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# **WAYS OUT OF THE EUROPEAN HOUSING CRISIS**

Tenure Innovation and Diversification  
in Comparative Perspective

ELGAR LAND AND HOUSING LAW AND POLICY

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# 1. Spain

**Sergio Nasarre-Aznar and Héctor Simón  
Moreno**

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## INTRODUCTION

This chapter<sup>1</sup> depicts the general features of the Spanish housing system and the role that alternative and intermediate housing tenures may play in facilitating access to housing. Spanish housing policies have prioritised homeownership, a substantial share of this coming with public support, since the end of the 1950s, when the country's economy was beginning to recover from the devastating effects of the Civil War (1936–9). Along with some other societal, financial and economic factors, this may explain the current high homeownership rate (76.2 per cent in 2019, the vast majority without a mortgage: 47.8 per cent of households are homeowners without a mortgage, the highest rate in Western Europe after Italy and Malta<sup>2</sup>); the progressive decline in the private rental sector since then; and what is assumed to be a relatively low – albeit not yet properly quantified – share of social rental housing.

Considering the current difficulties in accessing homeownership due to credit restrictions and the insecurity of the labour market since the 2007 Global Financial Crisis, which are increasing due to the consequences of the economic downturn caused by COVID-19,<sup>3</sup> recent reforms of the law governing urban

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<sup>1</sup> Made possible thanks to the research project 'Vivir en comunidad: nuevas reglas para un nuevo paradigma' (PID2020-112876GB-C31) funded by the Spanish Ministry of Economy and Competitiveness.

<sup>2</sup> Eurostat, 2019; <https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>.

<sup>3</sup> Spain has been the worst of OECD countries in managing it (G. Lafortune, *Sustainable development report 2020* (Cambridge: Cambridge University Press 2020) 20), while *The Lancet* reported several complaints by scientists and researchers related to allegations of discoordination and political intrusion (Source: [www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)31713-X/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)31713-X/fulltext), accessed 21 November 2020).

leases in 2019 (at national level) and 2020 (at Catalan level<sup>4</sup>) have been passed. So far these amendments have not succeeded in making leases a truly desired alternative to homeownership,<sup>5</sup> while attempts to increase the social housing stock<sup>6</sup> have only had limited success, which has led large municipalities<sup>7</sup> to accommodate low-income groups in substandard housing, such as hostels or shipping containers.<sup>8</sup> Other housing tenures, such as housing cooperatives, are still far from being a self-standing true alternative option to homeownership and leases.<sup>9</sup>

In this context, alternative and intermediate tenures, such as the types implemented in Catalonia in 2015 (shared and temporal ownerships), could become a model for Spain and other EU countries to achieve a continuum of housing tenures, as suggested by the New Urban Agenda 2016. As a matter of fact, they have been chosen as one of the top 50 out-of-the-box housing solutions to provide affordable housing in Europe<sup>10</sup> and are mentioned as a best practice in the Report ‘*Concrete actions for social and affordable housing in the EU*’,<sup>11</sup> as they try to mix the pros of homeownership (stability, freedom, autonomy, and so on) and those of leases (flexibility and affordability).

<sup>4</sup> Where a stronger rent control than that introduced in Berlin in 2020 has been put into force after an ochlocratic process. A similar one was announced in October 2021, to be passed for all of Spain in 2022 and to become effective in 2023.

<sup>5</sup> For reforms in Spain see S. Nasarre Aznar, *Los años de la crisis de la vivienda* (Valencia: Tirant lo Blanch 2020) 551 ff. The reforms made in Catalonia are too recent to access but there is already qualitative evidence that this affirmation may be real, such as those included at [www.diaridetarragona.com/tarragona/La-nueva-ley-de-los-alquileres-desincentiva-la-rehabilitacion-en-TGN-20201108-0047.html](http://www.diaridetarragona.com/tarragona/La-nueva-ley-de-los-alquileres-desincentiva-la-rehabilitacion-en-TGN-20201108-0047.html), accessed 22 November 2020.

<sup>6</sup> Even including intrusive measures that interfere with private contractual relationships, which have been taken at a regional level since 2015.

<sup>7</sup> Where people have concentrated in these turbulent times due to the absence of a proper policy of territorial cohesion.

<sup>8</sup> UNESCO Housing Chair URV, ‘L’habitatge compartit a Barcelona i la seva adequació als estàndards internacionals, Informe para la Oficina de la Sindica de Greuges de la ciudad de Barcelona’ (2020) [www.sindicadegreugesbcn.cat/pdf/monografics/lloguer.habitacions.pdf](http://www.sindicadegreugesbcn.cat/pdf/monografics/lloguer.habitacions.pdf), accessed 4 December 2020.

<sup>9</sup> K. Dol, *West European homeownership sectors and the Global Financial Crisis* (PhD, TU Delft 2020).

<sup>10</sup> Solution 46, 112. The publication is available at [www.feantsa.org/en/news/2019/12/11/hsp-publication-50-housing-solutions?bcParent=27](http://www.feantsa.org/en/news/2019/12/11/hsp-publication-50-housing-solutions?bcParent=27), accessed 26 June 2020.

<sup>11</sup> See S. Nasarre Aznar (ed) (2021), *Concrete actions for social and affordable housing in the EU*, The Foundation for European Progressive Studies (FEPS), 34 (Spain), 52 (UK) and 78 (the Netherlands).

## HISTORICAL EVOLUTION OF SPANISH HOUSING POLICIES

From a historical perspective, since the mid-twentieth century, most dwellings have been built to be sold.<sup>12</sup> Leases were the most common type of housing tenure at that time, at 51.4 per cent in 1950. The economic boom of the 1960s allowed millions of citizens to become homeowners for the first time, on the basis of housing policy adopted by General Franco's various governments. It marked the turning point at which homeownership came to be the preferred housing tenure, at the expense of leases. Against this backdrop, the current (still in force) Act 49/1960 of 21 July,<sup>13</sup> established a complete and successful system for organising, as a form of sustainable access to housing, multi-unit buildings: the condominium (*propiedad horizontal*).<sup>14</sup> At the same time, the 1964 Act on urban leases froze rents and triggered a decline in interest in this type of tenure as an investment for landlords, which was to remain the case until lease liberalisation in 1985.

After the Spanish Constitution of 1978<sup>15</sup> came into force (CE), the state continued to promote the construction of social housing (either by private developers or by public companies) for sale, through the State Housing Plans (*Planes Estatales de Vivienda y Suelo*), on the basis of arts 149.11 and 13 CE. Between 1940 and 2011, 6.7 million units of public housing was built (out of a total of 12.6 million main residences built during that period), most of them on a homeownership basis.<sup>16</sup> The Housing Plans 2009–12<sup>17</sup> and 2013–17<sup>18</sup>

<sup>12</sup> J.L. Bermejo Latre, 'Capítulo VI. La evolución de las políticas de vivienda en España del siglo XX', in F. López Ramón (ed), *Construyendo el derecho a la vivienda* (Madrid: Marcial Pons 2010) 169 ff. Rules such as qualification of the dwelling, orientation towards specific social strata, minimum construction standards or limitation of either the sale price or the rent are elements that have been in existence, broadly speaking, from the beginning as regards social housing.

<sup>13</sup> Spanish Official Gazette (BOE) n. 176, 23.7.1960. The BOE may be consulted at [www.boe.es](http://www.boe.es), accessed 26 October 2021.

