

The Austrian Rent control System and its effects on economy and society

Vienna, January 2015

1. Introduction

Improper functioning housing markets are a main factor for macroeconomic imbalances in different member states of the EU. One of those is Austria. Austrian tenancy law is highly inhomogeneous and complicated. Different rules apply to different houses and different contracts. Rent control and tenancy protection have their roots in the time of the First World War, where the goal was to ensure housing for soldiers fighting in World War I.

Post-war the situation changed. Houses were built, there was no shortage of housing anymore and new rules were being made for the newly built houses.

Nowadays the rules for old houses still apply and create a two class society amongst tenants and also landlords.

Parallel to that, object based social housing exists in Austria. That means that there is no evaluation of social needs over time. People who are occupying apartments in social housing facilities in many cases are not in social need anymore, but can still stay in their apartment for very cheap prices and along with that create the need for new social houses.

2. Historical development

Historical evolution of the national housing situation and housing policy

Until recent decades, especially in the period after World War II to the 1970s, the priorities, structures and systems of Austrian housing and funding policy developed largely in parallel to those in many other European countries. The focus of the post World War II housing policy was to

reconstruct destroyed buildings and supply residential housing by providing object related subsidies directly by the state.

Whereas in many states of the EU in the 1980s started a fundamental housing policy change towards a more liberal, market orientated model, we miss such a fundamental change for all dwellings in Austria.

The Austrian housing policy was and still is dominated by the aim to provide adequate living space for all households especially for those with low or middle income through focus of the housing policy on object-related subsidies and on a close cooperation of the state with limited-profit housing associations.

3. Origins and development of tenancy law

The Austrian legal system has two main sources of tenancy law: the ABGB (General Civil Code) and the MRG (Tenancy Statute).

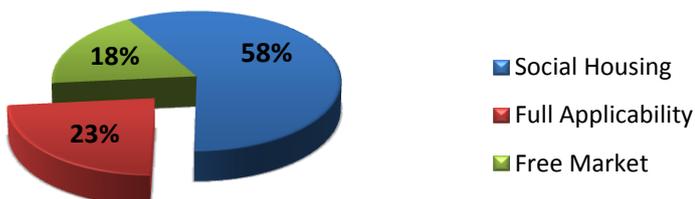
Court decisions are not an official law source in Austria. The judgements of the Supreme Court (OGH) even though do have strong influence on Austrian tenancy law, because the OGH is responsible to decide about all legal questions of law that are important for the legal unity, legal certainty and legal development of the Austrian legal system. Judgements of the OGH are a guideline for lower tier courts and also for itself.

Because of the historical development, the Austrian tenancy law is extremely complicated and inhomogeneous. Important rules were enacted only as provisional standards during the First World War. Some of the rules from that time have been amended, but many are in force until today. As these rules have often been amended, repealed and issued again for short-term political reasons, Austrian tenancy law still contains a high number of exceptions and counter-exceptions, which even for legal experts are complicated to handle. The main aspects of the Austrian tenancy law system are the extensive protection of the tenant against eviction, his right to dispose of the rented object and his contractual rights, the great variety of law limiting rents, and the strict maintenance rules.

The differentiation in Austrian tenancy law that is both object-based and contractual-based goes so far that, the freedom of contract could either be nearly not limited at all, or that the norms of the MRG minimize the freedom of contract significantly (exclusively in favor of the tenant). For original tenants and for new tenants also different norms apply which leads to a discrimination amongst tenants. Old tenants often pay significantly less for far larger dwellings than a new tenant.

3. Current legislation

Housing distribution in Austria



Applicability of the MRG

In relation to the ABGB, the MRG and other special statutes are “leges speciales”: As far as the MRG or other special statutes are not applicable or as far as the MRG or other special statutes do not contain any regulations, the provisions of the ABGB (§§ 1090 et seq.) have to be applied to a tenancy agreement. The scope of application of the ABGB and the MRG is especially important with regard to the issues of **maximum rents** (§ 16 MRG) and of **termination** (§§ 29, 30 and 31 MRG). According to the ABGB, tenancy agreements are subject only to the general restrictions of “laesio enormis” (§ 934 ABGB) and the regulations of the ABGB concerning exorbitant rents (usury § 879 par. 2 fig. 4 leg. cit.). The MRG protects the tenant by far stricter limits: In the cases listed by § 16 par. 1 MRG, an adequate main rent has to be agreed in terms of size, situation, furnishings, etc.

