Communication **2017 EUSA conference** – European Union science association – **Miami** – 4-7 June 2017 – Brice Daniel

# Titre : “The Europeanization of French, Swedish and Dutch social housing policies: between path dependency and instrumentalization of EU state aid norms”

Recall that the single market initiative in the 1980s was based on a deregulatory agenda and assumed that initiatives to ensure free movement of goods, persons, services, and capital could be insulated from social policy issues, which would remain the province of member states. This dubious assumption runs directly contrary to the central tenets of political economy, which stress that economic action is embedded within dense networks of social and political institutions [...]. Already there is significant evidence that the tidy separation between market issues, belonging to the supranational sphere, and social issues, belonging to the national spheres, is unsustainable. Irrespective of the results of ‘high politics’ struggles over social charters and treaty revisions the movement towards market integration carries with it a gradual erosion of national welfare state autonomy and sovereignty, increasingly situating national regimes in a complex, multi-tiered web of social policy”.

Paul Pierson & Stephan Leibfried, « Social Policy: left to courts and markets », *Policy-making in the European Union*, Oxford University Press, 2000, p. 268

Draft – please do not cite without authorisation

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# Communication

To understand how European law can impact Member state housing policies – whereas Welfare state researchers have for a long time considered that as the EU as no direct prerogative in social policy, they were then sheltered from any European intervention[[1]](#footnote-1) - it is needed to take a few steps back and ask ourselves how the EU has come to built itself a prerogative on national public services: if the EU has no explicit competence regarding public services or housing policies, it could come to be interested in those policies through its competition and internal market prerogatives. It should be noted that certain types of public services – social housing being one of the examples – have been progressively recognised by EU institutions as falling into the category of Services of General Economic Interest (SGEI). This legal regime includes in EU law, all the public services – recognised as being in the general public interest – which have an economic dimension, because they are provided on a market where commercial and non-commercial actors operate at the same time. Those SGEI, when recognised as such, have to abided to the general principles of EU competition law, and their funding by public authorities is then only allowed under certain conditions.

On the basis of these competencies, the EU in the 1990s launched itself in a large process of liberalisation of member states public services policies: after a first round of liberalisation of the network industries (gas, electricity, phone, rail…), some social national services have became subjects of a process of marketisation, if not liberalisation. Yet, contrary to network industries, marketisation of social services was not done through sectorial legislation taken by the European legislator, but rather through the judicial enforcement of the general principles of competition of the founding treaties.

To refer to this process of marketisation of national public services Fritz Scharpf[[2]](#footnote-2) use the concept of “negative integration”. According to him, negative integration is a market creation process – as negative integration rely on a suppression of exchange obstacles and the opening of market that were previously not subjected to private intervention. Negative integration can be opposed to positive integration, under which there is an harmonisation of the different national rules, and in which ultimately a common model of public policy might be put forward. In the realisation of these process of market integration, the role of national public or private actors is determining[[3]](#footnote-3), as they are the ones that in most cases, serve as informational relay for the European Commission which does not have the sufficient resources to control every potentially unlawful practices that are incurring at the national level. In the case of national housing policies, these actors logics might be multiple: one government might make the choice of notifying to the Commission services its social housing funding scheme in the view of making sure that it is abiding with EU law; a representative of the commercial sector might try to make a strategic usage of European competition rules in the view of contesting national housing policies in front of the European Commission (as the Commission is judge of first instance in competition issues); but the Commission might also investigate a national housing policy on its own initiative if it considers that it might be unlawful.

It is precisely through different litigations that arisen around the 2000s at the European level, that was started a negative integration process of national housing policies. This communication well be coming back to the origins of three of these litigations – the Dutch, the Swedish and the French ones – and on their consequences. After the cases have been referred to the Commission, a decision as still to be given. But as the general European competition principles are by definition imprecise, they give a certain leeway to national and Europeans involved actors in interpreting them in specific contexts. Law has no executive force by itself, its enforcement is depending on the results of interactions between different actors, equipped with different resources, in specific institutional contexts.