<sup>14</sup> The underlying reasons of such success are explained in S. Nasarre Aznar, 'Chapter 10 – New challenges to Spanish condominiums in an economic and pandemic crisis', in R.K. Lippert and S. Treffers (eds), *Condominium Governance and Law in Global Urban Context* (Abingdon: Routledge 2021).

<sup>15</sup> An official English translation may be found at [www.congreso.es/portal/page/portal/Congreso/Congreso/Hist\\_Normas/Norm/const\\_espa\\_texto\\_ingles\\_0.pdf](http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/const_espa_texto_ingles_0.pdf), accessed 15 October 2021.

<sup>16</sup> C. Trilla and J. Bosch, 'El parque público y protegido de viviendas en España: un análisis desde el contexto europeo' (2018) 197 Documento de trabajo, Fundación Alternativas, 22.

<sup>17</sup> Royal Decree 2066/2008 of 12 December (BOE n. 309, 24.12.2008).

<sup>18</sup> Royal Decree 233/2013 of 5 April (BOE n. 86, 10.4.2013).

constituted a significant shift, as access to social rental housing started to be promoted as well (the latter Plan ceased funding homeownership, both in terms of building – subsidies for developers – and buying – subsidies for purchasers), and focused on restoration, regeneration and urban renewal. The engagement of cooperatives and banks as social housing providers and the increased use of intermediation instead of direct housing provision were remarkable changes as well, at least in the short term.<sup>19</sup> The State Housing Plan in force for the period 2018–21<sup>20</sup> foresaw grants to foster access to both rental properties and homeownership for young people (under the condition that the properties are in municipalities with fewer than 5,000 inhabitants) and to improve energy efficiency and housing accessibility, as well as rehabilitation.

Despite being present in the prospective document ‘España 2050’,<sup>21</sup> the implementation of alternative and intermediate tenures (AITs) is not on the current Spanish government’s political agenda; the enactment of a general housing law for Spain (currently at draft stage) and the creation of a rent control system for leases seem to be its priorities in the short term.<sup>22</sup>

As the responsibility for regional planning and housing has been assumed by the Spanish Autonomous Communities on the basis of art. 148.3 CE, they have their own housing plans and policies, which might not include all measures funded at the national level.<sup>23</sup> Due to the scarcity of affordable housing and the inability of public authorities to manage and provide enough social housing, some Autonomous Communities have implemented both soft measures to increase the social housing stock (for instance, a legal right of pre-emption granted to the Public Administration in case a dwelling is transferred to a third party, for example due to a mortgage enforcement procedure; Andalusia Act 1/2018 of 26 April<sup>24</sup> and Catalan Decree-law 1/2015 of 24 March<sup>25</sup>) and hard

<sup>19</sup> It remains to be seen whether this approach will last in the long term: see M. Pareja-Eastaway and T. Sánchez-Martínez, ‘More social housing? A critical analysis of social housing provision in Spain’ (2017) 4 *Critical Housing Analysis* 1, 124 ff.

<sup>20</sup> Royal Decree 106/2018, of 9 March (BOE n. 61, 10.3.2018).

<sup>21</sup> Gobierno de España, ‘España 2050. Fundamentos y propuestas para una Estrategia Nacional de Largo Plazo’ (2021) [www.lamoncloa.gob.es/presidente/actividades/Documents/2021/200521-Estrategia\\_Espana\\_2050.pdf](http://www.lamoncloa.gob.es/presidente/actividades/Documents/2021/200521-Estrategia_Espana_2050.pdf), accessed 1 November 2021.

<sup>22</sup> See an aprioristic criticism on this draft at S. Nasarre-Aznar, ‘La tormenta perfecta que precede a la Ley de Vivienda’ (2021) *Hay derecho*, available at [www.hayderecho.com/2021/10/13/tormenta-perfecta-precede-ley-vivienda/](http://www.hayderecho.com/2021/10/13/tormenta-perfecta-precede-ley-vivienda/), accessed 3 November 2021.

<sup>23</sup> An agreement between the State and each Autonomous Community is needed to fund regional plans with national public funding.

<sup>24</sup> BOE n. 127, 25.5.2018.

<sup>25</sup> BOE n. 130, 1.6.2015.

and intrusive interventions. Examples of the latter are the expropriation of the dwelling in cases where the social function of the property is not fulfilled according to art. 33.2 CE (for example when it remains empty without just cause for a period of two years: Catalonia Act 4/2016 of 23 December)<sup>26</sup> or penalties of up to 90,000 euros for violations of the strong rent control system implemented in Catalonia under Act 11/2020 of 18 September.<sup>27</sup> The proliferation of these rules at a regional level fails to provide legal certainty for landlords and housing owners, and it remains to be seen whether they can achieve their objectives.<sup>28</sup>

## Housing Tenures

According to the National Statistics Office (INE),<sup>29</sup> in 2019 in Spain homeownership was at 76.1 per cent, dominating leases (18.3 per cent) – which have consistently decreased in Spain since the 1960s, in line with almost all European countries<sup>30</sup> – and other tenures (such as gratuitous use or usufructs, which accounted for 5.6 per cent). In order to interpret the distribution of these housing tenures, the following must be taken into consideration:

- (a) First, the above-mentioned housing policies adopted over the course of the previous decades at a national level may explain the generalisation of homeownership. But there are also differences in the functioning of the property and rental markets in Spain that help to understand the legal framework in which the unstoppable spread of homeownership has taken place,<sup>31</sup> such as the following:
  1. traditional tax incentives for the acquisition of properties (only implemented quite recently for the rental market);

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<sup>26</sup> BOE n. 7276, 29.12.2016.

<sup>27</sup> BOE n. 8229, 21.9.2020. A review of the implications that this rule has had for the private rental market may be found in S. Nasarre Aznar, 'El control de la renta de los arrendamientos urbanos de vivienda en Cataluña: el riesgo de excluir a los ya excluidos' (2020) *Hay Derecho*, [www.hayderecho.com/2020/10/28/control-renta-arrendamientos-urbanos-vivienda-cataluna-riesgo-excluir/](http://www.hayderecho.com/2020/10/28/control-renta-arrendamientos-urbanos-vivienda-cataluna-riesgo-excluir/), accessed 29 October 2020.

<sup>28</sup> A review of the measures taken at regional level and their limited efficacy so far may be found in *ibid*, 484 ff.

<sup>29</sup> INE (2 April 2020), 'Encuesta Continua de Hogares', 6, available at [www.ine.es/prensa/ech\\_2019.pdf](http://www.ine.es/prensa/ech_2019.pdf), accessed 26 June 2020.

<sup>30</sup> C. Whitehead et al., *The Private Rented Sector in the New Century – A Comparative Approach* (Denmark: Boligøkonomisk Videncenter 2012) 23.

<sup>31</sup> S. Nasarre Aznar et al., 'Tenancies as an alternative to homeownership in Spain, Portugal and Malta? The legal drivers in a European context', in C. Schmid (ed), *Tenancy Law and Housing Policy in Europe* (Cheltenham: Edward Elgar Publishing 2015) 76 ff. See also S. Nasarre Aznar, n 27, 59.