The scope of applicability of the MRG and ABGB on tenancy agreements is basically divided into three main areas: full applicability-, partial applicability-, or non-applicability of the MRG.

In general, the most important differences between full, partial and non-applicability of the MRG are that for tenancy agreements, where the MRG is

- fully applicable: the tenant is protected by strict rent limits and against unwarranted eviction
- partially applicable: the tenant is protected only against unwarranted eviction,
- not applicable: the tenant is neither protected by strict rent limits nor against unwarranted eviction.

Full applicability of the MRG

According to § 1 par. 1 MRG, the MRG applies to the lease of flats, parts of flats or business premises including the co-leased surrounding house areas or bases and to the cooperative use of immovable property. Contractual relationships about individual so called “neutral objects” – objects that are neither part of (business) dwellings nor used for human habitation or business matters (i.e. garages, ateliers, hunter’s cabins, etc.) are ruled out from the application of the MRG at all.

Partial applicability of the MRG

§ 1 par. 4 MRG partially excludes from the application of the MRG:

- Leased property in edifices which have been newly constructed without public funding with a building permit dated after 30.06.1953;
- Leased property which has been newly constructed by extension of the attic or as superstructure with a building permit dated before 31.12.2001 and unextended premises of the attic, which have been leased with the additional agreement that a flat or a business premise is going to be constructed by the landlord or - fully or partially – by the lessee within them or as superstructure ;
- Leased property which has been constructed as an addition to a building with a building permit dated after 30.09.2006 ;
- Leased property that is commonly held, if the leased property is within an edifice that has been newly constructed based on a building permit dated after 08.05.1945.

Due to § 1 par. 4 MRG, only the mandatory provisions for the case of death of landlord or tenant (§ 14 MRG), for deposit (§ 16b MRG), for termination of a lease contract (§§ 29 to 36 MRG), for indexation of the rent (§ 45 MRG), for rent limitation in case of assumption of the contract (§ 46 MRG) and for transfer terms (§ 49 MRG) apply to contractual relationships about the above mentioned premises; all other provisions of the MRG do not apply.¹

Non-applicability of the MRG

§ 1 par. 2 MRG excludes from the application of the MRG:

- Leased property, being rented out either to hotel trade or multi-storey car parks, transport enterprises, warehouses, workshops, official residences or homes for single or aged people, apprentices, youthful employees, pupils or students;
- Flats which are rented by a charity or humanitarian institution for sociopedagogical assisted living;
- Flats provided by employers for employees;
- Leases which expire merely with the passing of time and without notice of termination provided that the stipulated duration of the contract does not exceed half a year and the rental unit is either a business premise or a flat which the tenant rents and uses as a second home;
- Flats which are rented merely as a second home for relaxation purposes;
- Leased property in edifices, which do not consist of more than two individual flats or business premises, whereby premises count for nothing that were or are newly created by expansion of the attic.

¹ TENLAW: Tenancy Law and Housing Policy in Multi-level Europe, National Report for Austria P 66f

§ 1 par. 2 MRG conclusively regulates the above mentioned exceptions. Nevertheless, all or certain provisions of the MRG can apply to an agreement between lessor and lessee.²

4. Tenancy regulation

Norms of the MRG are mandatory in favor of the tenant and its application cannot be excluded by agreement. To prevent circumventing the MRG by, the OGH ruled that there is a legal presumption of MRG applicability for all contracts about dwellings that fulfill rent characteristics.

In applicability of the MRG a landlord has to accept the transfer of tenancy rights without (ordinary) possibility of termination of the contract in different situations:

- Full applicability of the MRG:

A landlord is furthermore obliged to accept a new contractual partner, if his tenant leaves the dwelling and at the same time declares according to § 12 MRG the transfer of his tenancy rights to his spouse, registered partner, relatives in direct ascending (parents) or descending lines (children) or his siblings. For all benefitted persons it is additionally required that they either have moved in together with the leaving tenant or have lived in the rented dwelling for at least the last two (spouses, direct ascending or descending relatives) or five (siblings) years before the tenants' leaving. Apart from dwellings that are used for living purposes only, in Austria there is also an entry right for buyers or lessees of companies into a tenancy agreement for business premises (§12a MRG).

