the deposit, taxes and subsidies were dealt with in previous questions.

### *3.2.2. Stability*

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<sup>191</sup> Arts 1755 and 1721 CC F. Tollenaere, *Huren op de private huurmarkt, Eindelijk een droom of eerder een nachtmerrie*, Cahiers voor de welzijnswerker, (Mechelen: Kluwer), 39.

<sup>192</sup> Art. 1720 CC.

<sup>193</sup> Art. 1756 CC.

<sup>194</sup> Art. 1754CC; [http://www.belgium.be/nl/huisvesting/huren\\_en\\_verhuren/herstellingen\\_en\\_onderhoud/](http://www.belgium.be/nl/huisvesting/huren_en_verhuren/herstellingen_en_onderhoud/), 28 April 2013.

<sup>195</sup> Art. 1754 CC.

<sup>196</sup> Art. 7:217; Art. 7:240 CC

<sup>197</sup> *Besluit Kleine Herstellingen (Minor Repairs (Tenant's Liability) Decree)* (8 April 2003), Stb. 2003, 168

<sup>198</sup> Decree 87-712 of the 26th August 1987 adopted in application of 7 of the Act 86-1290 of the 23th December 1986 aimed at boosting rental investment, home ownership and social housing development of land supply and determining the list of recoverable costs, (In French: "*Décret n°87-712 du 26 août 1987 pris en application de l'article 7 de la loi n° 86-1290 du 23 décembre 1986 tendant à favoriser l'investissement locatif, l'accession à la propriété de logements sociaux et le développement de l'offre foncière et relatif aux réparations locatives*"), Art. 1756 of the Civil Code added an obligation concerning the cleaning of cesspools and wells.

### *Duration*

In Belgium, the standard duration of private tenancy contracts is 9 years<sup>199</sup>. Standard private tenancy contracts end after a period of nine years has expired, if at least six months before the due date one of the parties has given notice to terminate the contract.<sup>200</sup> Otherwise, the contract is automatically extended for three years under the same conditions.<sup>201</sup> The landlord can only terminate the contract (before the end of the 9 years) under very strict conditions<sup>202</sup>: if he wants to have his flat back for himself or for a member of his family, to perform work on the premises or without a specific reason but in this case the tenant must be compensated. Short-term contracts can also be concluded for three years or less<sup>203</sup>. To avoid the conclusions of chain short-terms contracts with an increase of rent at each renewal<sup>204</sup>, the possibility to renew the contract is limited to once for one year. A short-term private tenancy contract ends after a period of three years has expired, if at least three months before the due date one of the parties has given notice to terminate the contract.<sup>205</sup> Otherwise, the contract is supposed to be a standard 9 years contract except in specific cases<sup>206</sup>.

Contracts can also be concluded for a longer period with a maximum of 99 years<sup>207</sup>. Such contracts end at the expiration date, if at least six months before the due date one of the parties has given notice to terminate the contract.<sup>208</sup> If not, the contract will be extended for three years under the same conditions.<sup>209</sup> The conditions for terminating a long-term private tenancy contract early comes under the same termination conditions as standard private tenancy contracts (9 years contracts).

Contracts can also be concluded for the duration of the tenant's life.<sup>210</sup> The (early) termination of a private tenancy contract for the duration of the tenant's life by the landlord is only possible if it is stipulated in the contract.<sup>211</sup>

In the Netherlands and in France, the situation is a lot simpler concerning the duration of contracts. In the Netherlands the general rule is that contracts are open-ended. There are some exceptions, based on the Vacancy Act. These contracts have to be closed for a minimum period of six months.<sup>212</sup> The civil code specifically mentions the situation in which the landlord wants to live in a house that he did not previously occupy, for example when he had not sold his previous house or for other reasons had to wait

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<sup>199</sup> Art. 3 § 1 Housing Rent Act.

<sup>200</sup> Art. 3 § 1 Housing Rent Act.

<sup>201</sup> Art. 3 § 1 Housing Rent Act.

<sup>202</sup> Article 3 §§ 2 through 4 Housing Rent Act.

<sup>203</sup> Art. 3 § 6 Housing Rent Act.

<sup>204</sup> A. van Oevelen (ed.), *Woninghuur*, 194.

<sup>205</sup> Art. 3 § 6 Housing Rent Act.

<sup>206</sup> It is possible to avoid a short term contract converting into a standard nine year contract. The following has to be done: the extension of the contract has to be in writing, the rent has to be the same or less, the tenant has to be the same party, the extension is only allowed once, the contract period of the original and new lease combined may not exceed three years, and it is allowed that the duration of the second contract is not the same as the duration of the first contract.

<sup>207</sup> A. van Oevelen (ed.), *Woninghuur*, 160.

<sup>208</sup> Art 3 § 7 Housing Rent Act.

<sup>209</sup> Art 3 § 7 Housing Rent Act.

<sup>210</sup> Art. 3 § 8 and A. van Oevelen (ed.), *Woninghuur*, 162-163.

<sup>211</sup> Arts 3 §§ 2-4 in conjunction with art 3 § 8 Housing Rent Act; L. Machon et al., *101 vragen en antwoorden over de nieuwe wet*, 53.

<sup>212</sup> Art. 16 § 4 Leegstandswet.

before he moved into his house. The tenant may not already be living there. If the landlord wants to move back into his house (for example after he spent some time working abroad) or wants to allow his previous tenant to move back in, the contract can be closed for a limited time.<sup>213</sup> In all these cases the contract must explicitly state that the tenant has to vacate the house at the end of the agreed upon term. The landlord cannot terminate the contract early.