2. a full-structured mortgage market since 1872, supervised by a public authority, coupled with a mature mortgage securitisation system for the income (proceeds) derived from mortgages, which ensures funding for mortgage lenders (such a structured market does not exist in the rental market, even though real estate investment trusts –REITs – were regulated in 2009);<sup>32</sup>
3. certainty of the rights of buyers and lenders since the enactment of the Spanish Civil Code in 1889 (CC) (on the contrary, the law on urban leases has been very highly volatile and extremely pendular: see below);
4. a traditional and expeditious system for the enforcement of mortgage foreclosures (in contrast with the burdensome procedure for eviction due to non-payment of rent);
5. property transactions supervised by Latin notaries and land registrars, who act as gatekeepers (generally absent in the rental market).

These elements have provided a secure, affordable (with swift access to funding) and attractive market for homeownership. In addition, it should be taken into consideration that the Spanish welfare state is relatively weak, so homeownership is perceived as a ‘safety net’ for times of vulnerability (such as old age, sickness or unemployment).<sup>33</sup> In addition, from the affordability point of view, since 2012 homeownership has been more affordable than renting (as it had been until 2007: see below). It is not just by chance, then, that citizens have a rational preference for homeownership in Spain.<sup>34</sup>

- (b) Second, the legal framework on urban leases has been highly volatile. Thus, the Urban Leases Act of 1964 implemented a tenant-oriented legal framework by freezing the rents and forcing the extension of lease contracts. These measures were abolished by Royal Decree 2/1985,<sup>35</sup> which, under a socialist regime, started an ultraliberal regulation of urban leases. The original version of the current law of urban leases (LAU 1994<sup>36</sup>) sought to strike a balance between the rights and obligations of both parties by means of regulating a five-year protection period for the tenant regarding the duration of the lease, updating of the lease rent

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<sup>32</sup> Act 11/2009, of 26 October (BOE n. 259, 27.10.2009).

<sup>33</sup> The Social Security Reserve Fund, which was set up in 2003 with the aim of accumulating surplus to cover payments of contributory pensions, amounted to 66.815 billion euros in December 2011, whereas it amounted to only 2.150 billion euros in December 2019.

<sup>34</sup> S. Nasarre Aznar, n 27, 59.

<sup>35</sup> BOE n. 111, 9.5.1985.

<sup>36</sup> BOE n. 282, 25.11.1994.

(the rent could only be increased annually according to the Consumer Price Index) and transfer of the rented dwelling (the principle of *emptio non tollit locatum*). The subsequent amendments to LAU 1994 by Act 4/2013 of 4 June,<sup>37</sup> which liberalised the lease contract (for example, the five-year protection period was reduced to three years), and by Royal Decree Law 7/2019 of 1 March<sup>38</sup> (which extended the three-year protection period again, to five and seven years depending on whether the landlord is a natural or legal person, respectively), have not succeeded in making leases a true alternative to homeownership; indeed, none of them followed successful European models.<sup>39</sup> However, it is also true that the private rental sector has experienced slight growth since the liberalisation that took place in 2013 – but it seems that this development has more to do with market forces than with a real interest in renting as a tenure option. For example, given an unemployment rate of 16.5 per cent and a youth unemployment rate of 40.6 per cent in September 2020,<sup>40</sup> many households are forced to rent, because they do not have easy access to the funding needed to buy their own home; in addition, since 2013 there have been barely any public policies that could help them to obtain the required financing.<sup>41</sup> Finally, while it is not the main reason for the lease bubble that started in 2016 (this being that less affluent households had been unable to buy since the GFC of 2007), tourism has negatively influenced access to the private rental market in some areas in a number of cities, for example in some districts of Barcelona.<sup>42</sup> As tourist apartments

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<sup>37</sup> BOE n. 134, 5.6.2013.

<sup>38</sup> BOE n. 55, 5.3.2019.

<sup>39</sup> See S. Nasarre Aznar et al., n 31, 67 ff.; and S. Nasarre Aznar, 'Leases as an alternative to homeownership in Europe: some key legal aspects' (2014) 22 European Review of Private Law 6, 815 ff.

<sup>40</sup> Eurostat, Unemployment statistics, [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Unemployment\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Unemployment_statistics), accessed 30 October 2020.

<sup>41</sup> According to Fotocasa (2019) 'Los jóvenes y la vivienda en 2019', 3, young people do not rent because of the freedom or flexibility leases entail or because they can choose better homes, but because of necessity: as they cannot afford to buy a dwelling, they rent in the meantime. Available at <https://research.fotocasa.es/wp-content/uploads/2019/10/informe-los-jovenes-y-la-vivienda-en-2018-2019.pdf>, accessed 26 June 2020. For an economic analysis of the rental market, see D. López-Rodríguez and M. de los Llanos Matea, 'Recent developments in the rental housing market in Spain' (Bank of Spain, Analytical Articles, Economic Bulletin No. 3, 2019), [www.bde.es/f/webbde/SES/Secciones/Publicaciones/InformesBoletinesRevistas/ArticulosAnaliticos/19/T3/descargar/Files/be1903-art25e.pdf](http://www.bde.es/f/webbde/SES/Secciones/Publicaciones/InformesBoletinesRevistas/ArticulosAnaliticos/19/T3/descargar/Files/be1903-art25e.pdf), accessed 26 June 2020.

<sup>42</sup> M.-À. García-López et al., 'Do short-term rental platforms affect housing markets? Evidence from Airbnb in Barcelona' (2019) Working Paper, 5. Available

are excluded from the scope of application of LAU 1994, their regulation is under the jurisdiction of the regional governments.<sup>43</sup>

- (c) Third, the total amount of social rental housing available in Spain remains unknown but it is commonly assumed that, at present, it barely makes up around 2 per cent of the total housing stock. According to a recent non-exhaustive survey conducted by the Spanish Ministry for Development,<sup>44</sup> there are around 290,000 public-owned units throughout Spain. So far, housing policies have failed to substantially increase this share. At a national level, 67,514 ‘protected housing units’ (that is, with a limited sale or rental price) were delivered in 2007 and 53,332 in 2012; however, the number declined progressively until it reached the 5167 units delivered in 2018 – the worst ‘protected housing delivery’ scenario since 1950.<sup>45</sup> To give a local-level example, the mayor of Barcelona, Ada Colau, promised to build 18,500 social housing units in a decade – with 3541 in the five-year period 2016–20 – but the real numbers delivered are far below those.<sup>46</sup> The model of social housing adopted by Spain (social housing only for those who cannot access the free market) is cyclical; that is, it only allows social housing to exist when the economy is doing well and the State is collecting taxes (that is, when it is not needed very much), but not when there is an economic downturn (that is,

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at <https://ieb.ub.edu/wp-content/uploads/2019/07/2019-IEB-WorkingPaper-05-1.pdf>, accessed 26 June 2020.

<sup>43</sup> Regional laws share common patterns: the property is located on a certain type of land, such as land intended for residential/urban use; the assignment of the dwelling is temporary, which varies according to the Autonomous Community, but short-term use is always presumed; accommodation for tourist purposes is offered in exchange for a monetary benefit; it must be a regularly offered service; the dwelling must be furnished and equipped for immediate use; and it must be marketed and promoted in tourist promotion channels, see Isabel M. Román Sánchez et al., ‘La legislación sobre los apartamentos turísticos y viviendas de uso turístico en España, comparativa por comunidades Autónomas’ (2017) 3 *International Journal of Scientific Management and Tourism* 4, 404.