- Full or partial applicability of the MRG:

Landlords also have to accept a new contractual partner after the death of a tenant. His spouse, registered or unregistered partner, relatives in direct ascending (e.g. parents) or descending lines (e.g. children) or his siblings enter ex lege into a rental contract according to § 14 par. 2 and 3 MRG, if they have been living in the rented dwelling at the time of the tenant's death and have an urgent need of accommodation. § 14 par. 2 MRG at the same time excludes a succession of the tenancy rights of the deceased tenant to his legitimate heirs. For unregistered partners it is additionally

² TENLAW: Tenancy Law and Housing Policy in Multi-level Europe, National Report for Austria P 66

required that they either have moved in together with the deceased tenant or have lived in the rented dwelling for at least the last three years before his death (§ 14 par 3 2. sentence MRG).

The new contractual partner enters the old contract and has either no or just a very little increase in rent. That leads to the situation that dwellings are being kept occupied amongst family members for generations without a significant increase in rent. This is like a dispossession for the landlords, as usually a major part of their property is being occupied, for extremely low rent. In most cases these rents don't even pay off enough to conduct regular maintenance of the houses. Despite that it is an imbalanced situation to other (new) tenants as well.

5. Economic and social Impact

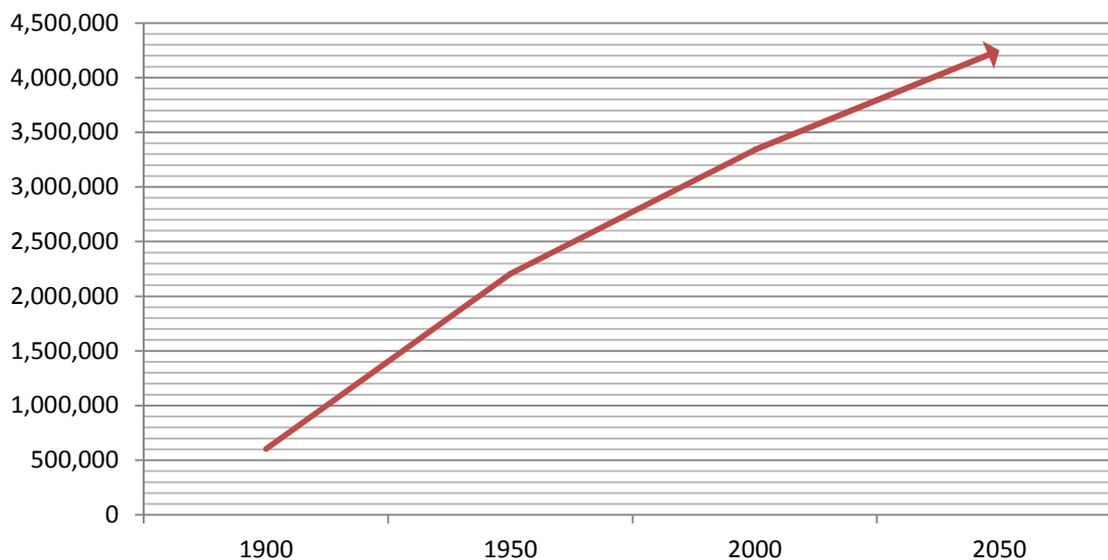
Property owners, who fall under rent control, often do not make enough profit to conduct investments for their buildings. Prices for maintenance and operation follow the market level, while rents stay almost the same (except for guaranteed value), especially with protected old tenants. As property owners often have to invest the entire income they make with their property directly into maintenance, the interest for further investments e.g. for thermal insulation or other energy efficiency measures, is rather low. This not only is counterproductive in terms of modernization and environmentally friendly adaptations, but also kills a lot of job opportunities for businesses. Therefore also a lot of tax money remains unrisen.

In the long run, rent control is counteracting its own purposes, as it causes a rise in rents in other areas. With controlled rents lower than market level, the quantity demanded will of course exceed the available amount of housing in that sector. In the long run this creates a shortage of housing in that sector. With shortages in the rent-controlled sector, this excess demand at some point will have to be covered by the uncontrolled sector. The rising demand in the uncontrolled sector naturally results in rising prices for that sector. In effect, even though rents may be lower in the controlled sector, they force a rent increase in the uncontrolled sector, leading to higher rents for private rental housing as a whole.