This performative characteristic of law, is in our view even more pronounced when dealing with EU law. Hence some researcher characterise European law as being “interactionist”[[4]](#footnote-4). Beyond the activation or not of EU norms by actors which use it in the view of promoting EU norms compliance, the enforcement of EU law seems to be dependant on the institutional and political contexts in which it is rendered: when the Commission is seised of a state aid case, the Commission opens a negotiation period with the concerned State, which let a certain leeway to these actors in the compliance path they agree on at the end of the process. The final decision that it is determined, have more to view with political bargaining than with a strict enforcement of legal principles that are clear and auto-performative. This is well illustrated by the words of Victor Schaap, the high-level civil servant that had to negotiate with the Commission during the Dutch litigation process:

« [In this kind of negotiations] Europe is as much political as a national government. […] The process had nothing to do with a discussion about the enforcement of legal technic principles. It was more like that: “you do a little bit like that, in exchange I will do a little bit like that… Agreed? Agreed! A normal political enterprise in fact ».

It should also be noted that European law is given on specific national institutional set-up. Regarding national housing policies, one of the element of this institutional context is the model of policy that is assessed. If there is a plurality of typologies of social housing policies, most of them tend to present a binary representation of housing policies, by opposing universalist policies – in which social housing is open to the whole population – to targeted policies – for instance on the basis of socio-economical criteria. The typology proposed by Laurent Ghekiere is interesting in that regard as it is proposing a richer distinction between different targeted social housing policies[[5]](#footnote-5). The author has proposed to classify social housing policies according to three ideal-types: generalist, universalist and residual. The determining criterion in discriminating between those three conceptions is the access to social housing dwellings: in the residual model, only the most disadvantaged population can pretend to social dwellings; in the generalist model, a more or less important part of the population is allowed to access to a social dwelling; in the universal model, the whole population can pretend to one, without consideration to their income.

Every one of these policy models are tied to a different set of public policy objectives: residual policies only tried to offset a failure of the totally deregulated housing market where the poorest are not able to afford a rent at the market price; generalist policies try to offer to disadvantaged populations decent and affordable dwellings, and at the same time try to keep a certain level of social mix in the social sector; universalists policies are set-up in the view of reaching a critical mass in the general housing sector to have an impact on market prices, and in the view of pursuing a more perfect social mix. This three models of policies also refer to three specific traditions of social housing, as in housing policies logics of path dependency are especially strong[[6]](#footnote-6). It means that all along the history of development of the considered housing policies, some political choices have been taken that conditioned their future evolution possibilities. If path dependency is particularly strong in housing policies, it is, among other things, due to the relatively slow development of housing units, to the long time span for which they are built and to the low level of mobility of tenants[[7]](#footnote-7)… Hence, these policies are not really sensible to rapid endogenous changes, changes in the policy objectives are more likely to be progressive. The capacity of these policies to resist to change makes them even more interesting to study through the perspective of the changing power that European competition norms can have on them. Through the comparative study of the French, Dutch, and Swedish European litigations on social housing, this communication tries to show how interactions of national and European actors inside specific institutional and politic context affect each others, in the view of giving a better understanding of the *output* of the policy process that has presided over the compliance path decided in each country in the context of the process of negative integration. The added-value of the comparative perspective here is that it will be a way for us to analyse the different compliance strategies that were designed in Sweden and the Netherlands, even if these two countries are examples of the same housing model, and the different compliance strategies that were designed in those two universalist countries against the one that was chosen in France, an example of the more generalist social housing policy[[8]](#footnote-8).

In practice, the confrontation between competition logics and national social housing policies manifested itself in the imposition of a set of form and content conditions which came to constrain the modalities under which public authorities are allowed to give subsidies to SGEI housing operators. If these conditions are not fulfilled, public service compensations that are given to providers might be reclassified as state aid by the Commission or the Court, and hence be considered as illegal. It is possible to distinguish between two main regime of conditionalities enforced by the EU to subsidies benefiting to non-commercial housing operators: one condition of form that is tied to the intervention perimeter of the social housing service of general interest, as the Commission as the power to determine what level of intervention subsidised operators should have in the housing market without starting to be a source of unfair competition for commercial providers; a set of substantive conditions imposed by the EU to subsidised non-commercial actors – conditions more directly targeted to the subsidies that those operators benefit from, which need to comply with some requirement of transparency, quantification and monitoring if national authorities want them to be considered as legal by the EU. These conditionalities find their origin primarily in the European case law but also in a group of accompanying SGEI texts that were promulgated by the Commission[[9]](#footnote-9). These texts had for a long time suffered from a very low level of compliance in member states, a situation that started to change at the beginning of the 2000s when a round of contestations of the subsidies benefiting social housing operators appeared. These two regimes of conditionalities might be assessed under the angle of failibility. Which means that by applying business practices and principles to social landlords, those two regimes are constitutive of a failibility horizon for national social housing operators. Instruments of monitoring and accounting are set up, which have detrimental effects on the financial health of providers, which in turn might justify reforms along the way, as providers are suffering from financial difficulties. As said previously the regime of conditionalities implemented by the SGEI framework is double: first, the substantive conditions imposed on non-commercial housing operators might steer, in some model of housing policies, a redefinition of the perimeter of intervention of social housing operators (which can for instance take the form of selling of housing units by non-commercial providers to commercial ones); second, the form conditions imposed on the subsidies benefiting to the operators – which take the form of public policy instruments inspired by the *New public management* – have indirect consequences on the financial leeway of the social operators.

