



Model Law on Common Good Housing

Austrian contribution to the “New European
Bauhaus” Rebuild Ukraine Initiative

Draft, October 2023

Prepared for the Austrian ...

 Federal Ministry
Republic of Austria
Climate Action, Environment,
Energy, Mobility,
Innovation and Technology

CONTENTS

Explanatory Statement	3
Chapter 1: General Provisions	3
Art. 1 General aspects of limited-profit housing	3
Chapter 2: Conditions for approval	3
Art. 2 Legal form and minimum capital	3
Art.3 Supervisory Board	4
Art. 4 Incompatibilities	4
Art. 5 Admissible restriction of beneficiaries	4
Art. 6 Limited business activities	4
Art. 7 Selling prices and rents	5
Art. 8 Transfer of shares	5
Art. 9 Economic efficiency of the business and reliability of the housing management	6
Chapter 3: Procedure	6
Art. 10 Competent authority	6
Chapter 4: Auditing and supervision	6
Art. 11 Auditing Association	6
Art. 12 Auditing association by-laws	6
Art. 13 Legal status of an Auditing Association	7
Art. 14 Audit and supervision	7
Art. 15 Accounting	7
Chapter 5: Housing subsidies	8
Art. 16 Tax benefits	8
Art. 17 Privileged access to housing subsidies for new construction and renovation	8
Chapter 6: Transitional provision	8
Art. 18 Transitional provision	8

COMMON GOOD HOUSING LAW (GENERAL MASTER)

EXPLANATORY STATEMENT

The CGH Law applies to companies organised under private law whose owners (public authorities or private owners) have an interest in a functioning and prosperous housing market.

Subsidies come directly or indirectly from the public purse. There is not a single economy in the world that does not rely on subsidies and still aspires to certain standards in social welfare and ecology.

It is up to the national government to ensure that subsidies are effective for the benefit of those who are supposed to benefit, i.e. the inhabitants of the dwellings (whether tenants or owners) and the citizens seeking accommodation.

The state must ensure that these rules are respected. The limited-profit housing system is seen as a means of controlling not only the achievement of individual objectives pursued by a subsidy, but also an entire sector of the economy, which is under a legal obligation to reinvest on an ongoing basis.

Common Good Housing Entities (CGHE) fulfil public service obligations of general economic interest and guarantee a generational equalisation to secure a sustainable housing supply for existing and prospective users.

Housing associations that are not authorised as CGHEs may also build individual projects under the terms of this Law.

CHAPTER 1: GENERAL PROVISIONS

Art. 1

General aspects of limited-profit housing

- (1) This Law regulates the organisation and operation of approved Common Good Housing Entities (CGHE) and assigned projects (para. 4 of this article).
- (2) Housing entities shall be deemed to be CGHEs only if they are approved in accordance with the provisions of this Law.
- (3) Housing entities licensed as CGHEs under the terms of this Law must be directly engaged in tasks in the field of housing and settlement that serve the interests of the general public and guarantee a generational equalisation to secure a sustainable housing supply for existing and prospective users. Furthermore, they must use their capital for the aforementioned purposes and they must have their business activities monitored and audited at regular intervals.
- (4) This Law also applies to housing entities that are not licensed as CGHEs and that build individual housing projects under the terms of this Law (assigned projects).

CHAPTER 2: CONDITIONS FOR APPROVAL

Art. 2

Legal form and minimum capital

- (1) The housing entity must be a legal entity organised as a public limited company or a private limited company; Its registered office must be in [country].

- (2) The responsible authority (Art. 10) may also grant approval to cooperatives, foundations, funds, non-profit organizations, limited liability companies, communal enterprises, state enterprises and joint stock companies with the majority of communal or state ownership and associations (societies), which are then treated in the same way as an association under para. 1 of this article (assigned projects). In such a case, the competent authority shall impose certain conditions.
- (3) The economic capacity of an CGHE must be sufficient to enable it to carry out its tasks in accordance with the law and its articles of association or statutes.

Art.3

Supervisory Board

The CGHE must have a supervisory board or other body with rights and duties substantially similar to those of a board of directors (internal supervisory body).

Art. 4

Incompatibilities

- (1) The CGHE shall in no way be controlled, directly or indirectly, by a political party or any of its affiliated organisations, or by persons or legal entities actively engaged in or associated with the production of or trade in building materials, or by persons or legal entities otherwise engaged in business related to housing.
- (2) The statutes or articles of association of the CGHE shall ensure that
 - (a) there is no preponderance of persons or companies engaged in the building trade among the owners or members of the CGHE,
 - (b) persons or companies engaged in the building trade are not able to exercise a decisive influence on the management of the CGHE.
- (3) This article does not apply to assigned projects (article 1, para. 4).