In order to avoid the application of the MRG, some landlords are partially starting to let their objects via different platforms on the internet to travelers and tourists. This form of letting of course requires more effort than standard letting, but allows compensation for the really low rents in the full applicability of the MRG. This of course is not desirable, as it harms the hotel economy. But it is a clear sign that the capped rents do not conform to market level, and that landlords are not consistent with this situation.

3

Households in Austria



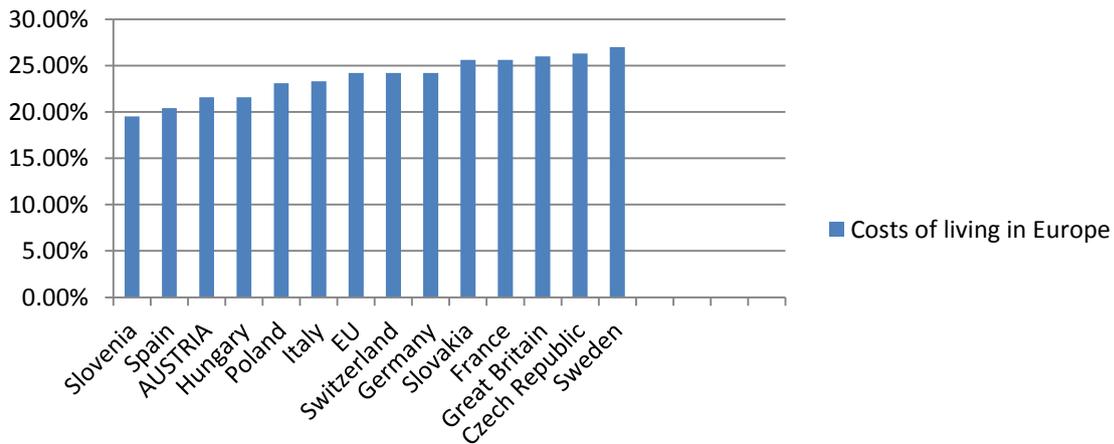
Statistics show that around 25% of buildings have been built in the last 20 years. That proves that there actually is a lot of interest in building residential dwellings, along with the interest of maintaining and improving already existing houses. In order to keep this interest up, there needs to be a deregulation instead of even stricter rules.

³ The amount of households is constantly increasing, mainly due to the slimming size of the average household

The tenant's cost of living in old buildings e.g. for heating, electricity, maintenance, etc. nowadays is almost the same as it is in new buildings, due to the quality of renovation work.

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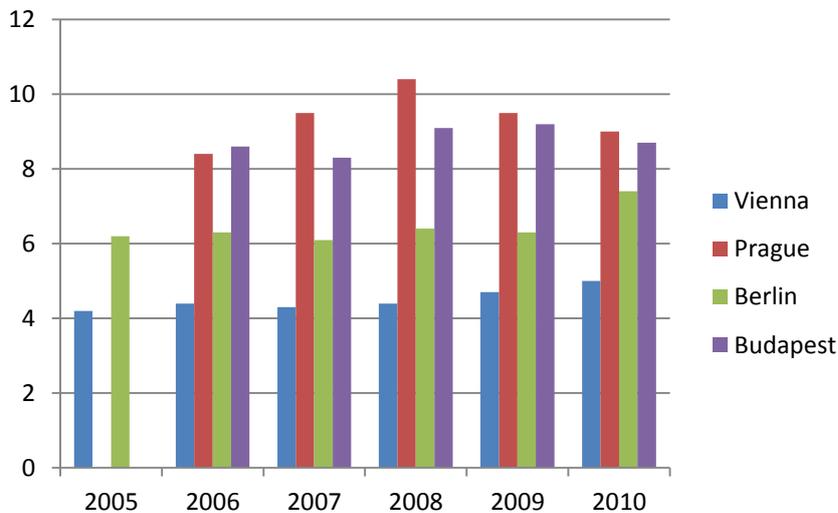
Costs of living in Europe



By comparing the costs of living to other European countries, it becomes clear how inexpensive living in Austria still is.

