Council of the European Union

Brussels, 10 September 2026
(OR. en)

12967/26
ADD 2

Interinstitutional File:
2026/0268 (COD)

COMPET 1047
MI 862
SOC 586
CODEC 1634
FIN 1243
COH 141
ENER 560

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	9 September 2026
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2026) 605 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Subsidiarity grid Accompanying the document Proposal for a Regulation Proposal for a Regulation establishing a framework for measures in Member States to safeguard housing affordability and availability

Delegations will find attached document SWD(2026) 605 final.

Encl.: SWD(2026) 605 final

EUROPEAN
COMMISSION

Brussels, 9.9.2026
SWD(2026) 605 final

COMMISSION STAFF WORKING DOCUMENT

Subsidiarity grid

Accompanying the document

Proposal for a Regulation

Proposal for a Regulation establishing a framework for measures in Member States to safeguard housing affordability and availability

{COM(2026) 599 final} - {SEC(2026) 599 final} - {SWD(2026) 606 final} - {SWD(2026) 607 final}

Subsidiarity Grid

- **As proposed by the Committee of the Regions with guidance in blue**
- **Obviously, the answers to the questions below, the explanatory memorandum and – if applicable – the impact assessment should be consistent. This may require some iterations.**
- **Please try to stay under 10 pages.**

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
The proposal is based on Article 114 TFEU, which empowers the Union to adopt measures for the approximation of laws that have as their object the establishment and functioning of the internal market. The proposal establishes a common framework governing the assessment under Union law of housing-related measures that may affect the free movement of services, establishment and capital, thereby improving the consistent functioning of the internal market.
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
The proposal falls within the Union's shared competence pursuant to Article 4(2)(a) TFEU (internal market). While housing policy remains primarily a national, regional and local competence, measures affecting internal market freedoms are governed by Union law.
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2[1]: - Has there been a wide consultation before proposing the act? - Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?
Yes. In accordance with the Better Regulation Guidelines and Protocol No. 2, the proposal is accompanied by an explanatory memorandum and an Impact Assessment containing a detailed assessment of compliance with the principle of subsidiarity, supported by qualitative and, where appropriate, quantitative evidence. The Impact Assessment explains why the objectives of the proposal cannot be sufficiently achieved by Member States acting alone and why Union action is necessary to establish a common framework governing the assessment of housing-related measures affecting the internal market. The Commission also carried out extensive consultation activities. Building on the public consultation undertaken in preparation of the European Affordable Housing Plan, which received 13 330 responses, the Commission conducted a Call for Evidence, a targeted questionnaire and four dedicated workshops with Member States, regions, cities, stakeholders and experts between 6 March and 3 April 2026. The Call for Evidence received 617 contributions and the targeted questionnaire 303 responses.

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN

The consultations confirmed broad support for greater legal certainty regarding the compatibility of housing-related measures with Union law, while emphasising the need to respect subsidiarity and preserve flexibility for competent authorities. Public authorities called for a common framework to support the assessment of housing stress and the justification of local measures. Economic operators stressed the importance of proportionality, legal certainty and evidence-based decision-making, while representatives of tenants, students, social housing providers and civil society underlined the need for effective tools to safeguard housing affordability and availability. The explanatory memorandum and the Impact Assessment both contain dedicated sections explaining the proposal's compliance with the principle of subsidiarity.

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

The explanatory memorandum explains how the proposal complies with the principle of subsidiarity. Housing policy, urban planning and land-use regulation remain primarily matters for Member States. However, the assessment of whether housing-related measures restricting internal market freedoms comply with Union law cannot be effectively addressed by Member States acting alone.

While the Court of Justice has established the relevant legal principles, existing Union law provides no common operational framework for identifying housing stress or assessing the justification and proportionality of housing-related measures. As a result, competent authorities apply different methodologies and evidential standards. This creates uncertainty, administrative burden and inconsistent application of Union law.

The added value of Union action is therefore to establish a common framework for assessing housing-related measures affecting the internal market. The Proposal provides a common methodology for demonstrating housing stress and common requirements governing the justification, necessity, proportionality, transparency and review of such measures. It preserves the discretion of competent authorities to determine whether intervention is necessary and which measures are appropriate in light of local circumstances, while ensuring that measures affecting the internal market are assessed according to common Union standards.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

The objectives cannot be sufficiently achieved by Member States acting alone because, although housing policy remains national, only the Union can establish a common framework governing the assessment under Union law of housing-related measures affecting the internal market. Without Union action, divergent methodologies and procedural standards would continue to create legal uncertainty and inconsistent application of Union law.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