This communication will be presented in two parts. In the first place, we will come back to the institutional and actors logics specific to each national contexts, and which have lead to the emergence and the resolution of the social housing litigations (part I). Thanks to this contextualisation, we will be better equipped to understand why each of the three case studied was impacted at different degree by the regime of fallibility imposed on national social housing operators: redefinition of the perimeter of intervention of social housing operators (part II - as the second dimension of conditionalities imposed by the SGEI legal framework has only indirect consequences on social landlords financial room for manoeuvre it will not be addressed in this communication).

**Judicial instrumentalization of EU law by national actors as a driver of social housing negative integration**

If different models of social policies are subject to more or less important degrees of change due to EU competition law[[10]](#footnote-10), that does not mean that the different social housing policies are impacted, at the same time, and in the same proportion by European integration. This might be explained by the importance of each institutional context and each national system of actors in the realisation of national housing policy negative integration. Hence, it is interesting to come back briefly on the judicial and political trajectory which have presided in each country to the negative integration of the housing policies. In this examination, we will be paying a specific attention to different actors interactions and games that have happened in the multi-level European space of public policy.

In the Dutch case, it is directly the Commission that had on its own initiative instructed the case. It started to examine the case of the public aid scheme that was benefiting to *woningcorporaties* (wocos) – Dutch social housing operators[[11]](#footnote-11) – in the view of assessing its compliance with EU competition law and more specifically state aid norms. It is the DG COMP which had decided to instruct the case in 2005. The DG COMP was then headed by Neelie Kroes – a Dutch politician affiliated to the liberal economic party VVD – and that, previously to her work as a commissioner, have been working for the Dutch commercial real-estate sector. In this context of this instruction, the Commission had send to the Dutch government, on the 14th of July 2005, a letter of preliminary conclusions dealing with the financing of the Dutch national housing policies[[12]](#footnote-12). In this letter, the European Commission expressed its doubts regarding the compatibility of the national social housing policies set-up with European law[[13]](#footnote-13). As such, the Commission asked for: a review of the mandate of wocos in the view of reserving social housing to a “more precisely defined target group of less favoured persons or to groups of disadvantaged persons”[[14]](#footnote-14); a review of the social housing offer, that should be correlatively reduced in the view of setting it in line with the new residualized perimeter of national social housing policies (via selling of housing units to commercial providers); a clearer distinction between social and commercial activities of the providers. Following this letter, a period of negotiation and exchange of information between the Commission and the different Dutch governments that have taken office during the period, has happened. It ended in 2009, when an agreement was found between the parties.

This long period of negotiation has also be an occasion for the Dutch institutional real estate investors (IVBN) to fill a complaint before the European Commission in 2007 in the view of accelerating the process, and in the view of weighting on the national discussion that happened at that time. It is only when the IVth Balkenende, just elected, has transmitted a new housing law draft to the Commission, *a priori*, compatible with EU law that the Commission, after having taking notice of the draft, has informed Dutch authorities that the case was closed (in a decision taken on the 15th of December 2009[[15]](#footnote-15)).

