

ANNEXE 5 to the response to UN Joint Communication from the Special Procedures of 19 April 2021

Notes on housing association supervision and performance agreements

Re (1) Supervision:

The Housing Associations Authority (*Autoriteit woningcorporaties / AW*) is responsible for the supervision of housing associations under section 61 of the Housing Act (*Woningwet*). This supervision by the Authority focuses on the following subjects:

- the lawfulness of the acts and omissions of housing associations;
- the governance and integrity of their policy and management;
- maintenance of their financial continuity;
- protection of funds designated for public purposes;
- the solvency and liquidity of housing associations;
- quality of risk management, administration, control and accountability;
- the compensation that housing associations receive for providing services of general economic interest (SGEI) that come within their social housing remit.

In carrying out the supervision, the Housing Associations Authority performs the following tasks:

- makes a risk-oriented assessment of the policy and management of the authorised institutions and their subsidiaries and forwards it to them;
- makes a risk-oriented assessment of the overall functioning of the authorised institutions and their subsidiaries, and
- informs the Minister, either on request or of its own accord, about developments affecting the authorised institutions and subsidiaries that are in the interest of supervision, and makes proposals on this basis.

The moment the Housing Associations Authority concludes, in the course of its supervision, that a housing association is not complying with the rules that have been drawn up on the above subjects, it can intervene independently by imposing an administrative fine on the association, issuing an instruction to it, appointing a supervisor and/or imposing a monetary penalty.

As the Housing Associations Authority carries out the supervision independently of government policy on housing associations and how this policy develops and is implemented, it functions independently of politics and the housing association sector. The Housing Act contains provisions safeguarding this independence.¹

Re (2) Performance agreements

Housing associations are required to use their resources as a matter of priority for the benefit of housing in general (section 45 of the Housing Act) and ensure, as far as is reasonable, that their activities benefit the housing policy that applies in the municipalities where they actually operate (section 42 of the Housing Act).

Sections 43 and 44 of the Housing Act require housing associations to draw up and send to the municipality an overview of their planned activities showing how these activities will help to implement the housing policy that applies there. The overview must cover the next five calendar years and also relate to any undertakings connected with the housing association. When drawing up the overview, the housing association is required to consult with the tenant organisations and residents' committees that represent the interests of the tenants of its residential units (as referred to in section 1, subsection 1 (f) and (g) respectively of the Landlord and Tenant Consultation Act (*Wet op het overleg huurders verhuurder*)).

When sending the overview, the housing association must also request consultation with the municipal executive concerned and the tenant organisations. This is done in order to make performance agreements for the implementation of the housing policy applicable in the municipalities concerned for at least the next calendar year. If no performance agreements can be made because of a dispute, the housing association, municipality and/or tenant organisation can refer the dispute to the Minister. Dispute resolution of this kind is, in principle, a last resort. First, the parties involved at local level must be able to show that they have done everything in their power to reach agreement among themselves. This is because they will have to continue working

¹ See, for example, section 60, subsections 2 and 3 and section 61d of the Housing Act.

together to define and implement local housing policy. If they nonetheless fail to reach agreement, the dispute may be eligible for referral.

When a dispute about the conclusion of performance agreements is referred in this way, the basic procedure is for the Minister to submit it to an advisory committee for its opinion. The committee consists of an independent chair and three members appointed on the recommendation of organisations representing the interests of housing associations, municipalities and tenant organisations. After receiving the committee's opinion, the Minister makes a binding decision. The advisory committee on the resolution of disputes concerning Housing Act performance agreements was established in April 2016, after the revised Housing Act entered into force in 2015 (Government Gazette 2016, no. 14908). It was decided that the composition of the advisory committee should be the same as that of the triangular discussions at local level, with the addition of an independent chair sought by the Ministry of the Interior and Kingdom Relations.