<sup>44</sup> Ministerio de Transportes, Movilidad y Agenda Urbana, DG de Vivienda y Suelo, Observatorio de Vivienda y Suelo, ‘Boletín especial vivienda social 2020’ (2020), 4 available at <https://apps.fomento.gob.es/CVP/handlers/pdfhandler.ashx?idpub=BAW072>, accessed 3 November 2020.

<sup>45</sup> Defensor del Pueblo, ‘La vivienda protegida y el alquiler social en España’ (Separata del volumen II del Informe anual 2018, Madrid 2019) 12–13. Available at [https://www.defensordelpueblo.es/wp-content/uploads/2019/09/Separata\\_vivienda\\_protegida.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2019/09/Separata_vivienda_protegida.pdf), accessed 26 October 2020.

<sup>46</sup> See [https://cat.elpais.com/cat/2020/01/25/catalunya/1579970610\\_848636.html](https://cat.elpais.com/cat/2020/01/25/catalunya/1579970610_848636.html); [https://www.elnacional.cat/es/bcn-hub/colau-pisos-prefabricados-barcelona\\_238998\\_102.html](https://www.elnacional.cat/es/bcn-hub/colau-pisos-prefabricados-barcelona_238998_102.html), accessed 29 November 2020.

when it is needed), as has been the case since 2007.<sup>47</sup> In addition, there is a broad variety of providers/managers in the social housing sector (public, mixed, private for-profit and private non-profit) that work in an unstructured and uncoordinated manner, with significant differences in terms of legal character and size (housing stock and personnel).<sup>48</sup> Finally, it must be considered here – as it is often ignored in certain literature – that 453,942 households became full owners of their home thanks to some kind of public support during the period 2005–17 alone. To these numbers, as has been said, millions should be added from previous decades; today, this is allowing many vulnerable and elderly households to live in their own homes without owing money to any kind of public or private landlord or mortgage provider.

In light of the foregoing, it seems plausible to provide people with different options, that is, functional forms of housing tenures for each type of need and for each type of household (*continuum*), as suggested by the United Nations New Urban Agenda 2016.<sup>49</sup> To that end, more affordable homeownership, an efficient legal framework for leases or innovative collaborative housing schemes may help to achieve such an objective. From the AIT perspective, new housing tenures that could universalise and democratise access to homeownership by combining stability (homeownership has been proved to increase residential stability among low-income households<sup>50</sup>) with the prevention of household over-indebtedness<sup>51</sup> could help to achieve such a *continuum* in compliance with art. 47 CE (which lays down the right to enjoy decent and adequate housing). In this sense, only the region of Catalonia has so far made inroads into the implementation of a *continuum* of housing tenures through the temporary and shared ownership schemes (see below).

### Affordability Issues

The preference for homeownership pointed out above means 47.8 per cent of the Spanish population in 2019 lived in properties without a mortgage burden;

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<sup>47</sup> M. Stephens, 'Land value capture through planning and taxation', in M. Stephens et al. (eds), *UK Housing Review 2019* (Coventry: Chartered Institute of Housing 2019) 11 ff.

<sup>48</sup> See for more details N. Lambea Llop, 'Social Housing Management Models in Spain' (2016) *Revista catalana de dret públic* 52, 115 ff.

<sup>49</sup> Para. 36. Available at <http://uploads.habitat3.org/hb3/NUA-English.pdf>, accessed 30 October 2020.

<sup>50</sup> K. Aarland and C.K. Reid, 'Homeownership and residential stability: does tenure really make a difference?' (2019) 19 *International Journal of Housing Policy* 2, 165 ff.

<sup>51</sup> S. Nasarre Aznar, n 27, 519.

other countries are far below that figure, for example the Netherlands (8.5 per cent), Sweden (12.2 per cent) and Denmark (14 per cent).<sup>52</sup> It is therefore no surprise that Spanish cities have a lower rate of households which are over-indebted through housing costs (10 per cent, which has decreased since 2010) than other countries, such as the Netherlands (12.1 per cent), Germany (17.6 per cent) or Denmark (21.2 per cent).

Indeed, homeowners with no outstanding mortgage or loans had a housing cost overburden rate of just 1.8 per cent in 2019 (the rate was 3.7 per cent for owners with a mortgage or a loan); in contrast, the rate of overburdened tenants (paying rent at the market price) stood at 37.4 per cent in 2019.<sup>53</sup> This may be explained by the fact that in Spain, renting was more expensive than buying a dwelling with a mortgage until 2007, and again from 2012 to date. In fact, in the period 2014–19, rents increased progressively (by more than 30 per cent); consequently, young people, lower income households and those residing in metropolitan areas have experienced problems of housing affordability.<sup>54</sup> All in all, in general terms the housing cost overburden rate of Spanish households stood at 8.5 per cent in 2019, somewhat below the European average (10.1 per cent).

This confirms that the problem of housing affordability affects those who cannot buy or rent in the free market without becoming over-indebted.<sup>55</sup> As a result, labour market insecurity, as well as the stringent requirements for gaining access to credit that were set by lending institutions after 2007 – which have been aggravated by Act 5/2019<sup>56</sup> – mean the rental market is the only available housing option for those households that cannot access homeowner-

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<sup>52</sup> Eurostat, ‘Distribution of population by tenure status, 2018 (per cent)’ (2018) available at [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Distribution\\_of\\_population\\_by\\_tenure\\_status\\_2018\\_\(%25\)\\_SILC20.png](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Distribution_of_population_by_tenure_status_2018_(%25)_SILC20.png), accessed 30 October 2020.

<sup>53</sup> According to Eurostat, the housing cost overburden rate is the percentage of the population living in households where the total housing costs (‘net’ of housing allowances) represent more than 40 per cent of disposable income (‘net’ of housing allowances). See <https://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tessi164&language=en>, accessed 30 October 2020.

<sup>54</sup> Banco de España, ‘El mercado de la vivienda en España entre 2014 y 2019’, Documentos ocasional, N° 2013 (Madrid 2020) available at [www.bde.es/f/webbde/SES/Secciones/Publicaciones/PublicacionesSeriadas/DocumentosOcasionales/20/Fich/do2013.pdf](http://www.bde.es/f/webbde/SES/Secciones/Publicaciones/PublicacionesSeriadas/DocumentosOcasionales/20/Fich/do2013.pdf), accessed 26 June 2020.

<sup>55</sup> S. Nasarre Aznar, n 27, 393.

<sup>56</sup> BOE n. 65, 16.3.2019. This Act – in line with the Mortgage Credit Directive 2014/17/EU – lays down the duty of the creditor to make a thorough assessment of the consumer’s creditworthiness before granting the residential mortgage loan, which may lead to a decrease in the loan-to-property value ratio and other constraints.

Table 1.1 *Composition of households, 2019*

	Value	Annual variation
Total number of households	18,625,700	0.5
Average size of households	2.5	0.0
Single person under 65 years old	2,784,500	3.3
Single person over 65 years old	2,009,100	-1.4
Couple without children	3,937,200	0.6
Couple with children	6,219,000	-1.3
Mother or father with children	1,887,500	0.5

Source: INE.

ship.<sup>57</sup> These consist mainly of young people;<sup>58</sup> single, separated or divorced people who are living alone or with others; and single-parent families,<sup>59</sup> but also persons struck by chronic and rising unemployment.