At first glance, one might think that the different governments that have taken office during the negotiation period were forced to follow the inputs of the Commission, but if a more in depth analysis is made, the negotiations might appear to have been more complicated than that: the provisional decision that the Commission had send to the government in 2005, happened just a few days after the election of a new government in the Netherlands. In this context, Sybilla Dekker – member of the same liberal party as Neelie Kroes, the VVD – was appointed Minister for Housing. In a national context marked by important debates around the just repartition between public intervention and liberalism in housing policies[[16]](#footnote-16), the Commission notification seems to have constituted more of a blessing for the newly appointed Housing Minister than as a curse: the minister was then trying to lower wocos intervention and trying to regain some state control over their activities, yet without having to support the political cost of the reform by putting the blame on the Commission. This seems to be a good example of a strategy of blame avoidance[[17]](#footnote-17).

It should be noted that if the reform was *in fine* voted on, it is also because wocos were suffering from a bad reputation in the Dutch public opinion and in political circles since the 2000s: after a reform of their legal status in the 1990s, wocos have gained important financial and legal leeway – one of the objectives of the reform was to clear wocos’ debt of the State’s debt in the view for the State to be able to meet the requirement for the development of the Euro – but this reform had unforeseen effects as some wocos used this newly acquired freedom to develop risky real estate projects, finance their activities through toxic financial instruments and start to set up bad governance practices (very important inflation of their executives pay, etc.). In that regard some of the actors interviewed in the context of this research have advanced the idea that, if the Commission had not felt some kind of tacit agreement from the Dutch government regarding its actions, then the Commission will probably never have felt empowered enough to issue its biding 2009 decision, and that the negotiation regarding wocos compliance with the state aid framework might have go on forever.

The second universalist conception of social housing that has to deal with a European complaint was the Swedish one. Here the path of emergence of the litigation is completely different, as it started after the filling of a complaint by the Swedish property federation (commercial real estate investor umbrella organisation) in May 2005 before the Commission. The SPF has built its complaint on a new definition of state aid that it had developed with the help of Ernst & Young. The SPF has advanced the idea that as municipalities were not asking the maximum potential return on investment from their housing companies, by maximising their margins, then they were not acting like normal shareholders and thus were letting their companies benefit from an indirect and illegal state aid.

In the aftermath of that complaint the Swedish government has taken the engagement in front of the Commission to find as soon as possible solutions to set its housing policies in line with state aid norms. But more that an agreement with SPF’s legal argumentation, this move was made by the government in the view of preventing a direct involvement, or worst, a biding decision from the Commission on the case. The government was ready to do whatever it took to prevent a reform imposed on national stakeholders by the Commission.

*In fine* if a reform was possible, it was also because most of national stakeholders were interested in a reform of the system. To understand it, it is important to examine the policy process that has permitted the crystallisation of the reform. An expert Committee was set up in 2006 by Mona Sahlin, then housing minister. In the report that the committee has published in 2008, it has proposed two possibilities of compliance path[[18]](#footnote-18): the first one consisted in making it an obligation for municipal providers to maximise their profits, by applying the same business principles that the commercial sector; the second one rely on a pertaining of the specific aids that were given to municipal providers, but with a targeting of municipal housing policies[[19]](#footnote-19).

After having consulted the interested parties the government realised that it was impossible to find a consensus on one of these proposals, as none was sufficiently in line with the national housing tradition to gain momentum[[20]](#footnote-20). Yet, in April 2009, SABO – the umbrella organization of municipal housing providers – and the Swedish Union of tenants have presented a joint draft proposal where they proposed: the phasing out of all remaining specific aids for municipal operators, applications of *businesslike* principles by the wocos, in exchange of what, the universalist trait of Swedish housing policy will be sanctified, as the national system of rent negotiation.

The SPF had agreed on that proposal and had withdraw its complaint in November 2009, and the government has made it SABO’s proposal, which came into law in 2011. SPF acceptance can be explained by the fact that its complaint was not first and foremost directed at aid schemes that were still benefitting municipal operators but more against the national rent regulation system[[21]](#footnote-21). The SPF has considered that the draft reform was a sufficient improvement of the framework, as according to its interpretation of businesslike principles, municipal operators will then have to make their rent converge toward market price (even if rent negotiation is still formally in place). Municipal housing companies welcomed also the proposal as the most important providers were already acting in a professional and more business like fashion since the 1990s (their interpretation of businesslike principles), and as they view this trend as a way for them to acquire more freedom from their commanding authority. Every actors had thus an interested in a reform.