House price to income ratio

5



⁴ Cost of living (including rent, energy and operating costs) in percent, relative to the monthly income

⁵ The price-to-income ratio looks at the total cost/price of a home relative to median annual income

Recently voices that call for measures of thermal insulation are getting louder. While it is not yet scientifically proven, if thermal insulation measures really are a benefit in the long run in terms of efficiency or eco-friendliness, some owners already invested in it. The potential beneficiaries are solely the tenants, as they potentially save on heating costs. On the other hand the landlord can not charge more rent if his house is equipped with thermal insulation. So there is a strong imbalance between costs of investment and benefit. As there is almost no financial incentive for landlords, only a minority does thermal insulation measures to their houses until now. This of course leaves a huge amount of job opportunities unused.

The onward progressing requirements for houses, like renewal of electric installations or implementing new technologies like TV installations or fiber-glass technology also find no counterpart. Requirements rise and landlords have to pay in order to allow higher standards of living for the tenants, but on the other hand do not obtain the opportunity to charge a higher rent to compensate for these costs.

Basically landlords are ready and willing to conduct whatever measures are required to meet modern standards, but there should be a possibility to compensate for these costs.

6. Amount of investments and the impulse on economy

Market level rents are much higher than regulated rents. With non-regulated rents at market level, landlords would have approximately 2 billion Euros more available for investing in renovation work for old buildings. This would not only lead to an overall higher level of building standards in terms of sustainability, ecological friendliness and general housing quality in benefit of the occupants, but would also create new job opportunities for a broad variety of professionals and businesses and is an overall benefit for the economy. In times where unemployment rates are constantly rising, economic growth is stagnating and opportunities to create tax money are needed by the state, these benefits can not remain unused.

The construction sector covers roughly 7% of the entire Austrian economy. Compared internationally this percentage is quite high, as the average percentage in the European Union is at 6.4%. This already relatively high percentage could be even higher, if unused renovation potential was made available. It is estimated that roughly 1.000 Jobs can be created for every 100.000.000 € of investment volume.

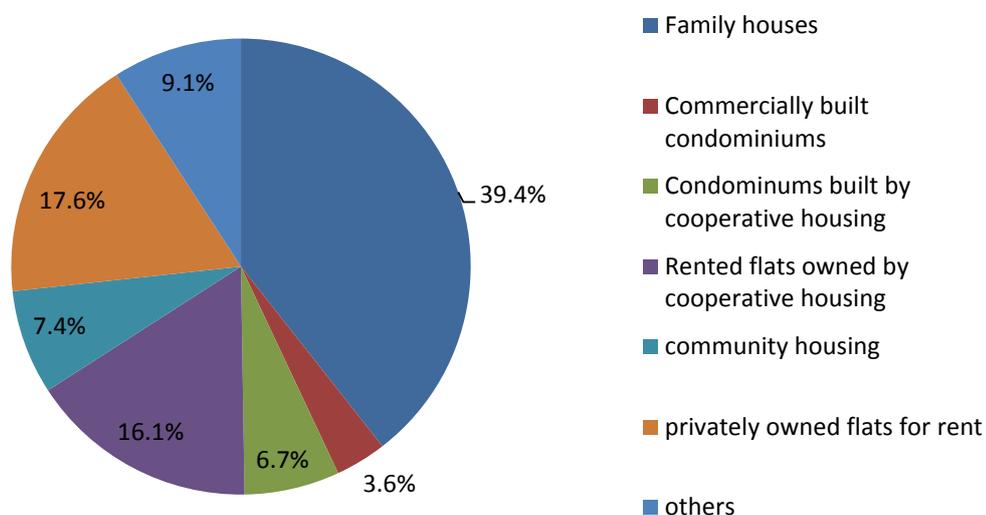
With regard to the energy efficiency directive, the European commission itself even estimates that in Austria roughly 6.400 jobs can be created until the year 2020 by raising the GDP (gross domestic product) by 550 million Euros.

That means roughly 25.000 Jobs could be created. A relatively high number for Austria, where already 287.200 people remain unemployed. The impulse for creating new and even more job opportunities along with an overall growth of the construction sector can come from private landlords.

These numbers could be even higher, if there was an opportunity to raise rents for old tenants who pay extremely low rents, making expensive investments for landlords nearly impossible.