In France, according to article 6 of the 1989 Act<sup>214</sup> if the landlord is a corporate body (In French: "*personne morale*") the duration of the contract is six years and if the landlord is a natural person (in French "*personne physique*") the duration of the contract is three years. There is no possibility for the landlord to terminate the contract early. Article 10 of the 1989 Act organises an automatic right to renewal<sup>215</sup>. At the end of the contract, it is renewed for the same duration as the first time, and it can be renewed an indefinite number of times. In some limited cases, the landlord is allowed to offer a shorter lease (minimum one year) according to article 11 of the 1989 Act. The landlord must prove that a specific event justifies that he takes back the dwelling for personal or professional reasons. If the event does not occur, the contract is considered to last three years. If the completion of the event is only delayed, the landlord can, only once, postpone the termination of the contract if the tenant agrees.

### *Conclusion*

The three laws aim to protect the tenant. The Netherlands and France choose an easy way to do so by limiting the options concerning the duration. Moreover, even if there is duration in the French law, the automatic renewal and the impossibility of terminating the contract early ensures extra protection for the tenant. On the contrary, the situation in Belgium is very complex due to the large number of applicable rules. If the landlord only agrees on a short-term contract, there is more risk that the rights of the tenant is unprotected. However, the options for the landlord to terminate the contract or to offer a short-term contract are limited. Stability for the tenant seems to be one of the goals of each of these laws.

### *Pre-emption right*

In Belgium and in the Netherlands, there is no pre-emption right. In the Netherlands, in practice, tenants of housing corporations are offered to buy their house when the housing corporation decides to sell some of its stock.

On the contrary in France, if the landlord wants to sell the dwelling, the tenant has a pre-emption right strictly defined according to article 15 II of the 1989 Act<sup>216</sup>. Not only does there have to be an offer of the possibility to buy the dwelling, but also, another offer must be made to the tenant if the price is reduced or there are changes in the conditions of the sale. The French law is thus more protective to the tenant in creating an option for him to buy the flat.

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<sup>213</sup> See Art. 7:274 §2 CC.

<sup>214</sup> The 1948 Act which is still applicable to very few contracts. The specificity of the regime is that after the first contract (of a minimum of six years), the tenant has a right to stay in the dwelling (in French: "*maintien dans les lieux*"). He can only lose the benefit of his right for very specific reasons.

<sup>215</sup> Vial-Pédroletti, " Tacite reconduction : durée du bail tacitement reconduit", *Loyers et copr.* 2013 p. 22.

<sup>216</sup> This article also stated that for each notice its content must be copy otherwise, the notice are considered null.

### 3.2.3. Flexibility

#### *Termination of the contract*

In Belgium, the tenant can terminate standard contracts (9 years) and long-term contracts (more than 9 years duration or the life of the tenant) at its end but also at any time during the lease with a notice period of three months.<sup>217</sup> The tenant must pay the landlord a fixed compensation (from 1 to 3 months rent), if he ends the contract during the initial three years period. For a short-term contract (less than 3 years), tenants do not have a right to terminate the contract early.

Dutch tenancy law accepts three grounds for termination of contracts: a) notice, b) rescission and c) termination by mutual agreement. As there are no terms, if the tenant wants to give notice, he must respect a period: the length of the period between two payments of at least one month and a maximum of three months. In addition, the termination has to take place on the date when normally the rent would be due. Thus, if he normally pays his rent on the first day of the month, his contract will end on the first of the month.<sup>218</sup> If tenancy contracts are closed for a fixed period, the tenant will have to respect that period and cannot terminate the contract unless agreed otherwise.<sup>219</sup> In (very) exceptional circumstances, general principles of contract law, such as unforeseen circumstances or rules of good faith, may lead to a different result. If the tenant keeps using the dwelling after the fixed period, the general rules will apply.

In France, the tenant can leave at any time, subject to respecting certain formal requirements. The leave is effective at the expiration of a period of three months' notice. In specific cases, the notice can be only one month<sup>220</sup>: if the tenant finds his first job, if his job is transferred, if he loses his job, if he finds a new job after losing the previous one, if the tenant is over sixty years old and his health justifies his move, or if he benefits from social allowance (in French: *Revenu minimum d'Insertion* or *Revenu de solidarité active*). The period starts from when the landlord receives the notice letter. The tenant has to pay the rent during the full period, one or three months, except if he reached an agreement with the landlord or if another tenant enters the dwelling before the end of the period. To inform the landlord that he wants to leave, the tenant has to send him a registered letter with acknowledgement of receipt or to have the notice served by a bailiff. There is no provision in the law concerning the content of the letter but if the tenant benefits from a shorter notice, he should inform the landlord. Once the tenant sends his notice, he has to leave the dwelling at the end of the period, except if he reached an agreement with the landlord to stay or to extend the notice.

#### *Conclusion*

The three laws offer the opportunity for the tenant to leave the dwelling with a short notice from one to three months. Nevertheless, Belgian law can be considered as less

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<sup>217</sup> Art. 3 § 5 Housing Rent Act.

<sup>218</sup> Art. 7: 272 § 2 CC.

<sup>219</sup> *Aerts v Kneepkens*, Hoge Raad 10 August 1994, NJ 1994/688; S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 16.3

<sup>220</sup> Damas N., "Préavis réduit : des limites à la valse-hésitation du bailleur", *AJDI* 2013, p. 9; Civ. 3rd 19 September 2012, n°11-21.186

flexible for the tenant as in some cases he has to pay compensation to the landlord and for short-term contracts he is not allowed to terminate the contract earlier.