French etiology of the litigation is less complex: in May 2012, the UNPI – the national union of real estate property – taking inspiration in the Dutch and the Swedish complaints, decided to act accordingly and filled a complaint before the Commission arguing that some of the subsidies benefiting to social providers in France should be reclassified as state aid as only part of the French current social offer should be considered as an SGEI under EU law[[22]](#footnote-22). This complaint is still instructed by the Commission hence it is difficult to envision what consequence it might have in the end. It seem quite clear nonetheless that contrary to the Swedish and the Dutch case, the French government is strongly defending the national housing policies set up[[23]](#footnote-23), which seems to make it harder for the Commission to take a stance on the case, and might explain why the Commission as still not given any decision on the case even if it has all the elements needed to make a legal assessment of the situation.

If it is under the pressure of a possible condemnation by the Commission that the Swedish and the Dutch policies have evolved, it clearly appears in the two case that European law has been instrumentalised by national actors with the objective of advancing their agenda of marketisation of national housing policies more than to obtain a decision strictly on European state aid norm compliance. In the three considered countries, national actors have then rely on “strategic usages[[24]](#footnote-24)” of European law to undermine the equilibrium of the power structure previously prevailing in the national housing policy system of actors, in the view of putting forward their policy proposals. Thanks to this destabilisation they were able to open “windows of opportunity[[25]](#footnote-25)” to try to pierce through veto points that previously might have prevent any reform to make it into law, in national housing policies deeply marked by path dependency.

This passage through the monographs was the occasion for us to retrace the compliance path followed by the considered countries. It will permit us to better understand why those policies were impacted to different degrees by the institutionalisation of a failability horizon to social housing providers activities.

**A redefinition of the perimeter of intervention of social housing providers by the Commission**

As was said in the introduction, the first element of conditionality that was induced by the institutionalisation of EU competition law to the financing of social housing providers is a condition of substance: if in application of the subsidiarity principle, national public authorities are supposed to dispose of an important power of appreciation regarding the opportunity to classify a public service as an SGEI[[26]](#footnote-26) - which will allow in return for its subsidisation - in practice this freedom is framed by the Commission. As the Commission is entitled with a power of control over “manifest error” of appreciation regarding national authorities classification of SGEI.

It means that the Commission can judge that a service, which was considered of public interest by a member state, should have been considered as being a normal service, provided on market condition, without any subsidies from public authorities. In the first social housing case that the Commission had to assess – about the residual social housing policies of Ireland[[27]](#footnote-27) - it has considered that the subsidies were legal as the public compensations that were given to providers were supposed to finance the building of dwellings only for the most disadvantaged populations. This is on the basis of this first decision that the Commission has developed a purely residual approach of the social housing service of general interest. It is why are only concerned by Europeanisation on the basis of EU competition law, the universalists and the generalists systems of housing.

The principal idea that the Commission has put forward in the 2005 letter that was send to the Dutch government was that only the part of the social housing sector that was destined to the most impoverished part of the population should be considered as an SGEI. Which means that only that part of the sector was allowed to receive public funds. The national policy was then constitutive of a manifest error of appreciation[[28]](#footnote-28), as the offer that should considered as commercial according to the Commission was also benefiting from subsidies. With this prerogative the Commission as a real power of redefinition regarding the perimeter of intervention of the providers, and beyond that, on the perimeter that a member intend to give to its welfare state.

In response to the Commission demands, Dutch authorities have adopted in 2010 a decree entitled “SGEI temporary regulation[[29]](#footnote-29)” which provided that:

* The target population for social housing should be limited to households earning less than 33,000 € a year (43 % of the population);
* 90 % at least of the park of every wocos should be composed of this category of tenants if not, the company will have to pay fines and will no longer be able to access any public funding..

If the 2010 decree had not formally changed wocos’ mandate, the new control instruments that it had set up have prevented them, from this point, to promote a universalist conception of housing.

In the Swedish case, the choice *in fine* made by the legislator was to sidestep from the SGEI framework by phasing out all specific aid for municipal housing operators and by requiring them to function on businesslike principles. This choice was made as it appeared at that time that it was the only one opened to public authorities to safeguard the universalist trait of the policy. This compliance strategy can be explained by the fact that Swedish public opinion is since a long time unfavourable to social housing policies, as they are unanimously seen in the country as stigmatising the neediest. At first glance it might appear that confronted to the same Europeanization process as the Dutch authorities, that the swedes were able to safeguard the universal characteristic of their policy. Even if this saving had a cost for municipal operators as they are now force to act according to businesslike principles, without subsidies.

