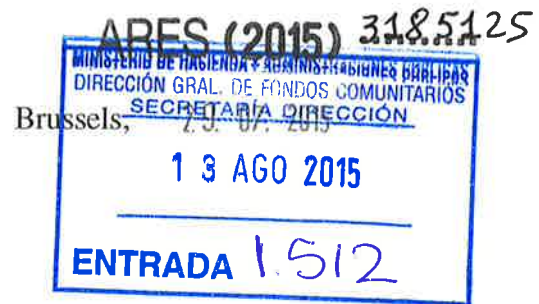




EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
REGIONAL AND URBAN POLICY  
Director-General



Dear Mr Pinero,

Thank you for your letter Ares (961651) of 4<sup>th</sup> March 2015 in which you request a series of clarifications in the field of building, purchase and rehabilitation of housing. The Commission welcomes the initiative and the careful approach in order to limit these investments to the proper scope. First of all, I would like to highlight that investments should have a long term vision and be part of an integrated plan seeking for a holistic and long-lasting impact. Secondly, they should observe the rules and principles stemming from the EC treaties in terms of equal treatment and non-discrimination on grounds of nationality which implies an obligation of transparency.

Given these general principles:

**1. Regarding public housing, the public ownership: how long should it be kept, and eventually, under what conditions could it be handed to private property?**

According to Article 71 (b) of Regulation (EU) No 1303/2013 (the CPR) an operation comprising investment in infrastructure shall repay the contribution from the ESI Funds if within five years of the final payment to the beneficiary or within the period of time set out in State aid rules, where applicable, it is subject to a change in ownership of an item of infrastructure which gives to a firm or a public body an undue advantage.

Thus, if within five years of the final payment to a beneficiary or the period fixed in State aid rules, the public property is sold to a private party, Article 71(b) may apply depending on the conditions of the sale (i.e. non application of an open tender procedure).

However, the Commission strongly recommends that housing purchased with ERDF co-financing be used for the purpose for which it is acquired for a period not less than 5 years in order to guarantee the affordability and accessibility of public social housing stock in a sustainable perspective.

**Sr. D. José María Piñero Campos**  
**Director General de Programación Territorial**  
**Ministerio de Hacienda y Administraciones Públicas**  
**Paseo de la Castellana 162**  
**E-28071 MADRID**

**2. Actions on housing: must they always be included in an integrated urban project or can they be isolated actions, such as the rehousing of certain deprived social groups?**

Investments in housing shall be part of an integrated urban strategy if realized according to Article 7 of Regulation (EU) No 1301/2013 (the ERDF Regulation). Nevertheless, in case housing investments are targeted under the scope of social inclusion, these should be done in the context of local integrated housing approaches with special attention to public utility and social service infrastructures; when housing interventions concern marginalized communities they must be part of local integrated action plans. This means that they should be accompanied by interventions in employment, education and healthcare in order to ensure long-term social integration effects. Furthermore, when housing investments are envisaged within segregated neighborhoods they should be in line with local integrated action plans aiming at tackling the spatial and social isolation of the marginalized community.

**3. Must all the housing actions be devoted to deprived social groups?**

Investments in housing can be realized under different intervention logics and investment priorities, for instance energy efficiency or social inclusion. The target population and the funding scheme of the foreseen interventions may thus change accordingly. It is not required under the CPR that all housing actions are targeted to deprived and social groups.

**4. Are the costs of equipment of the houses eligible?**

In line with Article 65(1) of the CPR the eligibility of expenditure shall be determined on the basis of national rules, except where specific rules are laid down in, or on the basis of, this Regulation or the Fund specific rules. There are no specific legal provisions which regulate the eligibility of equipment for housing; therefore the national rules on eligibility should deal with eligibility of equipment. However, the appropriateness of such investment should be assessed on a case-by-case basis.