### Household Distribution

In terms of household structure, the average number of households increased by 89,800 during 2019 to reach 18,625,700 million.<sup>60</sup> The average household size stood at 2.50 people, the same figure as the previous year. It is worth highlighting that the most common type of household in 2019 was that of couples, with or without children, accounting for 54.5 per cent of the total. There were 4,793,700 people living alone in 2019 (in a total population of nearly 47 million). Of this number, 2,009,100 (41.9 per cent) were 65 or older, of which 72.3 per cent were women. When compared with the 2018 average values, the number of people living alone increased by 1.3 per cent in 2019 (61,300 more). The Spanish household structure is summarised in Table 1.1.

### State of the Housing Stock

The Population and Housing Census of 2011 showed that there were 9,814,785 buildings and 25,208,623 dwellings. Of these, approximately 55 per cent

<sup>57</sup> Following C. Schmid, 'Introduction', in C. Schmid (ed), *Tenancy Law and Housing Policy in Europe* (Cheltenham: Edward Elgar Publishing 2018) 3, the lease is the 'main accessible housing option for many low-income households'.

<sup>58</sup> A. Moreno Mínguez, 'Economic crisis and the new housing transitions of young people in Spain' (2016) 16 *International Journal of Housing Policy* 2, 177 ff.

<sup>59</sup> C. Trilla Bellart, *La política de vivienda en una perspectiva europea comparada* (Barcelona: La Caixa 2001) 90.

<sup>60</sup> Source: INE (2 April 2020), n 29.

(13,759,266 dwellings) were built prior to 1980, and almost 21 per cent (5 226 133 dwellings) are more than 50 years old.<sup>61</sup> Furthermore, 5.52 per cent of main residences, 6.80 per cent of secondary homes and 14.93 per cent of empty homes were in a bad or deficient condition in 2011.<sup>62</sup> These differences make sense as homeowners tend to show a greater commitment to keeping the dwelling in a good state of repair.<sup>63</sup> Façades, dividing walls and roofs are the elements with the greatest number of deficiencies, followed by the facilities and, lastly, the foundations and structure.<sup>64</sup> As housing rehabilitation has not been a priority for many years (housing policies have focused on the construction of new dwellings), this activity only makes up 28.7 per cent of the work carried out by the construction industry (while it makes up 41 per cent on average in the EU). This may explain the state of the Spanish residential housing stock.<sup>65</sup>

With regard to housing accessibility (that is, for the elderly or disabled), according to Royal Decree 173/2010 of 19 February,<sup>66</sup> all existing residential buildings should comply with the basic universal accessibility standards provided in the Technical Building Code (Royal Decree 314/2006 of 17 March),<sup>67</sup> without prejudice to other regional and local regulations that can improve these minimums.<sup>68</sup> The March 2018 report 'The accessibility of housing in

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<sup>61</sup> Act 8/2013, of June 26, on urban rehabilitation, regeneration and renewal (BOE n. 153, 27.6.2013).

<sup>62</sup> Ministerio de Fomento, DG de Arquitectura, Vivienda y Suelo, Observatorio de Vivienda y Suelo, 'Boletín Especial Censo 2011 – Parque edificatorio' (2014) 75, available at <https://apps.fomento.gob.es/CVP/handlers/pdfhandler.ashx?idpub=BAW021>, accessed 26 June 2020.

<sup>63</sup> T. Zumbro, 'The relationship between homeownership and life satisfaction in Germany' (2014) 29 *Housing Studies* 3, 334 ff.

<sup>64</sup> Source: Colegio de Aparejadores, Arquitectos Técnicos e Ingenieros de Edificación de Barcelona, 'Informe del mantenimiento del parque edificado residencial en España' (2019) 16, available at [www.apabcn.cat/documentacio/areatecnica/PDFS\\_SHAREPOINT/Informe\\_mantenimiento\\_parque\\_edificado\\_residencial\\_Espana.pdf](http://www.apabcn.cat/documentacio/areatecnica/PDFS_SHAREPOINT/Informe_mantenimiento_parque_edificado_residencial_Espana.pdf), accessed 26 June 2020.

<sup>65</sup> Ministerio de Fomento, S.E. de Infraestructuras, Transporte y Vivienda, 'Boletín Especial Plan de Infraestructuras, Transporte y Vivienda PITVI (2012–2024)' (2013) 15, available at [www.fomento.gob.es/recursos\\_mfom/pdf/E5389C54-BA5B-4CFA-9416-103C3C968A8F/122304/PITVI\\_Bloque\\_III\\_Vivienda.pdf](http://www.fomento.gob.es/recursos_mfom/pdf/E5389C54-BA5B-4CFA-9416-103C3C968A8F/122304/PITVI_Bloque_III_Vivienda.pdf), accessed 26 June 2020.

<sup>66</sup> BOE n. 61, 11.3.2010.

<sup>67</sup> BOE n. 74, 28.3.2006.

<sup>68</sup> J.A.M. De la Cerda Ballesteros and J. Flores Rodríguez, 'Accesibilidad universal y no discriminación en inmuebles residenciales de uso privado' (2013) *Revista Crítica de Derecho Inmobiliario* 737, 1539 ff.

Spain',<sup>69</sup> which analysed the universal accessibility of single-family homes and multi-storey buildings, showed that only 0.6 per cent were universally accessible – not dissimilar to the situation in Germany and Sweden.<sup>70</sup>

## TYPES OF TENURE

### **Squatting and Other Examples of Substandard Housing ('Rent Minus')**

The European Typology on Homelessness and Housing Exclusion (ETHOS), developed by FEANTSA,<sup>71</sup> classifies living situations that constitute homelessness or housing exclusion. Beyond the categories of homeless and roofless there are other situations, such as houseless, insecure housing and inadequate housing, that are also worth highlighting. In Spain, there is a lack of official data in terms of the classification used in the ETHOS Table.<sup>72</sup> However, the 2018 Foessa Foundation's survey on integration and social needs<sup>73</sup> estimates that 27.9 per cent of the population suffers from a lack of access to housing in Catalonia. In the Diocese of Barcelona, this number reaches 36.3 per cent. This situation is aggravated in the case of non-EU foreigners (71.8 per cent), the unemployed (up to 69.2 per cent) and families with minors (44.2 per cent). These are hidden realities that do not appear in any public register; there is no written evidence of them. These persons do not have any legal guarantees and they cannot usually apply for public aid. Examples of the Spanish and Catalan realities on the ground are the following.<sup>74</sup>

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<sup>69</sup> Report commissioned by Fundación Mutua de Propietarios (<https://mutuadepropietarios.es>) for the UNESCO Housing Chair of the University Rovira i Virgili, <http://housing.urv.cat/en/>, accessed 26 June 2020.

<sup>70</sup> To allow for a European perspective, Germany and Sweden were included in the comparison (the percentage was 2.5 for Sweden and 1.5 for Germany); see S. Nasarre-Aznar and H. Simón Moreno, 'Housing not for all: The lack of universal accessibility to housing in multi-unit buildings in Spain, Sweden and Germany' (2019) 12 Journal of Property, Planning and Environmental Law 1, 35–54.

<sup>71</sup> Available at [www.feantsa.org/en/toolkit/2005/04/01/ethos-typology-on-homelessness-and-housing-exclusion](http://www.feantsa.org/en/toolkit/2005/04/01/ethos-typology-on-homelessness-and-housing-exclusion), accessed 26 June 2020.