Art. 5

Admissible restriction of beneficiaries

- (1) As a general rule, the dwellings allocated must not be restricted, in particular by sale or lease, to particular persons, groups of persons or a particular number of persons.
- (2) In allocating dwellings, the CGHE must be guided by considerations of objectivity, in particular the need for accommodation, the size and the income of the beneficiary household.

Art. 6

Limited business activities

- (1) The CGHE must, according to its statutes or articles of association and in fact, be engaged in the construction and management of dwellings with a floor area not exceeding 150 square metres and with standard fittings, and in all legal transactions connected therewith. The construction of such dwellings shall be carried out in accordance with the principle of strict economy with regard to construction costs and with due regard to operating and maintenance costs; the result achieved shall, however, be in accordance with the state of the art and generally recognised quality standards.
- (2) The management shall include the financing and maintenance procedures and may at the same time manage the process of construction of such buildings (para. 1 of this article). In addition to the flats it has built in its own name, the housing company may also manage flats it has acquired by other means.

- (3) With special permission granted by the competent authority under certain conditions, a housing company may carry out activities other than those referred to in para. 1 and 2 of this article.

Art. 7

Selling prices and rents

- (1) Having regard to the principles of economy and efficiency, the CGHE shall be guided by the objective of providing affordable housing in the drafting of leases and in the sale and management of apartments. The Statutes must provide adequate safeguards for the interests of tenants, purchasers and freeholders.
- (2) The CGHE may only transfer apartments at an adequate price. The price is in any case considered to be adequate if
 - a) in the case of a lease, it is lower than the comparable rent pursuant to articles # ff. of the Rent Act,
 - b) in the case of the sale of an apartment forming part of a condominium, it does not exceed the costs of the CGHE including reserves.
- (3) The rent for a dwelling may not be set below an amount which, according to the principles of a prudent businessman, is sufficient to cover the running costs of a proper housing administration, including a reasonable return on equity and borrowed capital, depreciation according to generally accepted accounting principles and the formation of reserves.
- (4) When residential buildings are resold, an entry in the land register shall ensure that, for a period of at least ten years, no increase in the price which is not justified by the expenses incurred by the last owner on the site shall be permitted in the event of resale by the first or any subsequent purchaser. Such an entry in the Land Register is also required where the CGHE sells an undeveloped site on which social housing is built in the CGHE's own name and at the purchaser's expense.

Art. 8

Transfer of shares

- (1) According to the CGHE's Articles of Association, but also in practice, the rights of the owners and the members must be limited as follows:
 - a) As a share of the profits, they may not receive more than a percentage per annum that does not exceed a reasonable return on equity or another percentage per annum of their capital contribution, as determined by the Minister of Finance; they may not receive any other pecuniary or equivalent benefit, except reasonable compensation for special contributions or services of pecuniary value.
 - b) If the CGHE is liquidated or if the owners or cooperate members cease to be owners or members, they shall receive nothing except their share, to the extent that has actually been paid.
- (2) Entitlement to a share of the profits shall be deemed to be a capital contribution.
- (3) In the event of liquidation of an CGHE, its assets, to the extent that they are not required to be returned to its owners or members, shall be used for housing purposes under the public welfare regime. The competent authority shall issue regulations to this effect. At the request of the competent authority, the assets shall be transferred to the latter together with a statement enumerating all the assets. There must be no reason to believe that business activities are not being or will not be conducted in accordance with the purpose laid down in the Statutes and in accordance with business ethics.
- (4) Only persons whose integrity as businessmen is beyond doubt may be members of either the Board of Directors (Executive Committee) or the Supervisory Board or officers of the CGHE.

Art. 9

Economic efficiency of the business and reliability of the housing management

- (1) The costs of management and administration must not exceed a reasonable amount according to the statutes and in fact. In particular, the CGHE may not grant its agents or third parties benefits or remuneration which are disproportionately high in relation to the CGHE's economic capacity.
- (2) There must be no reason to believe that business activities are not being or will not be conducted in accordance with the purpose laid down in the Statutes and in accordance with business ethics.
- (3) Only persons whose integrity as businessmen is beyond doubt may be members of either the Board of Directors (Executive Committee) or the Supervisory Board or officers of the CGHE.

