

HOUSING FINANCE INTERNATIONAL

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Rebuild Ukraine – a new legislative approach to affordable housing

↳ By Wolfgang Amann

1. The background

Europe will stagnate demographically in the coming decades. There will be competition to incentivise young people to live in particular countries. Many countries are already in demographic decline. Ukraine faces a similar threat. To rebuild successfully, it will need to be attractive to its own people. Emergency housing is not enough. Thriving cities are needed. The city of Vienna can serve as a model. The city's strong growth is partly due to attractive and affordable housing.

The EU is strongly committed to supporting Ukraine's reconstruction. It adopted the Ukraine Facility in January 2024. One of its priorities is affordable housing.

The New European Bauhaus with its Rebuild Ukraine Initiative is also important. The Austrian Ministry for Climate Action has commissioned the IIBW to develop the business case for Limited-Profit Housing as Austria's contribution to this European Initiative.

2. European best practice in affordable housing⁷

Many European countries have well-functioning housing policy models. One of the most effective is the system of Limited-profit Housing Associations (LPHA) in Austria. It is convincing in terms of quantity, quality, financing and sustainability. Over the past couple of decades, LPHAs have completed around 1 million housing units, which represents 25% of the total housing stock in Austria. The volume of new construction is at a stable level of 15,000 to 20,000 units per year. LPHAs are active in all regions and also in places where there is no market supply of housing. Austria has a generalist approach to affordable housing, as the majority of the population qualifies for access to LPHA housing. This is possible because subsidies to individual projects are moderate,

amounting to only about 20% of total costs in cash value (the government earns a similar amount from VAT alone). Despite the large number of subsidised dwellings, government expenditure on housing subsidies is below the EU average at around 0.5% of GDP. LPHA housing is characterised by very good value for money, effective rehabilitation, and social and environmental sustainability. Many LPHAs are well capitalised. Commercial banks are queuing up to finance LPHAs because of their low risk profile and excellent credit history. LPHAs are at the forefront of green and energy-efficient construction and renovation, as well as technological and social innovation.

Such affordable housing models can fill the gap between market and social housing, not only in Ukraine.

But in recent years it has proved difficult to get such new models off the ground. Previous experience of trying to 'export' European good practice to other countries has shown that 'copy-paste' does not work. The legal and institutional complexity is too great.

Therefore, a legislative approach was chosen. The voluminous Austrian LPH Act has been condensed to just 18 paragraphs on a few pages. Thus, it might be possible to reinvent such legislation in another country, if it is appreciated by decision-makers and stakeholders. A model legislation approach is common in the EU.

3. Long-standing deficits and current housing destruction in Ukraine

Notwithstanding the enormous damage caused by Russia's war of aggression against Ukraine, it should be noted that there were significant deficits even before that. Most of the housing stock is old. Housing maintenance is inadequate and poorly regulated.

The thermal condition of the housing stock is poor. The housing stock is characterised by the give-away privatisation of the 1990s. The resulting very large stock of owner-occupied housing (before the war >90%) is poorly regulated. Owners' associations are still not widespread. As a result, full renovations are rare. Since the 1990s, state housing policy has focused on home ownership. Private rental is hardly regulated. Tenant protection is underdeveloped. Housing regulations are complex and often contradictory. Inadequate regulation has resulted in little social housing being built in recent decades. The damage caused by the ongoing war is enormous. 1.4 million housing units have been destroyed or damaged, particularly in the Donetsk, Kharkiv, Luhansk, Kyiv and Mykolaiv oblasts. There are 5.1 million internally displaced persons (IDPs), some 60% of whom live in rented accommodation. Their main problem is the affordability of housing.

4. Design of a "Common Good" housing sector in Ukraine

Following European best practice, a Common Good Housing (CGH) sector is envisaged for Ukraine. Similar to the Austrian case, private-law entities will fulfil public service obligations. The main features will be cost rents, surpluses to be revolved, tied assets, limited business activities, obligation to build and strict audit and supervision. For compliance reasons, it is recommended that only municipalities are allowed to be shareholders in such a new sector.