<sup>72</sup> An example is the report conducted by A. de Inés et al., *El sensellarisme a Barcelona. Evolució i joves en situació de sensellarisme* (2019) 16, that only provides part of the information needed to complete an ETHOS Table for Barcelona. Available at [www.bcn.cat/barcelonainclusiva/ca/2019/11/Diagnosi\\_sensellarisme\\_2019\\_WEB.pdf](http://www.bcn.cat/barcelonainclusiva/ca/2019/11/Diagnosi_sensellarisme_2019_WEB.pdf), accessed 26 June 2020.

<sup>73</sup> Available at [www.caritasbisbatvic.cat/wp-content/uploads/2019/07/2019\\_07\\_03\\_CC\\_Informe\\_FOESSA\\_Catalunya.pdf](http://www.caritasbisbatvic.cat/wp-content/uploads/2019/07/2019_07_03_CC_Informe_FOESSA_Catalunya.pdf), accessed 26 June 2020.

<sup>74</sup> Conclusions based on the report UNESCO Housing Chair URV (2020), n 8.



- (1) *Squatting*. It is estimated that around 87,500 households occupy properties illegally in Spain.<sup>75</sup> Around 80 per cent of these buildings belong to legal entities (for example banks).<sup>76</sup> Squatting constitutes the crime of usurpation (art. 245.2 of the Spanish Criminal Code 1995);<sup>77</sup> according to data provided by the INE, this was the crime that saw the highest increase between 2008 and 2013 (168 per cent).<sup>78</sup> Be that as it may, squatting is the result of the failure of public policies:<sup>79</sup> civil law and criminal law procedures for repossessing squatted properties may last more than six months or even more than a year;<sup>80</sup> public authorities have failed to increase the stock of public housing (as pointed out above); and, incredibly, squatting has even been protected as a temporary residential solution by the Catalan government through Decree-Law 17/2019 of 23 December,<sup>81</sup> and through RDL 1/2021<sup>82</sup> for all of Spain.

<sup>75</sup> Institut Cerdà, 'La ocupación ilegal: realidad social, urbana y económica ... un problema que necesita solución' (2017) 17, available at [www.icerda.org/es/producto/la-ocupacion-ilegal-realidad-social-urbana-y-economica-un-problema-que-necesita-solucion-pdf/](http://www.icerda.org/es/producto/la-ocupacion-ilegal-realidad-social-urbana-y-economica-un-problema-que-necesita-solucion-pdf/), accessed 26 October 2021.

<sup>76</sup> N.M. Sarries, 'Al menos 70.000 pisos de la banca están ocupados de forma ilegal', *Diario Expansión*, 16 April 2017, [www.expansion.com/empresas/banca/2017/04/16/58f3af7f268e3ebc4f8b459b.html](http://www.expansion.com/empresas/banca/2017/04/16/58f3af7f268e3ebc4f8b459b.html), accessed 30 October 2020.

<sup>77</sup> 'Whoever occupies a property, dwelling or building pertaining to another, without due authorisation, or who remains there against the will of the owner, shall be punished with the penalty of a fine, paying a daily penalty to be determined, for a period of three to six months.'

<sup>78</sup> C. Márquez, 'Las condenas por ocupación crecen un 168% durante la crisis', *Diario el Mundo*, 29 January 2015, [www.elmundo.es/blogs/elmundo/mas-datos/2015/01/29/las-condenas-por-ocupacion-crecen-un-168.html](http://www.elmundo.es/blogs/elmundo/mas-datos/2015/01/29/las-condenas-por-ocupacion-crecen-un-168.html), accessed 30 October 2020.

<sup>79</sup> For more details see H. Simón Moreno, 'La ocupación de viviendas sin título habilitante y los derechos fundamentales y humanos en conflicto' (2021) *Revista Crítica de Derecho Inmobiliario* 786, 2161 ff.

<sup>80</sup> The average duration of all civil law procedure aimed at recovering the possessions of the property is 9.4 months (*verbales posesorios*), according to the General Council of the Judiciary, [www.poderjudicial.es/cgpj/es/Temas/Transparencia/ch.Estimacion-de-los-tiempos-medios-de-duracion-de-los-procedimientos-judiciales.formato1/?idOrg=20&anio=2019&territorio=España&proc=Asuntos%20civiles](http://www.poderjudicial.es/cgpj/es/Temas/Transparencia/ch.Estimacion-de-los-tiempos-medios-de-duracion-de-los-procedimientos-judiciales.formato1/?idOrg=20&anio=2019&territorio=España&proc=Asuntos%20civiles), accessed 15 October 2021.

<sup>81</sup> BOE n. 45, 21.2.2020. This rule establishes temporary accommodation for the benefit of 'squatters' in a social and economic emergency, in the same dwelling that they are 'squatting', if there is no social shelter available (art. 6.8). This will be the case on condition that the possession of the dwelling is at least six months prior to the date of its acquisition or the beginning of their management by the administration and the squatters have not renounced an award of social emergency housing in the last two years. The situation of temporary accommodation does not grant squatters priority in the allocation of social housing by the public administration.

<sup>82</sup> BOE no. 17, 20.1.2021.

- (2) *Forced room rental.* The LAU 1994 applies to all lease contracts the object of which is a liveable dwelling and whose primary purpose is to satisfy the tenant's need for permanent accommodation (art. 2 LAU 1994). However, room rental is not included within the scope of the LAU 1994,<sup>83</sup> which has far-reaching consequences for the tenant's legal position; for example, there is no protection period for the benefit of the tenant and there is no limit placed on the amount required as a deposit (limited to one monthly rent under art. 36 LAU 1994). As a result, tenants who rent rooms (who are mainly, but not exclusively, students and professionals)<sup>84</sup> suffer from a lack of security of tenure. In addition, renting a room is not always an affordable housing option: young people must allocate more than 40 per cent of their disposable income to pay for the rental of a room in the Barcelona region.<sup>85</sup> Room rental may lead to situations of overcrowding (for example in the case of immigrants arriving in Spain for the first time).<sup>86</sup>
- (3) *Subletting of rooms.* On some occasions, tenants rent rooms in the dwelling they rent. According to the law, consent of the landlord is required for the tenant to undertake the partial (not total) subletting of the dwelling (art. 8.2 LAU 1994); otherwise the landlord can terminate the lease (art. 27.2.c) LAU). But landlords are not always asked for their consent. This leaves the sublessee in a weak legal position. Furthermore, the subletting rent shall never be higher than the rent paid by the tenant to the landlord – but this may not be respected by the tenant.
- (4) *Black market of leases.* In some cases, people without any legal ownership title rent out properties. The situation of their 'tenants' is similar to a precarious possession (that is, a *de facto* possessory situation that will last until the owner claims the property back). An example of this

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<sup>83</sup> H. Simón Moreno, 'Capítol 22. El lloguer d'habitacions', in S. Nasarre Aznar, H. Simón Moreno and E. Molina Roig (eds), *Un nou dret d'arrendaments urbans per a afavorir l'accés a l'habitatge* (Barcelona: Atelier 2018) 293 ff; see also J.M. Botello Hermosa, 'El contrato de arrendamiento de habitación: la problemática de su regulación. ¿Ley de Arrendamientos Urbanos o Código Civil?' (2016) *Revista Crítica de Derecho Inmobiliario* 75, 1034 ff.