Yet one might ask if this salvation is not akin to a Pyrrhus victory: as in the mid-term confronted to the phasing out of investment aid, Swedish operators incur the risk of being force to limit their intervention. Nowadays some operators oppose to their municipalities the fact that they have to abide to business principles in the view of not accepting in their dwellings low income households. In addition to that, the previous equilibrium existing between dwellings at cost of construction price and dwellings close to the market price that was permitting to balance the sheets of the providers, was only reachable if the middle income group find an advantage in housing itself in the municipal park (and not in the private rental market, or on the owner market). But with the phasing out of the aid, Swedish housing operators are likely to face difficulties in maintaining their park, which will lower the utility value of their flats, and the enforcement of businesslike principles will force them to raise their prices. In under real estate pressure zones such an inflation of the rents is already perceptible[[30]](#footnote-30). The attractiveness of municipal dwellings for the middle or the higher income group is then lower, which may in the mid-term participate to a residualization of the Swedish municipal housing stock.

Last but not least, the question of the compatibility of the perimeter of generalist social housing policies with European competition law is also asked, as shown by the French case. As the case is still under instruction by the services of the Commission, it is hard to assess what changes the case might bring in French housing policies. Especially since it is still the only generalist model that had, for now, to suffer from a complaint on the basis of EU competition norms. It is still possible to make the hypothesis that, if the Commission finally gives a decision on the case, as there is already an income ceiling in France, the debate will be focusing on the appropriate level of revenues that should defined the target group, the most disadvantaged people. It is interesting to note in that regard, that the income ceiling that was set up in the Netherlands in the aftermath of the Commission intervention, covers around 43% of the general population[[31]](#footnote-31), whereas the current ceiling in France concerns around 63% of the population[[32]](#footnote-32). If, in the end, there is a redefinition of the intervention perimeter of French social housing policies, it will be interesting to assess if it as an impact on the financial situation of the French providers.

But it is clear that negative integration of the two studied universalist traditions had participated to such a weakening of the financial situation of national social landlords. If in theory, as they are not prevented from it in law, social landlords might try to continue to follow the traditional objectives of universalist policies – putting downward pressure on market price, realising the largest possible social mix, etc. – but those activities have now to be pursued on market conditions, which will means losses for providers. This rush forward will not be sustainable for social landlords in the long run. Even though, due to the nature of their activities social landlords are not susceptible to went bankrupt – or at least only under extreme conditions – as they are always able to offset their losses by selling part of their park. This situation is close to the one described by Pierre-André Juvenile and Benjamin Lemoine in an a special issue of *Les Actes de la Recherche en Sciences Sociales* (to be published) dealing with the failibility imposed on public institutions activities due to the mainstreaming of the *New Public Management* and the accounting and monitoring procedures that comes with it. A novelty that put public institutions in a context of failibility, where in most of the case they are protected from bankruptcy, but where public policy instruments of monitoring and accounting are imposed in their daily functioning, which force them to rethink their involvement in public affairs. Even if, in the Dutch case, wocos are not public structures, but private operators, the situation seems to be comparable: a situation where social landlords, are not subject to bankruptcy but yet, with the set up of new public policy instruments experience pressure on their traditional financial equilibrium, which in turn force them to rethink by themselves the perimeter of their activities. In practice, European intervention in those two policies has manifest itself in a redefinition of the universalists Swedish and Dutch housing policies, in generalist housing policies (even if, in law, Swedish policies are still defined as universalists).

