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**Contact**

Bart de Jonge, legal adviser Aedes

vereniging van  
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Ms. Elżbieta Bieńkowska, Commissioner for Internal  
Market, Industry, Entrepreneurship and SMEs

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**Subject**

transparency obligation in [Directive 2014/23/EU](#) & [Directive 2014/24/EU](#)

KvK 40478218

Dear ms *Bieńkowska*, dear *Commissioner*,

The Commission recently decided to send a letter of formal notice to the Netherlands because it considers that it breached the transparency obligation in [Directive 2014/23/EU](#) and [Directive 2014/24/EU](#). According to the Commission the Netherlands should have qualified Dutch social housing corporations as contracting authorities<sup>1</sup>.

Aedes is surprised by the views taken by the Commission. Since decennia, Dutch social housing corporations have been providing adequate and affordable housing as private, not-for-profit organizations. In fact, they were private initiatives since their start at the end of the 19<sup>th</sup> century. This status was formalized again in 1995 when the financial ties with the State were cut. Since then social housing corporations operate independently from public authorities<sup>2</sup>.

To prevent any misunderstanding, the last review of the Housing Act in 2015 explicitly added that any indication from the Minister cannot relate to contracting activities of social housing corporations<sup>3</sup>.

The Commission's seems to overlook the nature of this private-public relationship. Contrary to other social housing sectors in Europe, Dutch housing corporation enjoy a large amount of autonomy in their investments and other decision-making. Political influence is kept out of the governance and management of social housing corporations<sup>4</sup>.

Any parallel between the EU case law on the French social housing organizations<sup>5</sup> and the Dutch social housing corporations would show a lack of understanding of the large differences between social, public and cooperative housing in Member States. Anyone active in the sector knows that the French regulation and the exercise of control by public authorities on HLM providers is much more detailed and direct than the general framework that applies to Dutch social housing corporations.

Investment decisions cannot be forced upon any of the social housing corporations. They remain responsible for their own decisions. These are often made after involving and discussing with large groups of different stakeholders, public and private. This guarantees a crucial balance between responding to local housing needs and ensuring a long-term financial sustainability of housing assets.

This social responsibility and local conscience is deeply rooted. It has existed for more than a century and delivered excellent results. By turning social housing corporations into public authorities would disrupt a fundamental balance in the relationship with private and public stakeholders.

<sup>1</sup> [http://europa.eu/rapid/press-release\\_IP-17-4771\\_en.htm](http://europa.eu/rapid/press-release_IP-17-4771_en.htm)

<sup>2</sup> See Nota Volkshuisvesting in de jaren 90 (1988) and Wet Balansverkorting Geldelijke Steun Volkshuisvesting, (1995).

<sup>3</sup> Artikel 61d Woningwet

<sup>4</sup> "in the Netherlands there is no more direct subsidy and therefore (...) new construction and investment in the existing stock depends on decisions by housing associations within a general regulatory framework." Source: Scanlon, K. and C. Whitehead (2011), "French Social Housing in an International Context", OECD Economics Department Working Papers, No. 862, OECD Publishing, Paris.

<sup>5</sup> <http://dx.doi.org/10.1787/5kgcd9s0q8f8-en>

<sup>5</sup> Commission v French Republic, C-237:99, EU:C:2001:70

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This vision is widely shared. It explains the strong role of internal supervision, independent controllers, instruments of self-regulation (e.g. covenants, sectoral codes and guidelines, benchmarking tools, etc.) and the remote nature of public support. Contrary to many other countries, there is no direct subsidy for social housing. Also, they pay VAT and Corporate Taxes just as other private company.

Besides these fundamental points, we would like to warn about important implications the introduction of EU procurement rules would have. To start with, the introduction of such a complex set of procedures would delay investments in urgently expected construction and (energy) renovations of affordable dwellings.

The EU public procurement rules are costly, time-delaying and more complex than the procedures used by private companies to select and contract their providers<sup>6</sup>. According to conservative estimates, the EU procurement rules would increase the administrative costs of the 350 social housing corporations by 30 million euro annually. With this amount they could build 750 dwellings.

This will especially impact smaller social housing corporations - half of the sector manages less than 5.000 dwellings. Smaller organizations lack legal staff and will have many difficulties to implement EU procurement procedures. At the same time, they rarely cross the thresholds for works mentioned in the EU Directives.

Not only social housing corporations are worried about delays in investments and increasing administrative costs. When the Dutch parliament debated the Commission's letter of formal a large majority denounced the views expressed by the Commission on the alleged public status of social housing corporations.

Finally, the extra costs of imposing EU procurement rules would also be borne by other businesses, mainly in the construction and renovation sector. They would have to follow new additional requirements to participate in EU procurement procedures. This might discourage smaller companies.

The Commission's steps risks to generate important social and economic costs, while the benefits for the internal market seem almost absent<sup>7</sup>. After limiting the target group for social housing in 2009, this would bring another blow to social and affordable housing in the Netherlands<sup>8</sup>.

Instead of arguing about far-stretched legal interpretations, it would be more productive to work together to develop a, still embryonic, internal market for affordable housing.

Enhancing this cross-border supply would offer real options and make EU-wide procurements attractive for housing providers, private and public. It would be much welcomed by our members who are constantly looking for innovative ways to reduce costs and increase quality in the supply (chains)<sup>9</sup>.

In the face of the facts and implications expressed here, I ask you to review your position on Dutch social housing corporations.

I would be glad to provide any further information you may require during a meeting at your earliest convenience.

Sincerely yours,



Marnix Norder  
President of Aedes, Dutch federation of social housing organizations

Cc. Mr. Jean-Claude Juncker, President of the European Commission

Cc. Mr. Frans Timmermans, First Vice-President, in charge of Better Regulation, Inter-Institutional Relations, the Rule of Law and the Charter of Fundamental Rights

Cc. Mr. Jyrki Katainen, Vice-President for Jobs, Growth, Investment and Competitiveness

Cc. Ms. Kajsa Ollongren, Deputy Prime Minister, Minister of the Interior and Kingdom Relations

Cc. Mr Robert de Groot, Permanent Representative to the EU for the Netherlands

<sup>6</sup> Directive 2014/23/EU and 2014/24/EU consists of respectively 64 and 178 pages of regulation. Directive 2014/24/EU, and its predecessor Directive 2004/18/EC, have led to 190 European Court cases until now and many more national court cases.

<sup>7</sup> Based on the very low effects of EU public procurements on the internal market, we do not expect any benefit. According to the study commissioned by the European Commission (Cross-border procurement above EU thresholds, 2011) only 1% of EU Public procurement procedures for works in the Netherlands are contracted outside of the Netherlands. Even when looking at the indirect effects (e.g. sub-contracting) this rises to only 4%.

<sup>8</sup> An earlier Decision of the Commission (C (2009) 9963) significantly limited the activities and target group of housing corporations in the Netherlands.

<sup>9</sup> See for example the Bathroom in a Day Challenge organized by one of our members. <https://ninesights.ninesigma.com/web/mitros/>