The legal basis for this new CGH sector is explained in 6 chapters with 18 articles on 6 pages only (see p. #)! A short explanatory statement makes it clear that this CGH is to be understood as a service of general economic interest (SGEI) and is therefore exempt from the EU ban on state aid. Art. 1 describes some general aspects of Common

Good Housing. Art. 2-9 deal with the conditions for approval as a CGHE, including legal form and minimum capital, composition and functioning of a supervisory board, incompatibilities, independence and allocation of dwellings. The limitation on business activities includes the construction and management of standard housing, related legal transactions, strict economy in construction costs, operating and maintenance costs, housing management and construction management. Other activities are allowed only with special permission from the competent authority and under certain conditions. It also stipulates that rents may not be higher or lower than an entities own costs (cost rent principle) and limits on rent and price increases. The chapter concludes with provisions on a limited return on equity for the owners of the CGH, limited proceeds in the event of liquidation or sale of shares. Art. 10 defines the competent authority, rules on withdrawal, information to the public and fines. A particular focus is on auditing and supervision (Art. 11-15), including provisions on the auditing association (to be approved by the Minister of Finance), its legal status and by-laws, and details on periodic and extraordinary audits of CGH entities. Without a positive audit, the annual accounts cannot be approved. Art. 16-17 concern tax benefits and privileged access to housing subsidies for new construction and renovation, followed by transitional provisions (Art. 18). The Ukrainian version also includes a chapter on definitions.

5. What complies with existing legislation in Ukraine and what does not?

Ukrainian company law provides for the usual legal forms for housing companies: limited liability company, foundation, cooperative, etc. Ukrainian law also provides for various corporate control mechanisms common in the EU: annual audit and supervisory board. The 1993 Law "On the Basic Principles of State Financial Control in Ukraine" provides for audits of private entities that receive funds from public budgets at any level or use state or municipal property. Accounting rules are in place. There do not appear to be any obstacles to financing mechanisms, except for a general lack of appropriate financing instruments. Technical regulations are not affected by the proposed new approach to affordable housing.

The 2006 Social Housing Act does not provide for a cost rent scheme. Under the current law, only utilities are paid for social housing. Social housing is also only accessible to the most vulnerable households. The new law on social housing, which is about to be adopted, does not provide any options in this respect. Current legislation only provides for "non-profit" or "for-profit" economic activities. "Limited profit" is not provided for in company law. This also applies to many other provisions of company law: incompatibilities, limited business activities, tying up of assets, limited distribution of profits, restrictions on the transfer of shares, rules for the dissolution of CGH entities, etc. The same applies to the proposed regulations on the procedure for approval, refusal or withdrawal of the legal status of CGH entities. The proposed regulations on auditing and supervision of CGH entities go far beyond any existing legal provisions. The proposed tax benefits and privileged access to housing subsidies for CGH entities are crucial. This includes privileged access to public land without auction. The rent regulations proposed in the CGH Act are not covered by current legislation, in particular the cost rent, the permissible limitation of beneficiaries and the regulation on tenant protection.

6. Opportunities for implementation

It seems sensible to enshrine all the clearly defined rules for the business case of Common Good Housing Entities in a separate law, as is the case in Austria. A separate law would facilitate implementation and coordination with the many other laws involved. Of course, fine-tuning such a law and harmonising it with existing legislation will require an extensive legislative process. The establishment of a state infrastructure for auditing and supervision could benefit not only the new CGH sector. Experience in Austria shows that it is also used by health services, for example. An international workshop organised by the EIB and the IOM with the support of the IIBW in Vienna in January 2024 showed the interest of Ukrainian cities and oblasts in such a new approach and its feasibility in principle. It was proposed to use the so-called "GESIBA model". GESIBA is a large LPHA owned 100% by the City of Vienna. Such private-law entities have clear advantages compared to municipal housing within the public administration. Preliminary calculations show that, under the given conditions, net rents of less than €

3/m² seem feasible. Including operating and maintenance costs and a reduced VAT rate, this amounts to around €240 per month for a 60m² apartment. The EU's new Ukraine Facility provides large amounts of grants and loans for the re-construction of Ukraine. Support in the form of low-interest loans is ideal for the construction of affordable housing on a cost-rent basis.

The full text of the study and the model law in English and Ukrainian translation can be downloaded at <https://www.iibw.at/en/resources/projectdatabase>

MODEL LAW ON COMMON GOOD HOUSING

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 re-invest 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 Common Good 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 of 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.

3. 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.

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.

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