### *Sublease contracts*

In Belgium, under private tenancy law, a tenant who rents a dwelling and uses it as his principle residence is not allowed to sublet the dwelling completely. This is mandatory law and the tenant can only sublet a part under the conditions that the remainder part of the dwelling remains assigned as his principal residence and only with the permission of the landlord, which can be also given tacitly or afterwards.<sup>221</sup> The Housing Rent Act prescribes the legal relationship between the tenant and his subtenant, if the dwelling is the subtenant's principle residence. This means that the subtenant enjoys the same legal protection as the tenant.<sup>222</sup> The term of the sublease's contract period may not exceed the remaining term of the main lease contract period.<sup>223</sup>

In the Netherlands, a tenant is not allowed to sublet the dwelling without consent of his landlord.<sup>224</sup> However, he is allowed to sublet a part of his dwelling as long as he stays and has his 'main-residence' in that dwelling.<sup>225</sup> The consent for subletting can be tacit. However, this has to be shown by the main tenant, as consent is not presumed. When the relation between the main tenant and the landlord ends, the law provides a rule that allows the subtenant (of independent living space) to become the main-tenant. He will have to notify the landlord that he wants to continue the tenancy.<sup>226</sup> It is irrelevant whether the landlord has previously agreed to the situation. In practice this means that tenant has to start paying the rent to the landlord. If the landlord does not refuse the rent within six months, he will have to accept the new tenant.<sup>227</sup>

In France, according to article 8 of the 1989 Act, subletting is in principle not allowed. However, the landlord can give his approval to the tenant. In such a case he must agree to the principle of subletting but also on the price of the rent (which cannot exceed per square meter the price paid by the main tenant). If the main contract terminates, the sub-tenant has no rights from the landlord. The subtenant does not benefit from the provisions of the law that protect tenants.

### *Conclusion*

In the three laws, subletting is in principle not authorised without the agreement of the landlord. The subtenant is more protected in Dutch law than in French law as he can benefit from an extension of his contract. In terms of subletting, tenants do not benefit from any flexibility, even if it not abusive.

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<sup>221</sup> Art 4 § 2 Housing Rent Act; M. Dambre, *Bijzondere overeenkomsten*, Syllabus (Brugge: Die Keure), 265.

<sup>222</sup> Art. 4 § 2 Housing Rent Act.

<sup>223</sup> Art. 4 § 2 Housing Rent Act.

<sup>224</sup> Art. 7:221 CC.

<sup>225</sup> Art. 7:244 CC; S. Rueb, H.E.M. Vrolijk & E.E. de Wijkerslooth Vinke, *Memo Huurrecht 2013-2014*, (Deventer: Kluwer, 2014), No. 5.9, 14.1

<sup>226</sup> Art. 7:270a CC.

<sup>227</sup> Art. 7:269 CC.

## 4. Comparison of tenures with a public task

### 4.1. Generalities

In Belgium it is the type of landlord that largely determines whether one can speak of social or private renting.<sup>228</sup> If private persons or companies let the dwellings, they belong to the private rental sector. If a registered or accredited social housing association lets the dwellings, they are considered to be social rental dwellings. The regional housing societies are responsible for the accreditation of the social landlords.<sup>229</sup>

The system is very complicated due to regionalisation. In each region, social landlords follow different rules and have different names as follows: in Flanders, *sociale huisvestingsmaatschappij* (SHM, in total 102)<sup>230</sup>, in the Walloon Region 70 Sociétés de Logement de Service Public (SLSP)<sup>231</sup> and in Brussels 38 associations called SHM<sup>232</sup> like in Flanders or *Openbare Vastgoedmaatschappij* (OVM).<sup>233</sup> The social landlords are stimulated, supported, coached and financed by their respective regional organization. Local authorities and municipal welfare organisations known as OCMWs (*Openbaar Centrum voor Maatschappelijk Welzijn*, as they are called in Dutch) or groups of local authorities and OCMWs are also considered to be social landlords.<sup>234</sup>

Social Rental Agencies are responsible for administration and minor renovations. This is currently their primary function. They also offer individualized support for tenants with problems as part of their aim of preventing homelessness. Originally, they also aimed to provide a strong link between housing and welfare aims and to develop local policy networks on affordable housing.

In the Netherlands, within the rental sector, social renting with a share of 82% dominated in 2009. Any landlord – social or not – could own stock with regulated rent. Social landlords are the Dutch housing associations, which are non-profit legally private organisations that are accredited by Dutch government according to the Housing Act in order to fulfil a public task.

Since the mid-1990s they have been financially independent from the government and almost all municipal housing companies have been turned into social landlords.<sup>235</sup> They

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<sup>228</sup> Haffner et al., *Bridging the gap*, 64.

<sup>229</sup> Portaal Belgium.be, 'De sociale huisvestingsmaatschappijen', <[http://www.belgium.be/nl/huisvesting/sociale\\_huisvesting/sociale\\_huisvestingsmaatschappijen/](http://www.belgium.be/nl/huisvesting/sociale_huisvesting/sociale_huisvestingsmaatschappijen/)>, 13 January 2013.

<sup>230</sup> VMSW, 'Historiek. Van NMH en NLM over VHM tot VMSW', <<http://www.vmsw.be/nl/algemeen/over-vmsw/historiek>>, 31 January 2013.