**5. In the case of new construction or in the case of a purchase of second hand housing: does the 10% limitation set out in article 69, 3. b), of Regulation 1303/2013, apply?**

Article 69(3)(b) CPR states that: *"The following costs shall not be eligible for a contribution from the ESI Funds and from the amount of support transferred from the Cohesion Fund to the CEF as referred to in Article 92(6): [...] (b) the purchase of land not built on and land built on in the amount exceeding 10 % of the total eligible expenditure for the operation concerned. [...]"*

In this respect, the 10% threshold laid down in this Article concerns land built on and not built on. This means that when land is purchased and is built the cumulative value of both land and building should not exceed 10% of the total eligible expenditure for the operation concerned. However, when the subject matter of the purchase is a building that would be refurbished or put into use for a new purpose (for example to be used for social housing), Article 69 (3) does not apply. The subject matter of the purchase shall be defined according to principal element of the sale, either land or building.

In case buildings are purchased there is in most cases land around this building which is ancillary to the purchase of the building, thus not falling within the scope of Article 69(3)(b).

Therefore, if in your case the subject matter of the purchase is the building the limitation of 10% would not apply.

**6. How should the terrains be selected? Is it necessary to use a competitive system? Is the localisation of an area within the zone of an integrated Project enough for the selection of a terrain?**

The acquisition and rental of land and existing buildings by a public authority, is regulated by the EU public procurement rules (see in this respect Article 16 of Directive 2004/18/EC, which is presently applicable in Spain, and Article 10 of Directive 2014/24/EU, which will have to be transposed by 18 April 2016). Therefore, such activities should not be undertaken in a way that circumvents the EU public procurement rules, for instance by reaching an agreement with a constructor for constructing a building and subsequently acquiring or renting it and must respect, in any case, the European Court of Justice case-law on this question<sup>1</sup>.

The construction of social housing by a public authority does not benefit from any specific exclusion. EU public procurement rules apply fully to such situations provided that the value of the public works contract attains the EU relevant threshold according to Article 7 of Directive 2004/18/EC or € 5 186 000 under Article 4 of Directive 2014/24/EU. Below these thresholds, the fundamental principles of the Treaties (including competition, transparency, etc.) would apply to public contracts. The pertinent national law must also be considered.

**7. Can we co-finance actions in private houses of deprived social groups further than the common spaces?**

According to Article 65 (1) of the CPR eligibility of expenditure shall be determined by national rules, except where specific rules are laid down in or, on the basis of, the CPR or the Fund specific rules. In line with Article 5(4)(c) of ERDF Regulation and Article 4 (a) (iii) of Regulation (EU) N°1300/2013 on the Cohesion Fund (the Cohesion Fund Regulation energy efficiency, smart energy management and renewable energy use in both public infrastructure (including public buildings) and the housing sector may be supported under the ERDF and the Cohesion Fund.

There is no restriction contained in the CPR or CF/ERDF as to the possibility of financing operations further than common spaces. Thus, this matter should be dealt with in the national eligibility rules of the Member State.

Finally we recall that investments in housing for marginalized communities including Roma require coherent and multi-dimensional approaches supported from the various ESI Funds, complementing national resources and implemented coherently with reforms of social protection systems and must facilitate local integrated housing approaches with special attention to public utility and social service infrastructures aiming to desegregation.

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<sup>1</sup> See notably cases C-399/98, *Scala de Milano*, C-220/05, *Auroux*, C-306/08, *Commission/Spain*, C-451/08, *Helmut Muller* and C-576/10, *Commission/Netherlands*)

**8. If we build public housing in order to rent it on a social rent scheme should we treat those rents as future income and therefore deduct it from the costs of construction and equipment of the houses?**

According to Article 61 of the CPR, the eligible expenditure of the operation to be co-financed from the ESI Funds shall be reduced in advance taking into account the potential of the operation to generate net revenue over a specific reference period that covers both implementation of the operation and the period after its completion.

In line with the above Article "net revenue" means cash – inflows directly paid for the goods or services provided by the operation, such as charges borne directly by users for the use of infrastructure, sale or rent of land or buildings, or payments for services less any operating costs and replacement costs of short-life equipment incurred during the corresponding period.

On the basis of the above the rent of public housing should be treated as revenue of the operation at stake. However, such rent should be deducted from the eligible expenditure of the operation in case net revenue is generated following the application of one of the methods stated in Article 61(3) or (5) CPR.

**Yours faithfully,**



**Walter Deffaa**