**Conclusion**

This research has shed new light on processes of negative integration and welfare state reforms, by examining the specific example of social housing policies. In this conclusion, it seems interesting to assess the role of the Commission in this process of negative integration. It should be noted that the Commission when dealing with SGEI issues is equipped with a double monopoly. First, it has a legislative initiative monopoly, which means that it is the only European institution which have the power of proposing a change in the general legal framework for SGEI. As rightly shown in the debates that have taken place in the Council and in the Parliament on a general framework directive for public services where the Commission had clearly played a veto role, refusing to put forward any legislative proposal when the idea gained some momentum in the two main legislative institutions[[33]](#footnote-33). Second, an executive monopoly, as the Commission is the European executive organ in competition policies according to the treaties. Thanks to this prerogative, the Commission benefits from an important room for manoeuvre in the issuing of the regulatory texts that comes to frame ECJ case law, and from an important leeway in the instruction of the litigations: since 2009, and its decision on the Dutch case, the Commission seems to be taking a more cautionary approach on those issues as shown by its reluctance to issue a decision on the French case. But also by the changing public positions that the Commission had taken through time on those issues: if the Commission had shown an important pro-activeness under Kroes direction of DG COMP, since then, competition commissionaires have adopted low key approaches, as exemplified by this quote from Mario Monti: “it is not to the Commission to give a definition of national housing policies social[[34]](#footnote-34)”. Yet, is seems that the cautionary approach shown by the Barroso II and the Juncker Commissions is less revealing of a Copernican revolution than of a strategic choice: confronted to an unprecedented crisis of legitimacy it seems that the Commission is trying to not be blamed as the institution responsible for upheavals in national housing policies. Mindful of not being blame, the Commission seems to be addressing those questions, still with the same marketisation agenda, but through a less polarising instrumentation, most notably through the Country specific recommendations that it is drafting every year in the context of the European semester on national budgets. In this yearly recommendations the Commission has notably called for a phasing out of the rent regulation system in Sweden, and for a faster selling of the housing stock of wocos that do not correspond to the residualized social housing sector.

1. Paul Pierson & Stephan Leibfried, « Social Policy: left to courts and markets », in Helen Wallace, & William Wallace, *Policy-making in the European Union*, Oxford, Oxford University Press, 2000, p. 268. [↑](#footnote-ref-1)
2. Fritz W. Scharpf, « Negative and positive integration in the political economy of European welfare states », in Marks, Scharpf, Schmitter, & Streeck (dir.), *Governance in the European Union*, SAGE Publications, Londres, 1996. [↑](#footnote-ref-2)
3. . Paul Pierson & Stephan Leibfried, *op. cit.*, p. 280. [↑](#footnote-ref-3)
4. . *E .P.P.I.E.*, « Introduction – Analyser l’Européanisation des politiques publiques », in Bruno Palier & Yves Surel (dir.), *L'Europe en action : l'européanisation dans une perspective comparée*, Paris, L'Harmattan, 2007, p. 48. [↑](#footnote-ref-4)
5. . Laurent Ghekiere, *Le Développement du logement social dans l'Union européenne : quand l'intérêt général rencontre l'intérêt communautaire*, Paris, Dexia éditions, 2007. [↑](#footnote-ref-5)
6. . Bo Bengtsson & Hannu Ruonavaara, « Introduction to the Special Issue: Path Dependence in Housing », *Housing, Theory and Society*, 2010, vol. 27, n° 3. [↑](#footnote-ref-6)
7. . *Ibidem*, p. 193-194. [↑](#footnote-ref-7)
8. . If one asks the question of Europeanization, it is not really interesting to study the transformation of the residual models of social housing as these are likely to be conform, from the start to the European policy model (see Part II). [↑](#footnote-ref-8)
9. . The principal jurisprudential case that regulates the subsidizing of SGEI operators is the *Almark* decision, ECJ 24 July 2003, *Altmark*, case C-280/00. This decision was on a latter date framed and accompanied with a set of texts promulgated by the Commission, as the European executive organ regarding competition policies. The first version of this set of texts was called the Monti-Kroes legislative package and was promulgated by the Commission in 2005, it was replaced by the Almunia package in 2012. [↑](#footnote-ref-9)
10. . Fritz Scharpf, « The asymmetry of European integration, or why the EU cannot be a ‘social market economy’ », *Socio-Economic Review*, 2010, vol. 8, n° 2. [↑](#footnote-ref-10)
11. . It is under this term that are designated social housing providers in the Netherlands, they are non-commercial organization in the sense that they are non lucrative providers (their revenues are entirely re-invested in the development of their housing offer. The national housing law limits their domain of activities. They were municipally owned for a long time, but now they are financial independent and operate as private entities. [↑](#footnote-ref-11)
12. . Conclusions de l’avocat général Melchior Wathelet, présentées le 29 mai 2013, Affaire C 133/12 P. [↑](#footnote-ref-12)
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