<sup>231</sup> La Société wallonne du logement, 'Het netwerk van huisvestingmaatschappijen. Een ambitie, een waardige woning voor iedereen', <[http://www.swl.be/index.php?option=com\\_content&view=article&id=209&Itemid=341](http://www.swl.be/index.php?option=com_content&view=article&id=209&Itemid=341)>, 18 January 2013.

<sup>232</sup> BGHM Brusselse Gewestelijke Huisvestingsmaatschappij, 'Huisvestingsmaatschappijen', <<http://www.slr.b.irisnet.be/huisvestingsmaatschappijen>>, 31 January 2013.

<sup>233</sup> BGHM Brusselse Gewestelijke Huisvestingsmaatschappij, 'Beheersovereenkomsten', <<http://www.slr.b.irisnet.be/de-bghm/contrats-de-gestion>>, 31 January 2013.

<sup>234</sup> Vanneste, Thomas & Goosens, *Woning en woonomgeving*, 124 and 125.

<sup>235</sup> From: Haffner, 'Dutch Social Rental Housing: the Vote for Housing Associations'. And: Elsinga & Wassenberg, 'Social Housing in the Netherlands', 135. And: Elsinga & Van Bortel, 'The future of social housing in the Netherlands', 99 and 100.

are also in charge of providing social rental housing to the most vulnerable households in society. In 2009 there were about a little more than 400 housing associations.<sup>236</sup>

In France, the first social housing initiatives were not taken by local or state authorities but by private actors such as companies, factory owners and philanthropists<sup>237</sup>. Initially, social rental dwellings were built by *sociétés d'Habitations à Bon Marché* (HBMs), which in 1950 became *Habitations à Loyer Modéré* organisations (HLMs). Since 2008, the public HLMs have been known as *Offices Publics de l'Habitat*. These social rental landlords have a predominantly public character and are controlled by the local authorities (municipalities, groups of municipalities or departments), who are responsible for their creation and for managing their finances and their tasks<sup>238</sup>. There are also private HLMs (46% of the stock)<sup>239</sup>. These are called *Entreprises sociales pour l'habitat*. Such social rental landlords are private organisations with a non-profit objective (although they are allowed to pay a very limited dividend to their shareholders).<sup>240</sup> Private social rental landlords usually operate under the supervision of shareholders from both the private and public sectors. They not only provide social rental housing but are often also involved in the construction of subsidised owner-occupancy dwellings for lower-income groups<sup>241</sup>. Public and private social rental landlords have the same competences, expressed in the *Code de la Construction et de l'Habitation* (CCH). In 2008, there were about 560 HLM organisations in France. Specific providers of social rental housing are the *Sociétés d'Economie Mixte* (SEMs), also called *Entreprises Publiques Locales*. These are partnerships between local government and private partners that may also provide social rental housing. Finally, there are various smaller providers of social rented housing. This involves local authorities (municipalities), public or semi-public companies (public hospitals and the state railway company, the SNCF, have dwellings which they let to their employees) and the co-operative housing companies (although the latter mainly focus on the owner-occupied sector).

### Conclusion

The mechanisms in the three countries are rather different but are always based on the same idea of providing housing for people who cannot access the regular market. The Netherlands has the biggest social rental sector. In all three countries various actors at a regional level are involved. Probably due to the size of the country, France has a huge number of associations and very different types of providers of social housing, even if some are very small.

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

In Belgium, the financial system depends on the region where the dwelling is located.. In Flanders, the Decree on Financing of Social Housing, *Financieringsbesluit*) contains the

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<sup>236</sup> Rijksoverheid, 'Aantal corporaties en gemiddeld woningbezit', <[http://vois.datawonen.nl/report/cow10\\_903.html](http://vois.datawonen.nl/report/cow10_903.html)>, 17 February 2013.

<sup>237</sup> Lévy-Vroelant, Reinprecht and Wassenberg *Learning from history: changes and path dependency in the social housing sector in Austria, France and the Netherlands (1889-2009)*, 33.

<sup>238</sup> *Social Housing in France*, Information from the website <[www.cecodhas.org](http://www.cecodhas.org)>

<sup>239</sup> This means that they are subject to private law (Amzallag and Taffin, *Le logement social*, 20).

<sup>240</sup> Amzallag and Taffin *Le logement social*, 21.

<sup>241</sup> Boelhouwer and van der Heijden, *Housing systems in Europe*.



rules for the financing of social housing<sup>242</sup>. Via the so-called Decree on Funding (*Fundingbesluit*) the funds of the Flemish government are paid to the regional support organization called VMSW (*Vlaamse Maatschappij voor Sociaal Wonen*) which will allocate the subsidies in three ways to the investors in social housing: assistance in the payment of debt, project subsidies and assistance in the pre-financing of those taking the initiative for social housing projects. In Brussels, investments are financed mostly with a mix of loans and subsidies paid for by the Administrative Region.<sup>243</sup> In the Walloon Region subsidies (from local actors or via the *Société Wallonne du Logement*, i.e. the regional support organization) are available for the acquisition, construction and renovation, etc. of social rental dwellings and of so-called modest rental dwellings (article 29 of the Housing Code).<sup>244</sup>

In the Netherlands, in 1995 the sum of the future annual subsidy obligations of the government that were agreed upon with social landlords were calculated as net present value and paid as lump sum to the social landlords.<sup>245</sup> These were traded in for outstanding government loans that were in the hands of the social sector. In other words, the social sector had to repay these government loans and take out loans from the capital market. This operation resulted in cutting the financial ties between the government (no more subsidies for new construction) and the landlords (no more government loans for activities). Therefore, the social landlords became financially independent from the government and they were to operate as social entrepreneurs from then on, running the risks of investment themselves while using the societal capital that had been built up by the subsidies for the public task. In fact, they were to operate as a revolving fund.