<sup>84</sup> Source: Redacción, 'El 70% de los jóvenes extranjeros que viven en Barcelona comparten piso', *Idealista*, 9 September 2019, [www.idealista.com/news/inmobiliario/vivienda/2019/09/09/777415-el-70-de-los-jovenes-extranjeros-que-viven-en-barcelona-comparten-piso](http://www.idealista.com/news/inmobiliario/vivienda/2019/09/09/777415-el-70-de-los-jovenes-extranjeros-que-viven-en-barcelona-comparten-piso), accessed 26 June 2020.

<sup>85</sup> Consejo de la Juventud de España, 'Observatorio de Emancipación del Consejo de la Juventud de España' (1st quarter 2019) 10, available at [www.cje.org/descargas/cje7577.pdf](http://www.cje.org/descargas/cje7577.pdf), accessed 26 June 2020.

<sup>86</sup> J. Onrubia Fernández, 'Vivienda e inmigración en España: situación y políticas públicas' (2010) *Presupuesto y Gasto Público* 61, 282 ff.

situation is the illegal occupation of buildings or dwellings (squatting: see above) and squatters subsequently renting the properties to vulnerable families, who are in a weak legal position against the true owner of the dwelling, who may initiate eviction proceedings. These have been labelled ‘silent evictions’.<sup>87</sup>

In addition, 41.4 per cent of lease contracts remained undeclared in 2016,<sup>88</sup> which often implies, beyond the evident tax fraud, a lack of protection for tenants. Indeed, in these cases, civil (minimum duration, referenced income) and administrative law rules (certificates of habitability, energy conditions, overcrowding, substandard housing, and so on) are not properly met.

(5) There are a number of housing options in which the accommodation is temporary:

- (a) *Accommodation with family or friends.* In this scenario, 40.4 per cent of seniors helped relatives (usually sons/daughters and grandsons/granddaughters) or friends through the income from their pensions between 2010 and 2012.<sup>89</sup> It should also be borne in mind that 52.8 per cent of young people between the ages of 25 and 29 still live with their parents.<sup>90</sup>
- (b) *Shipping containers.* These are supposed to provide only temporary accommodation for people who have been evicted or are about to be evicted, as they do not have the certificate of habitability required to be legally considered housing. As an example, Barcelona has completed its first promotion of what it calls ‘temporary proximity accommodation’ (*al·lotjaments de proximitat provisional*, Aprop): prefabricated modules made from maritime transport containers, expected to accommodate up to 32 people, beginning in 2020.<sup>91</sup> In

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<sup>87</sup> T. Pérez, ‘Retratos de miseria de la vida en un cuartucho de alquiler en Barcelona’, *El Periódico*, 27 May 2018, [www.elperiodico.com/es/sociedad/20180527/la-vida-en-un-zulo-de-alquiler-en-barcelona-6827253](http://www.elperiodico.com/es/sociedad/20180527/la-vida-en-un-zulo-de-alquiler-en-barcelona-6827253), accessed 26 June 2020.

<sup>88</sup> According to the Technicians Syndicate of the Ministry of Economy. Source: Europapress, ‘Gestha denuncia que cuatro de cada diez alquileres de vivienda no se declaran a Hacienda’, 19 April 2016, <https://m.europapress.es/turismo/nacional/noticia-gestha-denuncia-cuatro-cada-diez-alquileres-vivienda-no-declaran-hacienda-20160419115430.html>, accessed 26 June 2020.

<sup>89</sup> Fundación Encuentro, ‘Informe España 2013. Una interpretación de su realidad social’ (Madrid 2013) 227.

<sup>90</sup> INE (2020), n 29, 6.

<sup>91</sup> M. Garcia, ‘Els primers inquilins dels pisos prefabricats APROP, passat festes’, *Betevé*, 16 December 2019, <https://beteve.cat/politica/primers-inquilins-al·lotjaments-temporals-aprop-2020/>, accessed 26 June 2020.

this way Barcelona is following the examples of the Netherlands (student flats) and England (social flats); problems have arisen here sometimes with regard to construction materials (cold in winter and hot in summer; without soundproofing) or a lack of space in the event that minors are involved.<sup>92</sup>

- (c) *Hostels and niches*. There are companies<sup>93</sup> offering 2.6 square metres of living space in Barcelona as a ‘solution’ to the problem of access to housing in the city. Even the municipalities of Barcelona<sup>94</sup> and Madrid<sup>95</sup> are formally against these kinds of practices, as they do not provide the necessary space to develop as a person at an individual level (right to privacy, art. 18 CE).
- (d) ‘*Pisos patera*’ (dwellings as crowded as the boats which carry illegal immigrants); hot beds (where people share the same bed in turns);<sup>96</sup> and immigrant reception centres and other similar facilities (for people in an irregular situation and/or pending expulsion from the State)<sup>97</sup> are other examples of substandard housing. Barcelona,

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<sup>92</sup> H. Richardson, ‘Shipping containers used to house homeless children’, BBC, 21 August 2019, [www.bbc.com/news/education-49412835](http://www.bbc.com/news/education-49412835), and [www.standard.co.uk/news/uk/shipping-containers-being-used-to-house-children-as-more-than-200000-go-without-homes-report-says-a4217871.html](http://www.standard.co.uk/news/uk/shipping-containers-being-used-to-house-children-as-more-than-200000-go-without-homes-report-says-a4217871.html), accessed 2 March 2020 and R. Spinks, ‘What if the future of housing means accepting that a home isn’t permanent?’, Quartz, 27 February 2019, <https://qz.com/1542887/london-provides-low-income-housing-in-modular-shipping-containers/>, accessed 26 June 2020.

<sup>93</sup> I. Jorro, ‘Casi un millar de barceloneses hacen cola por un “piso colmena”’, Crónica global, 4 January 2019, [https://cronicaglobal.elespanol.com/vida/millar-barceloneses-cola-piso-colmena\\_211446\\_102.html](https://cronicaglobal.elespanol.com/vida/millar-barceloneses-cola-piso-colmena_211446_102.html), and R. Arnau, ‘Los pisos “colmena” de Haibu “burlan” a Colau: crean sociedad y operarán con licencia de “hostel”’, EjePrime, 28 March 2019, [www.ejeprime.com/empresa/las-casas-colmena-de-haibu-burlan-a-colau-crean-sociedad-y-operaran-con-licencia-de-hostel.html](http://www.ejeprime.com/empresa/las-casas-colmena-de-haibu-burlan-a-colau-crean-sociedad-y-operaran-con-licencia-de-hostel.html), accessed 26 June 2020.

<sup>94</sup> REDACCIÓN, ‘El Gobierno de Colau amenaza con una respuesta “contundente” contra los “pisos colmena”’, Crónica global, 18 February 2019, [https://cronicaglobal.elespanol.com/business/gobierno-colau-amenaza-pisos-colmena\\_223206\\_102.html](https://cronicaglobal.elespanol.com/business/gobierno-colau-amenaza-pisos-colmena_223206_102.html), accessed 26 June 2020.

<sup>95</sup> P.R. Rocés, ‘El Ayuntamiento de Madrid veta la llegada de los “pisos colmena” de poco más de un metro de altura’, El Mundo, 20 December 2019, [www.elmundo.es/madrid/2019/12/20/5dfbc0aefdddf282a8b466f.html](http://www.elmundo.es/madrid/2019/12/20/5dfbc0aefdddf282a8b466f.html), accessed 26 June 2020.