CHAPTER 3: PROCEDURE

Art. 10

Competent authority

- (1) Approval, refusal or withdrawal of approval is decided by the financial authority (competent authority). The jurisdiction of the local financial authority depends on the location of the CGHE's head office. Approval by the competent authority is valid throughout the country.
- (2) An application for approval must be submitted to the competent authority through the Auditing Association (Art. 11).
- (3) Except for the reasons set out below, approval may only be revoked by a court order. A revocation by the CGHE is not permitted.
- (4) Approval shall be withdrawn
 - a) if the organisation or the statutes (articles of association) of the CGHE no longer comply with the law, in particular with articles 2-9 of this Act,
 - b) if the business activities of the CGHE are contrary to the law, in particular articles 2-9 of this Act,
 - c) if the CGHE evades current supervision.
- (5) The competent authority shall inform the public of the withdrawal of the licence at the expense of the CGHE.
- (6) If an approval has been legally revoked, the competent authority may, in agreement with the Auditing Association, impose fines on the CGHE as compensation for the advantages acquired through the approval. The fines shall be paid by the CGHE to a recipient to be determined by the competent authority. Payment of the fines may be enforced by law.

CHAPTER 4: AUDITING AND SUPERVISION

Art. 11

Auditing Association

- (1) The Auditing Associations to which the CGHE is affiliated pursuant to this Article shall be licensed by the Minister of Finance.
- (2) If a licensed Auditing Association is liquidated, the disposition of its assets must be made public, in compliance with Art. 12 letter d) of this Act.

Art. 12

Auditing association by-laws

The articles of association of an approved Auditing Association must guarantee the following points:

- a) The scope of the Auditing Association's activities may be limited in terms of subject matter or geographical area only on condition that only CGHEs whose activities are similarly limited are accepted as members.
- b) The CGHE affiliated to the Auditing Association may not at the same time be a member of another Auditing Association licensed under this Act.

The articles of association must also guarantee:

- c) the fulfilment of the obligations of the Auditing Association in accordance with the law and the statutes, in particular the proper conduct of audits;
- d) the transfer of the members of the Auditing Association (affiliated companies) to another authorised Auditing Association as a prerequisite for the possible liquidation of the Auditing Association.

Art. 13

Legal status of an Auditing Association

- (1) An approved Auditing Association may belong to an umbrella organisation approved by the Minister of Finance, the activities of which may include the promotion of the interests of the CGH sector in general.
- (2) Such an umbrella organisation may issue guidelines for the audits to be carried out by the Auditing Associations and for the accounting of the CGHE. These guidelines shall be binding on the Auditing Associations and the CGHEs affiliated to them. The umbrella organisation may require the Auditing Associations to submit audit reports.

Art. 14

Audit and supervision

- (1) Every CGHE shall submit to periodic audits by the Auditing Association. The Auditing Association may, with the consent or at the request of the competent authority, carry out extraordinary audits at the expense of the CGHE.
- (2) The audits must also cover compliance with the provisions of articles 2-9.
- (3) An audit must be carried out each year before the annual accounts are approved. Instead of the general audit certificate, a note of confirmation must be issued. If no audit has taken place, the annual accounts may not be approved. If they are approved without an audit, they are null and void.
- (4) The CGHE must submit all audit reports to the competent authority within three months of completion of the audit, if the competent authority so requires.
- (5) The competent authority shall have the right at any time to obtain all documents and information it deems necessary and to inspect all business transactions and the conduct of business. If necessary, it shall have the right, on its own initiative and at the expense of the CGHE, to have an extraordinary audit carried out by a body of its choice.
- (6) The competent authority must be notified immediately of any amendment to the articles of association.

Art. 15

Accounting

- (1) The CGHE shall comply with the regulations laid down in the guidelines issued by the umbrella organisation of Auditing Associations with the approval of the Minister of Finance.
- (2) The CGHE shall be audited by the Auditing Association to which it is affiliated.

- (3) The CGHE must take appropriate measures to comply with any objections raised by the Auditing Association. If this does not happen within a reasonable period of time, the Auditing Association may require the CGHE to comply with these objections within a specified period of time. If the CGHE has not complied with the objections by the end of the time limit, the Auditing Association shall notify the competent authority.

CHAPTER 5: HOUSING SUBSIDIES

Art. 16

Tax benefits

CGHEs are in their main business according to Art. 6 exempt from corporate income tax.

Art. 17

Privileged access to housing subsidies for new construction and renovation

CGHEs have privileged access to housing subsidies, especially for the construction and renovation of affordable rental housing. This privileged access is seen as compensation for their public service obligations.

CHAPTER 6: TRANSITIONAL PROVISION

Art. 18

Transitional provision

- (1) The requirement of article 11 (membership of an Auditing Association) may be waived until an adequate Auditing Association has been established in accordance with articles 11 et seq.
- (2) In such a case, the competent authority shall ensure that an audit is carried out in accordance with the principles of article 14 of this Act.