In France, support for social rental landlords is provided through an unusual financial system in which household savings (accumulated in the *Livret A* scheme or similar schemes at the state-regulated *Caisses d'épargne*)<sup>246</sup> are used to provide loans to landlords who build social rental housing. The interest rate on the loans for landlords is linked to this *Livret A* interest rate decided by the government based on a recommendation of the Banque de France. The system is called the *Fonds d'Epargne* and is coordinated by the state-controlled National Deposit Office (*Caisse des Dépôts*). The system limits the amount of state subsidisation required for social rental housing but also obliges the French state to find a balance between a favourable interest rate for the lenders (the social rental landlords) on the one hand, and a favourable interest rate for the capital providers (households) on the other hand<sup>247</sup>. The repayment of the *Fonds*

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<sup>242</sup> Wonen Vlaanderen, 'Hervorming financiering sociale huisvesting is rond', <[http://www.wonenvlaanderen.be/ondersteuning\\_voor\\_professionelen/financiering\\_van\\_woonprojecten](http://www.wonenvlaanderen.be/ondersteuning_voor_professionelen/financiering_van_woonprojecten)>, 31 January 2013.

<sup>243</sup> BGHM Brusselse Gewestelijke Huisvestingsmaatschappij, 'Investeringsplannen', <<http://www.slr.be/de-bghm/opdrachten/plans-dinvestissements>>, 31 January 2013.

<sup>244</sup> Direction Générale Opérationnelle Aménagement du territoire, Logement Patrimoine et Energie, 'Logement moyen locatif', <<http://dgo4.spw.wallonie.be/DGATLP/DGATLP/Pages/Log/Pages/Aides/SOPP/Art29moyen.asp#Subvention>>, 31 January 2013.

<sup>245</sup> Haffner et al., *Bridging the gap*, 216.

<sup>246</sup> M. Amzallag and C. Taffin, *Le logement social* [Social Housing] (Paris: Collection Politiques Locales, 2003).

<sup>247</sup> Amzallag and Taffin, *Le logement social*.

*d'Epargne* loans is guaranteed by the municipalities or the guarantee fund for the social rental sector: the *Caisse de Garantie du Logement Locatif Social* (CGLLS). Whereas the *Caisse des Dépôts* is responsible for the financial supervision of the social rental sector, the general performance of social rental landlords is evaluated by a central government organisation called MILOS: *Mission d'Inspection Interministérielle du Logement*, which is related to both the Minister of Housing and the Minister of Finance. MILOS can advise ministers to impose sanctions on social rental landlords that do not perform well, with the dismissal of the board of directors, and in extreme cases even the dissolution of the organisation as the ultimate penalty<sup>248</sup>.

The financial systems of the three countries completely differ from one another. It is impossible to determine which one is the most efficient. One can note that in the three cases, the State tries not to be too involved financially. The data concerning subsidisation has been dealt with in point 2.5.

### **4.3. Evaluative criteria for the tenant**

#### **4.3.1. Access**

In Belgium, each region has its own regulations and conditions concerning the registration and allocation of social dwellings.<sup>249</sup> Each regional organization publishes on their website the requirements and procedures for a candidate-tenant (house hunter or prospective tenant) to get a social rental dwelling allocated. For example, in Flanders,<sup>250</sup> the housing association will offer to send the prospective tenant's registration to other housing associations active within the municipality and in neighbouring municipalities. Each social housing association works with an individual waiting list of prospective tenants once they have registered. Waiting lists must be updated every two years. There are six eligibility rules. The first three are that applicants must be over eighteen, own no dwelling at the time of registration and be registered in the 'population' register or as foreigners. The aim of this requirement is that permanent rental agreements should not be entered into with temporary citizens. A fourth criterion is about income limits. The two last criteria concern the willingness of the prospective tenant to learn Dutch, unless there are good reasons (such as a health condition) not to, and to become a naturalised citizen, where possible. Priority rules determine the allocation sequence on the basis of a number of criteria. The first one is whether the dwelling is of a suitable size for the household. If not, a payment needs to be made for the 'oversized' dwelling. A second criterion is whether the candidate satisfies the 'absolute priority' rules (such as having a handicap, being of age, or being in urgent need of (other) housing). Relevant as third criterion is the chronological order of registration. Furthermore the landlord may prioritise 'local' candidates who have been living in the area for at least three of the previous six years and/or candidates who do not already live in a social rental dwelling or who do not have a permanent rental agreement (renting from a Social Rental Agency or OCMW).

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<sup>248</sup> Bougrain, *France*.

<sup>249</sup> Flemish Region: Framework Social Rent; Brussels Region: 26 September 1996 Decision of the Brussels-Capital Region; Walloon Region: 6 September 2007 Decree of the Walloon Government.

<sup>250</sup> From: Haffner et al., *Bridging the gap*, 77 et seq.