Although housing markets are inherently local, housing-related measures increasingly affect economic activities operating across borders, including the provision of services, investment and the acquisition of residential property. A significant percentage of the EU population lives in areas experiencing housing affordability challenges, while cross-border investment in residential real estate and the provision of short-term accommodation services have grown significantly in recent years, as set out in the impact assessment. Measures adopted by competent authorities therefore increasingly affect economic operators exercising Treaty freedoms across borders. Divergent approaches to assessing the justification and proportionality of such measures create legal

uncertainty, increase compliance costs and litigation risks, and may lead to inconsistent conditions for the exercise of internal market freedoms. These cross-border effects justify action at Union level.
(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty[2] or significantly damage the interests of other Member States?
Yes. While housing policy remains primarily a national, regional and local competence, housing-related measures may affect the exercise of the freedoms guaranteed by the Treaties, including the free movement of services, freedom of establishment and the free movement of capital. In the absence of a common Union framework, Member States may apply divergent approaches when assessing and justifying such measures under Union law, creating legal uncertainty, fragmentation of the internal market and unequal conditions for economic operators engaging in cross-border activities.
(c) To what extent do Member States have the ability or possibility to enact appropriate measures?
Member States remain fully responsible for designing and implementing their housing policies and are best placed to determine whether intervention is necessary in light of local housing market conditions. However, they cannot, acting individually, establish a common framework governing the assessment of housing-related measures under Union law. Only action at Union level can ensure that such measures are assessed according to common procedural standards, while preserving Member States' discretion as to whether and how they intervene.
(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?
The causes and severity of housing affordability challenges differ considerably across the Union, reflecting diverse demographic trends, tourism pressures, urbanisation, housing supply constraints and regional economic conditions. Consequently, the measures adopted by competent authorities also vary significantly. However, irrespective of these local differences, all such measures must comply with Union law where they affect the internal market. The absence of a common framework for assessing their justification and proportionality therefore creates legal uncertainty across all levels of governance.
(e) Is the problem widespread across the EU or limited to a few Member States?
Housing affordability challenges and housing stress are more acute in some Member States, regions and cities than in others. However, the need for legal certainty regarding the application of Union law to housing-related measures is Union-wide. Competent authorities across the Union may adopt measures affecting internal market freedoms and therefore benefit from a common framework for assessing their justification and proportionality.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
The issue is not whether Member States have the capacity to adopt housing policies or to assess their compatibility with Union law. Competent authorities are already required under the Treaties, the Services Directive, where applicable, and the case law of the Court of Justice to ensure that housing-related measures affecting the internal market are justified, necessary and proportionate. However, in the absence of a common operational framework governing how these assessments

[2] https://europa.eu/european-union/about-eu/eu-in-brief_en

should be carried out, Member States have developed different methodologies and evidentiary approaches. This creates legal uncertainty for public authorities and economic operators, increases the risk of inconsistent application of Union law and contributes to disputes and litigation. Union action is therefore necessary to provide a common procedural framework while leaving substantive housing policy choices entirely to the Member States.

(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?

Consultation activities demonstrated broad support among national, regional and local authorities for greater legal certainty regarding the compatibility of housing-related measures with Union law. While authorities stressed the importance of preserving flexibility to reflect local housing market conditions, many supported the establishment of a common Union framework to guide the assessment of housing stress and the justification and proportionality of housing-related measures. Stakeholders likewise emphasised the need for greater transparency, predictability and evidence-based decision-making.

2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?

Union action provides a common methodology and procedural framework governing the assessment of housing-related measures affecting the internal market. It improves legal certainty, transparency and the consistent application of Union law while fully preserving Member States' competence over housing policy.

(a) Are there clear benefits from EU level action?

Yes. The principal benefit of Union action is the establishment of a common methodology and procedural framework for demonstrating housing stress and assessing the justification, necessity and proportionality of housing-related measures under Union law. This promotes greater consistency in the application of internal market rules across the Union and provides clearer guidance for competent authorities when designing and implementing housing measures. It also increases legal certainty for citizens, investors and service providers by making the assessment process more transparent, predictable and evidence-based, thereby reducing the likelihood of inconsistent decisions and avoidable litigation.

(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?

Yes. Rather than each Member State developing its own methodology for assessing housing-related measures under Union law, the proposal establishes a single procedural framework that can be applied consistently throughout the Union. This avoids duplication of effort, facilitates the exchange of good practices and reduces compliance and administrative costs for both competent authorities and economic operators active in more than one Member State. By promoting a more consistent application of internal market rules, the proposal contributes to the proper functioning of the internal market while allowing housing policy decisions to remain tailored to national, regional and local circumstances.

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

The proposal does not harmonise national housing policies or replace national choices regarding housing measures. Instead, it establishes a common procedural framework governing how

housing-related measures that may affect the internal market should be assessed under Union law. This common approach improves the consistency, transparency and predictability of decision-making across the Union, while ensuring that similar legal principles are applied in a comparable manner. It also facilitates judicial review and contributes to a more coherent interpretation of Union law, thereby reducing uncertainty for both competent authorities and economic operators.