7. Allocation of real estate ownership

Allocation of real estate ownership



The applicable tenancy law in Austria nowadays is highly complicated. Different rules apply to different houses, depending on the date of erection.

Old buildings are under rent control. This regulation has its roots in a time where buildings of the old houses stock, for the most part, truly were in a worse shape than newer buildings. This changed entirely over the last decades. Nowadays, rejuvenated old buildings are very popular amongst tenants, as they offer a high quality of living in mostly very central areas.

Landlords who own an old house, at the same time have much higher maintenance costs compared to a new building, and in addition to that their building is under rent control, that leads to a doubled burden for them, higher maintenance costs and lower income. Tenants who live in a “new” building (e.g. post war period) - which is not under rent control – can end up paying more rent and receive lower standards than in a rejuvenated old building.

6

Topics	Buildings	Of which			
		residential buildings	of which		other buildings
			with one or two conventional dwellings	with three or more conventional dwellings	
Total	2 191 280	1 973 979	1 727 129	246 850	217 301
Year of construction (in %)					
Before 1919	14.9	14.4	13.4	21.2	19.9
1919 to 1944	7.6	7.7	7.4	9.8	6.4
1945 to 1970	24.0	24.2	24.1	24.6	22.8
1971 to 1990	28.8	28.8	29.8	21.2	28.8
1991 or later	24.7	25.0	25.2	23.2	22.1
Type of ownership (in %)					
Private person(s)	88.7	92.1	96.6	60.7	58.3
Public bodies	4.0	2.5	1.1	11.9	17.5
Limited profit housing associations	3.3	3.6	1.2	20.0	0.5
Other legal entities	4.0	1.8	1.0	7.4	23.6
	100	100	100	100	100

⁶ Statistik Austria, Census 2011, P 59



To roughly 23% of all the Austrian buildings the MRG is fully applicable. These buildings contain 325.000⁷ privately rented flats (built until 1945). Of a total of 3.644.958 flats in Austria that means, flats in old buildings are not even 9% of the entire stock.

This is an unobjective differentiation; a potential tenant will not make his decision to either rent or not rent an object depending upon the date of the erection of the building. But to the landlord this has severe consequences, even a few days can decide if the MRG is full or only partially applicable. This regulation appears to be highly outdated and should be amended.

In addition to that, social housing (council homes and co-operative flats) is being financed by tax money. The object based subsidies are extremely expensive and are not being evaluated over time. That means that once a tenant gets hold of a council home, he/she can keep it as long as he/she pleases, even if the requirements for obtaining a council (and therefore subsidised) home are long gone (i.e. the tenant's wage is already high enough to rent a normal flat). Even if the tenant already earns enough money to rent a normal flat, he/she usually keeps the one offered by the council, because of the cheaper prices.

This constantly creates the need to build even more housing opportunities.

So we strongly ask for a periodical evaluation of tenant's incomes. If the income for example is too high to fulfill the requirements for a subsidised council home, the tenant should either be obliged to move to a normal flat (and therefore provide space to people in need) or pay an adequate amount of rent – which furthermore should be used to build new homes.

8. Our demands

a.) We ask for a **deregulation** of the already highly complicated tenancy law in Austria, in order to allow the market to regulate itself, eliminate privileges and create equal rights for all.

b.) Old tenants mostly pay extremely low fixed rents, since decades. There should be a contemporary possibility to **raise the rents of old contracts** to a level that is fair for the landlord and also in comparison to prices other tenants pay.

⁷ Status 2011, by now this number is even higher, resulting in the percentage of old flats being lower.

c.) The catalogue of **operating costs**, which can be passed on from the landlord to the tenant is also highly outdated. It is a rigid catalogue that is not capable of solving nowadays issues. New costs which are not covered by that catalogue occurred over time. Landlords have to cover for these costs by themselves, even though the beneficiaries are the tenants. This catalogue needs to be contemporarily widened.

Costs for energy performance certificates, security- or electricity checks for example are not covered by the catalogue of operating costs. These things however are solely conducted in favor of the tenants, have little to no benefit for the landlord and therefore it should be possible to pass those on to the tenants.

d.) Some costs for measures whose only beneficiaries are the tenants, have in fact to be taken by the landlord. Thermal insulation is one of these matters. If a landlord decides to apply thermal insulation to his/her house, he/she has to cover the costs all by him/herself. The only ones who get advantages out of such measures, in fact are the tenants. These measures help tenants save on costs for heating, where on the other hand the landlord can not ask for a higher rent. We ask for a way to do some sort of **contracting** in this regard, as for now there is no incentive for the landlords to do such measures.