In the Netherlands, regulations that govern the distribution of housing are drawn up in a local or a regional allocation act (*huisvestingsverordening*).<sup>251</sup> The vacant social rental dwellings are advertised in a housing bulletin and/or on Internet, complete with the requirements.<sup>252</sup> Interested candidates can then apply directly for the dwelling or dwellings they would like to get. The dwelling will be offered to the candidate who best fits the selection criteria such as waiting time or length of residence in the current dwelling. The candidate also has a choice not to accept the dwelling. Waiting time varies between dwelling types, neighbourhoods and municipalities, but can be up to ten years in a tight housing market like Amsterdam, the capital city of the Netherlands.

In France, the social rental sector, laid down by the French *Code de la Construction et de l'Habitation*, is characterised by a rather complex and sophisticated housing-allocation process involving several stages and various actors<sup>253</sup>. The social rental landlords have signed agreements with the various institutions that contribute to the financing of the social rental sector. These agreements give the financing parties a say in the allocation of part of the social rental dwelling stock<sup>254</sup>. Generally a quota system with this share is used<sup>255</sup>: central state (usually *le Préfet*) 30% (25% for the most disadvantaged people and 5% for civil servants)<sup>256</sup>, local municipality (*commune*) 20%. The various local collectors of the 1% *logement* fund (the CIL: *Comité Interprofessionnel du Logement* and a number of other actors involved in social housing<sup>257</sup> are responsible for the allocation of the rest of the available stock of social rental dwellings<sup>258</sup>.

The actors entitled to a reservation will usually propose three candidates when a dwelling earmarked for them falls vacant or is completed. The dossiers of these candidates are then presented to the *commission d'attribution*. This committee, following the advice of the parties, decides to which household the free dwelling is allocated. There are multiple allocation criteria such as income ceilings<sup>259</sup>. The other requirements may differ between localities, but all allocation systems prioritise people with housing problems and/or social problems. The allocation process is rather complex and somewhat lacking in transparency. This may also explain why there are often complaints that discrimination has taken place<sup>260</sup>. There can also be a conflict between the rights of local stakeholders and the rights of the disadvantaged<sup>261</sup>. Extra support for the most disadvantaged households has to come from external sources and is generally in short supply. As a result, social rental landlords are sometimes reluctant to help the

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<sup>251</sup> Haffner et al., *Bridging the gap*, 221.

<sup>252</sup> Haffner et al., *Bridging the gap*, 222.

<sup>253</sup> Ball, J. *The insider/outsider thesis and its extension to social housing in France* (paper for the ENHR 2006 conference in Ljubljana, Slovenia, 2006)

<sup>254</sup> Observatoire de l'habitat de Paris, *L'accès au logement social à Paris en 2005* [Access to social housing in Paris 2005] (Paris : Observatoire de l'habitat de Paris, 2005).

<sup>255</sup> *Social Housing in France* < [www.cecodhas.org](http://www.cecodhas.org) >.

<sup>256</sup> However, the state can also delegate its allocation rights to local authorities. This is a very recent development (personal communication Schaefer).

<sup>257</sup> This may include social rental landlords, ministries, chambers of commerce, and public companies such as the Post Office and the national railways.

<sup>258</sup> Ball, *The insider/outsider thesis and its extension to social housing in France*.

<sup>259</sup> Bougrain, *France*.

<sup>260</sup> Kirchner, *Wohnungsversorgung für unterstützungsbedürftige Haushalte*, 207.

<sup>261</sup> J. Ball, Property, altruism and welfare: how national legal concept affect allocation of social housing to the disadvantaged, in: K. Scanlon, and C. Whitehead (eds.) *Social Housing in Europe II. A review of policies and outcomes*, (London: London School of Economics and Political Science, 2008), 64.

neediest<sup>262</sup>. In order to solve these problems, the current French government is developing plans to make the housing allocation process in the French social rental sector more simple, transparent and efficient<sup>263</sup>. Waiting times for a social rental dwelling can vary greatly, depending on the housing market situation in the region concerned. In areas with a particularly tight housing market, such as Paris, the waiting time can in fact be very long (up to 3 or 4 years).

### *Conclusion*

In Belgium and in France, access to the social rental market is difficult and there are waiting lists. The lack of social dwellings has led to investment, which is not sufficient for responding to the demand. In the Netherlands, access to the regulated market is satisfactory but not the access to the social rental market as such. In Paris and Amsterdam even the neediest have to wait few years before obtaining a dwelling. The French system is particularly obscure. None of the systems can be considered as satisfactory.

#### *4.3.2. Affordability*

In Belgium, if a tenancy contract is governed by social tenancy law, there is no freedom for the landlord to determine the rent. Each region has its own regulations.<sup>264</sup> The rent in social housing in the Flemish Region is based on household income. In the Brussels Region, the complex rent calculation is subject to several factors, such as the family income and the number of children.<sup>265</sup> In the Walloon Region, the rent is calculated in accordance with specific regulations.<sup>266</sup> All regions have also their own system for increasing or decreasing the rent.<sup>267</sup> For instance, the Flemish Region has chosen a system whereby the rent is revised every year. Such a revision is recalculated on the basis of the income in the new reference year (*nieuwe referentie jaar*) and the actual number of people who depend on the tenant. In addition, among other things, the index-based rent is also taken into account.<sup>268</sup>

In the Netherlands, the quality points system is used to determine whether a dwelling falls in the regulated sector or not. For dwellings that score less than 142 points at the beginning of the contract the rent is regulated. Based on the number of points of a dwelling in the regulated sector, a maximum rent is determined. A regulated rent can only be increased annually on the 1<sup>st</sup> of July. The government based on a decision of the Parliament determines the percentage of increase every year. Central government

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<sup>262</sup> Ball, *European Housing Review 2008*, 173.