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?

The proposal does not transfer substantive competence over housing policy to the Union. Member States, regions and local authorities remain entirely responsible for determining whether intervention is necessary, identifying local housing challenges and choosing the housing measures they consider appropriate. The Regulation harmonises only the procedural framework governing the assessment of such measures where they affect the internal market. The limited procedural obligations introduced by the proposal are proportionate to the objective of ensuring the consistent application of Union law and are outweighed by the benefits of increased legal certainty, reduced fragmentation and improved transparency.

(e) Will there be improved legal clarity for those having to implement the legislation?

Yes. The proposal provides competent authorities with a clearer and more structured framework for demonstrating housing stress and assessing the justification, necessity and proportionality of housing-related measures under Union law. By clarifying the evidence to be considered, the procedural steps to be followed and the principles underpinning the assessment, it increases predictability for public authorities, economic operators and citizens alike. Greater legal clarity is expected to facilitate implementation, improve compliance with Union law and reduce the risk of inconsistent application and subsequent litigation.

3. Proportionality: How the EU should act

3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?

The explanatory memorandum and the impact assessment explain that the proposal complies with the principle of proportionality because it does not go beyond what is necessary to improve the functioning of the internal market. It does not harmonise housing policy, require competent authorities to adopt housing-related measures, nor does it prescribe the substantive content of such measures. Instead, it lays down only those common requirements necessary to ensure legal certainty, transparency and the consistent application of Union law to measures falling within its scope
As confirmed by the impact assessment, this approach provides the appropriate balance between improving legal certainty and preserving the flexibility of national, regional and local authorities to respond to local housing market conditions.

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

The proposal is a proportionate response to the identified problem. It is limited to those aspects that require action at Union level, namely the establishment of a common procedural framework

governing the assessment of housing-related measures affecting the internal market. It does not harmonise housing policy or require Member States to adopt specific housing measures, but instead provides greater legal certainty regarding the application of existing obligations under Union law. The choice of a Regulation ensures the uniform application of procedural requirements across the Union, while leaving to Member States, regions and local authorities full discretion to determine whether intervention is necessary and which housing measures are appropriate in light of local circumstances. The limited administrative costs associated with the proposal are proportionate to its objectives and are expected to be outweighed by the benefits of greater legal certainty, more consistent application of Union law and a reduction in legal disputes.

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

Yes. The initiative is limited to establishing a common procedural framework governing the assessment of housing-related measures under Union law. It does not regulate the substance of housing policy or interfere with Member States' competence to determine whether intervention is necessary or which housing measures should be adopted. While Member States remain responsible for designing and implementing housing policies, only the Union can ensure the consistent application of Treaty freedoms by providing a common framework for assessing the justification, necessity and proportionality of measures affecting the internal market.

(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?

A Regulation is the most appropriate legal instrument because it establishes a common procedural framework governing the assessment of housing-related measures affecting the internal market. Uniform application of those procedural requirements is essential to ensure legal certainty and the consistent application of Union law across the Union.
Non-binding guidance could promote a more consistent interpretation of existing Union law but would not provide a sufficiently predictable and uniform framework for competent authorities, citizens and economic operators. A Directive would require national transposition, increasing the risk of divergent implementation and reducing the objective of improving legal certainty.
A Regulation therefore provides the most effective means of establishing a common framework while fully respecting Member States' competence for housing policy and the substantive design of housing-related measures.

(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument og approach?)

Yes. The proposal leaves Member States, regions and local authorities the broadest possible discretion consistent with achieving its objectives. It does not require competent authorities to adopt housing-related measures, nor does it harmonise housing policy or prescribe particular policy choices. Authorities remain free to determine whether intervention is necessary, how housing stress is addressed and which measures are most appropriate in their specific circumstances. The Regulation establishes common procedural requirements governing the demonstration of housing stress and the assessment of the justification, necessity and proportionality of measures where they affect the internal market.

(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?
The proposal gives rise to limited administrative costs for the Commission and for competent authorities responsible for applying the procedural framework. These costs relate primarily to the preparation of evidence supporting housing-related measures, monitoring and reporting activities, and the implementation of the common framework. As explained in the Impact Assessment, these limited costs are expected to be outweighed by the benefits of increased legal certainty, greater transparency, more consistent application of Union law and a reduction in legal disputes, litigation and unnecessary administrative burdens arising from divergent national approaches.
(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?
Yes. The proposal fully recognises that housing markets differ significantly across the Union due to variations in demographic trends, territorial characteristics, economic conditions and housing market structures. The common procedural framework is therefore designed to accommodate these differences by requiring assessments to be based on the specific circumstances of the area concerned. Competent authorities retain full discretion to determine whether housing stress exists, whether intervention is justified and which housing measures are most appropriate, provided that they comply with the common procedural requirements established by the Regulation and with Union law.