The resulting macro-economic consequences of this in the end turn out to be negative for the state itself as a landlords won't assign such measures and therefore do not create tax money.

In any case, costs for the landlords are increasing, as they have to conduct energy saving measures, pay for maintenance, fulfill different new requirements (e.g. Energy Performance Certificates), etc.

These costs are increasing and have to be taken by the landlord at the moment. We ask for a way to compensate for these costs. This could be done by amending the catalogue of operating costs.

e.) The situation regarding **entrance rights** also is highly unsatisfactorily for tenants and landlords. The today applicable law that enforces spouses, registered or unregistered partners, parents or children or his siblings to enter an original contract and keep the amount of rent at the same level creates a two-class society as it favors one tenant over the other and is also unfair to the landlord

who's property could be blocked for decades, as under this rule it can easily be passed on from one generation to the next either without an increase or a noticeable increase in rent.

Today's tenants already are the 4th generation after a possible original tenant. That means in some cases rents are almost the same as they were 100 years ago.

The regulations regarding entrance rights are strongly outdated and need to be urgently revised, in a manner that solves the problem of the two class society and eliminates privileges.

f.) In case of a time limited contract, the applicable law forces landlords who let flats in old houses to **deduct the rent by 25%**. Every homeowner should have the right to do time limited contracts without a deduction in rent, as property is a basic civil right. A deduction of 25% of the (already regulated!) rent usually results in such low rents, that landlords sometimes not just don't earn anything anymore with it, but can't afford to pay for maintenance anymore.

This also has negative effects for the tenants as well, as the deduction is a rigid 25%, regardless of how long the time limitation is. For Austria there already is a minimum for time limitations, which is three years. Even if the contract is limited by time, the tenant (only the tenant) still has the opportunity to quit the contract immediately after one year. So for the landlords there is no security.

The deduction however is always 25%. So there is no incentive for a landlord to do longer time limitations than three years, which furthermore of course is bad for the tenants, as they have to fear about their contract every three years. There could at least be a reduced deduction for longer limitations, even if a full removal of this regulation would be better for the housing market in the long run.

g.) Protection against unwarranted eviction is one of the main pillars of the Austrian tenancy law.

It is nearly impossible to cancel a unlimited tenancy contract as long as there are no major misdemeanors. Basically of course tenants need protection against random eviction. Still in situations of own requirement of the landlord, for example for himself or his children, it is still very hard to cancel such a contract. Even if all the requirements are met, this procedure can take up to two or three years. There is an urgent need for creating an **accelerated proceeding** in cases of own requirement or abuse (e.g. messies or rental nomads).

Despite the overall slow procedure, the requirements for own requirement are very strict. Even if for example a landlord would need his own flat in order to use it as a home for his own family (parents, children, grandchildren), it is still nearly impossible to cancel a unlimited contract with a tenant.

A **simplification** of requirements in this regard is a necessity.

Furthermore there should be a feasible possibility to cancel contracts with tenants who occupy flat space only because of the low prices. Huge amounts of space remain practically unused and are therefore not available for larger families, because tenants with old, protected contracts are hoarding this space solely because it is inexpensive.

9. Summary

An inefficient housing market is majorly caused by rent control. Tenants who have an unlimited, controlled contract remain in their housing because they do not have a reasonable incentive to move, even if their needs for housing have changed over time and their housing thus no longer suits their needs. Housing opportunities keep being unavailable to other, mostly younger tenants, because the old ones just keep their flats due to the low rent prices.

Property owners often must use significant resources to maintain their property. At the same time they can't create any profit with it. That often prevents property owners from investing and developing their property more than absolutely necessary. Properties are often just maintained to the extent that rent allows and is required by law. So because there is absolutely no benefit for them, no renovation is taking place which ensures that properties meet the most modern standards for their interiors, technical facilities, safety, comfort and energy efficiency.

Keeping pre-war regulation in place removes the possibility for property owners to develop their properties, opportunities to create growth and jobs under normal market conditions are being lost.