<sup>263</sup> *La ministre du logement Cécile Duflot a lancé ce mercredi une concertation sur un nouveau système d'attribution des logements sociaux*, La Tribune 16-1-2013 <[www.latribune.fr](http://www.latribune.fr)>.

<sup>264</sup> Flemish Region: Framework Social Rent. Brussels Region: the 26 September 1996 Decision of the Brussels-Capital Region; Walloon Region: 6 September 2007 Decree of the Walloon Government.

<sup>265</sup> 26 September 1996 Decision of the Brussels-Capital Region.

<sup>266</sup> Art. 7 § 1 of the standard social tenancy contract, which is attached as Appendix 5 to the 6 September 2007 Decree of the Walloon Government.

<sup>267</sup> Framework Social Rent. For Brussels Region the rent revision is laid down in the 26 September 1996 Decision of the Brussels-Capital Region.

<sup>268</sup> The rules for the calculation of social rent only apply to social tenants from a legally recognized Social Housing Association (SHM), not for social tenants of a municipality, CPA's, OMCW, Association of OMCW's, social housing or the Flemish Housing Fund.

can also set an average rent increase per landlord for social landlords for the total of its portfolio.

In France, for HLM the rent is determined based on a price per square meter (decided by the organisation) multiplied by the size. The size of the dwelling is calculated taking into account several elements such as the dilapidation of the dwelling<sup>269</sup>. The maximum rent that can be asked for varies according to the financial support schemes, which have been granted to the social landlords, as well as according to the size of the dwelling. Each subsidised loan has a maximum square meter price. These maximum square meter prices differ among regions. However, notwithstanding this regional variation, social housing rents still depend mainly on cost-related factors (mainly construction costs) and not on the housing market conditions. As a result, there is a large disparity in rent levels that are uncorrelated to applicable income ceilings, not to mention the quality of the building or the convenience of their location.<sup>270</sup> Consequently, in urban areas (where housing markets are generally tight), rents in the social rental sector tend to be significantly lower than those in the market rental sector, whereas these differences are usually much smaller in the more relaxed housing markets in small and medium-sized towns<sup>271</sup>. The state also makes recommendations with regard to annual rent increases in the French social rental sector, based on the rent revision index (*indice de révision des loyers*). However, social rental landlords are not obliged to follow these recommendations<sup>272</sup> and they may also decide to apply different rent increases.<sup>273</sup>

### *Conclusion*

In the three countries, a dwelling with a public task is more affordable than dwelling in the regular market. The calculation of the rent is never free in the social housing market and can be based on various criteria, such as income or the cost of construction. However, the real issue concerns the accessibility to this market and not its affordability. Concerning the deposit, the utilities and the repairs, the rules are the same as those of dwellings without a public task. The rent subsidies for tenants have been dealt with in point 2.5.

### *4.3.3. Stability*

In Belgium, security of tenure in the social rented sector is indefinite after a trial period of two years for new tenants. Another property right concerns the conditional right to buy. The right to buy allows tenants to buy their social rental dwelling provided that it is not an apartment; it is more than 15 years old and the tenant has rented it for at least five years. This right to buy appears to be a genuine right to buy, since the housing association does not need to give its explicit permission for the sale of the dwelling.

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<sup>269</sup> Art. L442-1 to L442-12 of the Building and Housing Code.

<sup>270</sup> Driant, *Social housing in France*, 127.

<sup>271</sup> Amzallag and Taffin, *Le logement social*.

<sup>272</sup> Nevertheless, the rent after rent increase may not exceed the maximum rent permitted in the financial agreements by means of which the social rental dwelling has been financed. These maximum rents are reviewed annually on the basis of the index of construction costs.

<sup>273</sup> Haffner et al., *Bridging the gap*, 118.

In the Netherlands, a tenancy agreement in the rental sector is usually for an indefinite period of time.<sup>274</sup> If the dwelling is sold the tenancy is not affected, but the tenant has no priority right to buy the dwelling. Social landlords sell part of their dwellings to their tenants within the framework of their financial model. Without these sales' revenues, social landlords may not be able to realize new social rental construction.<sup>275</sup>

In France, if the tenant lives in a social housing HLM (in French: "*Habitation à loyers modérés*"), he benefits from the right to stay indefinitely in the premises, except if he fails to comply with his duty<sup>276</sup>. The landlord can only terminate the contract for specific reasons. Non-paying tenants can be evicted, but this requires relatively long and complex procedures. However, the "Boutin" law of 2009 has slightly diminished the tenant security in the French social rental sector as households with incomes that are equal or higher than twice the income ceilings for social rental housing, are required to sign non-renewable three-year leases since they clearly do not belong to the target group for the social rental sector. Moreover, social rental landlords now have to offer more suitably-sized dwellings to households that live in dwellings that are considered too large for them. In a tight housing market, tenants who decline three housing units lose their occupancy rights after a six-month period. However, this rule does not apply to tenants that are 65 years old or that have disabilities<sup>277</sup>. There is no right to buy in the French social rental sector. However, social rental landlords may sell dwellings to former tenants as part of their real estate strategy. The sale of dwellings provides equity that can be used for new investment. Only social rental dwellings older than ten years can be sold. Moreover, the local authorities must approve the sale because they lose their allocation rights for the dwellings that are to be sold<sup>278</sup>. Occupied dwellings can only be sold to sitting tenants.

### *Conclusion*

The stability of the tenant seems to be better in the social sector than in the private one, as the contracts are open-ended ones even if there is a trial period in Belgium. In France, some changes were made to improve the accessibility of dwellings for people in need. Belgium created a genuine right for tenants to buy their dwellings under conditions whereas in France and in the Netherlands it is only an option for the social landlord to sell their dwellings to tenants.

#### *4.3.4. Flexibility*

In Belgium, the regulations of the conditions of termination vary from one region to another. For example, the tenant can at any time terminate the contract with three months notice (by registered letter) in the Walloon and the Brussels region.

In the Netherlands and in France, the applicable rules are the same as for the renting without public task.

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Rijksoverheid,

'Huurbescherming',

<<http://www.rijksoverheid.nl/onderwerpen/huurwoning/huurbescherming>>, 13 July 2013.

<sup>275</sup> Elsinga & Wassenberg, 'Social Housing in the Netherlands', 131.

<sup>276</sup> Driant, *Social housing in France*, 129.

<sup>277</sup> Driant, *Social housing in France*, 129.

<sup>278</sup> Hoekstra, *Country report France*.

In the three countries, the tenant has the liberty to quit the dwelling with a notice of up to three months. Contrary to what was seen in the private sector, no compensation has to be paid. The tenants of the social sector have more flexibility than those in the private sector. In the three countries, subletting a social dwelling is not allowed. This solution can be justified by the lack of dwellings in this market.

## **5. Conclusion**

In all three countries, homeownership has been encouraged by policies. Around half of the households are owners of their dwellings. However, renting is not considered to be socially inferior.

Since WWII there is a tendency to reduce the implication of the central government and to transfer responsibilities and risks to local authorities (France and Belgium) or to social landlord themselves (the Netherlands). Considering the increase of the households and the stabilisation or decrease of the number of dwellings built every year, the three countries will face a housing shortage in the coming years and need to develop specific policies such as subsidisation schemes in order to face it.

The impact of the GFC has differed, being significant in Belgium and even more significant in the Netherlands but with few effects in France. However, in all countries the return on investment has decreased in the recent years.

The determination of rent and its increase are different in the three countries. The Netherlands created a very peculiar system based on an objective evaluation of the dwelling, using a calculation based on quality points in order to determine whether a dwelling falls under the scope of the regulated market or not.

In Belgium and in France, the rent is freely determined between the parties. This can lead to abuse, and in France, governments had to intervene in areas where the market is tight to create regulated rent in order to avoid unreasonable prices, for example in Paris.

In all three countries, the increase of the rent is regulated and most of the time an index, for example based on the construction cost, is used. The regulation allows for the prevention of abuses in rent costs but also makes it impossible for the landlord to pressure a tenant to leave for example.

Although subsidies exist in all countries, the systems are very complex and criteria may differ per region or place, especially in Belgium. Therefore, it is impossible to draw a comparison on that topic. The taxation systems are also hardly comparable, as they are very different. The specificity of France is that it uses incentives and disincentives to stimulate the construction sector and then to offer more dwelling to rent. One can also note that none of the countries has specific taxes for tenants.

In the three countries, there is a strong protection for the tenant. Regulations concerning the content of the contracts, the rights and duties of the parties prevent tenants from abuses from landlords. One example can be the repairs tenants are supposed to perform in the dwellings. It is either limited to small repairs or a list is determined by the law and contains repairs that can be considered as small. The tenant is also protected by the duration of the contract, even when there is fixed duration, the landlord might be obliged to renew the contract (France) or might have to follow very strict procedure to

avoid renewal (Belgium, France). In the Netherlands, contracts are open-ended ones and therefore there is no right to renewal. The rules concerning termination of the contract by the tenants also shows strong protection for the tenants as they benefit from significant flexibility in all these countries, the tenant has to give a maximum of three months notice.

Concerning the protection of the landlord, the three countries have rules allowing for a deposit and an according right to the landlord and an obligation for the tenant to maintain the dwelling. The eviction procedures in the case of non payment of rent by the tenant are complicated but generally try to find a balance between the rights of both parties. However, the impossibility for a landlord to terminate the contract in the Netherlands is not satisfactory. It might lead to abuses and to a reduction of the market; owners might become reluctant to rent their properties if they cannot terminate rent contracts. The French and Belgian systems seem in this case more balanced. In France, the contract can be terminated at each of its terms (every 6 or 3 years), but only for good reasons. In Belgium, the landlord has an option to conclude short term contracts if needed.

In the three countries, the social rental sector is developed but in all of them there is a shortage of dwellings available and in Paris and Amsterdam, people have to wait years before having the chance to be allocated a dwelling. Even if the systems need to be improved to offer more dwellings to the neediest, each country has a significant social rental sector.

In Belgium, the division of the competences among the regions creates a very complicated system with very relative unity. It is impossible to have a proper overview, especially since the latest stage in the regionalisation that came into force the 1<sup>st</sup>. July 2014.

Finally, it is worth highlighting that all the systems are changing quickly. During the time of this project, several new laws were adopted in France, Belgium and the Netherlands, which shows the implication for the respective governments in this field. Some regulations were adopted to overcome the GFC, which hardly impacts the market in the Netherlands. Others, like the Duflot act in France in 2014 were adopted to offer better protection to tenants in a context in which the market is more and more tight. Even if all the countries try to encourage home ownership, the difficulties they face can be linked to the fact that they have a significant rental market and that finding a balance between the rights of both parties in a context of a tight market is not easy.