<sup>96</sup> See, for instance, VIVIENDOSINVIVIENDA, ‘Las “Camas calientes” del Raval’, 22 April 2015, <https://viviendosinvivienda.wordpress.com/2015/04/22/el-precario-mundo-de-las-camas-calientes-del-raval/>, accessed 26 June 2020.

<sup>97</sup> The governmental authority may propose to the appropriate Examining Magistrate that the foreign national be entered into an internment centre while the penalty order is being processed, for example in the case of expulsion from Spanish territory as a result of being there illegally without a residency authorisation (arts 53.1 and 62 Organic Law 4/2000, of 11 January, regarding the rights and freedoms of foreign nationals living in Spain and their social integration, BOE n. 10, 12.1.2000).

in fact, houses the Centre for the Internment of Foreigners in the Zona Franca, with capacity for no more than 220 people. However, according to data from 2013, at one point during that year it accommodated more than 1500.<sup>98</sup>

- (6) Finally, *co-living* is an example of voluntary shared housing in Spain. It is based on the exclusive or shared use of individual rooms and shared use of large common areas (occupying between 25 per cent and 30 per cent of the space), for example cinemas and games rooms (with ping pong, billiards, and so on), libraries, gyms, restaurants and swimming pools, and so on, on the other. Some media<sup>99</sup> have indicated that various companies are interested in launching professional co-living projects in the city of Barcelona, with two essential characteristics:<sup>100</sup> (a) the target market will be mainly students (mostly between 25 and 30 years old) and self-employed professionals; (b) the predominant model in Barcelona, unlike that in Madrid, focuses on renting rooms and locating the common areas on the same floor, not in other parts of the building.<sup>101</sup> These types of co-living facilities are not intended *prima facie* to offer a permanent residence. Problems may arise, though, if such temporary use becomes permanent for certain people (for example divorced people) or families. Furthermore, the necessary legal certainty is not provided to the parties since there is no specific legal regulation, so the most similar contractual provisions will be applied by way of analogy – that is, the rules governing room rental,<sup>102</sup> which present, as already pointed out, a lack of affordability, stability and legal certainty.

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<sup>98</sup> See the report carried out by Clínicas Jurídicas de ICADE (Universidad Pontificia Comillas) et al. (2015), ‘Situación actual de los Centros de Internamiento de Extranjeros en España y su adecuación al marco legal’ vigente, 47, available at [www.icade.comillas.edu/images/Clinica\\_Juridica\\_ICADE/Informe\\_situacion\\_actual\\_CIE\\_junio\\_15.pdf](http://www.icade.comillas.edu/images/Clinica_Juridica_ICADE/Informe_situacion_actual_CIE_junio_15.pdf), accessed 26 June 2020.

<sup>99</sup> I. Custodio Pareja, ‘Barcelona se prepara para el “coliving”: estudia las primeras licencias en el barrio de La Marina’, *Idealista*, 29 January 2019, [www.idealista.com/news/inmobiliario/vivienda/2019/01/28/771263-barcelona-se-prepara-para-el-coliving-estudia-las-primeras-licencias-en-el-barrio-de](http://www.idealista.com/news/inmobiliario/vivienda/2019/01/28/771263-barcelona-se-prepara-para-el-coliving-estudia-las-primeras-licencias-en-el-barrio-de), accessed 26 June 2020.

<sup>100</sup> X. Fernández de Castro, ‘El “coliving” esclata a Barcelona: l’experiència de compartir pis per 650 euros’, *Tot Barcelona*, 17 September 2019, [www.totbarcelona.cat/habitatge/el-coliving-esclata-a-barcelona-l-experiencia-de-compartir-pis-per-650-euros\\_2072046102.html](http://www.totbarcelona.cat/habitatge/el-coliving-esclata-a-barcelona-l-experiencia-de-compartir-pis-per-650-euros_2072046102.html), accessed 26 June 2020.

<sup>101</sup> S. López Letón, ‘El “coliving” asalta el alquiler: vivir como en un colegio mayor de lujo hasta los 40’, *El País*, 27 July 2019, [https://elpais.com/economia/2019/07/25/actualidad/1564063729\\_205023.html](https://elpais.com/economia/2019/07/25/actualidad/1564063729_205023.html), accessed 26 June 2020.

<sup>102</sup> According to Laia Comas (interviewed in *la Vanguardia*, 20 November 2018, <https://whiterabbit.es/laia-comas-de-inedit-barcelona-en-la-vanguardia/>, accessed 26

## Cohousing and Other ‘Rent-Plus’ Examples

Cohousing has been implemented in Spain essentially following the cooperative model, under which the cooperative becomes the owner of the building and the members of the cooperative have a right to the exclusive use of a private unit.<sup>103</sup> There are already some cohousing projects in operation in Spain,<sup>104</sup> mainly for seniors, but there are also examples of intergenerational cohousing in Barcelona, such as Princesa 49,<sup>105</sup> La Borda<sup>106</sup> and Pomaret.<sup>107</sup>

However, cooperatives must overcome a few obstacles, regarding the assignment of land use, before they can become a real alternative to leases and homeownership. Thus, the absence of a specific legal framework for this model and the challenges related to the organisational and financing issues that need to be solved prior to its constitution (it takes years to develop a project and it is not easy to get finance from lending institutions) pose difficulties that make the model hard to replicate. Success and replicability are difficult without major public support (free land, subsidies, and so on), which may not be available given that cooperatives cannot always be defined as affordable housing. Nepotism (when recruiting new members for the cooperative), the reduced space of private units (which could lead to constitutional concerns as far as the right to privacy is concerned: art. 18 CE), limitations in relation to the *inter vivos* and *mortis causa* transfers of the units and the past experiences of the Soviet Union and Danish cooperatives<sup>108</sup> are aspects that are worth pointing out as well.

On a regional level, the Catalan government regulated the so-called *aval-loguer* by Decree 54/2008 of 11 March.<sup>109</sup> This scheme gives lessors additional security by providing coverage against defaulted rent payments, applicable to

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June 2020), the founder of Inèdit ([www.ineditbarcelona.com/es](http://www.ineditbarcelona.com/es)), co-living is based on a lease with a maximum duration of one year that offers a number of services including things such as cleaning, airport pick-up, provision of prior visa information, and so on.

<sup>103</sup> See H. Simón Moreno, ‘Las cooperativas de viviendas en régimen de cesión de uso: ¿una alternativa real a la vivienda en propiedad y en alquiler en España?’ (2020) REVERSCO. Revista de Estudios Cooperativos, 134, 1 ff.

<sup>104</sup> Updated information may be found at <http://ecohousing.es>, accessed 15 October 2021.

<sup>105</sup> <https://sostrecivic.coop/projectes/princesa49/>, accessed 15 October 2021.

<sup>106</sup> [www.laborda.coop/es/](http://www.laborda.coop/es/), accessed 15 October 2021.

<sup>107</sup> <https://sostrecivic.coop/projectes/pomaret/>, accessed 15 October 2021.

<sup>108</sup> S. Nasarre Aznar, n 27, 614 ff. See also M.P. Rodríguez Liévano and Á. Galiana Saura, ‘El cohousing como modelo de vivienda colaborativo: riesgos derivados de la determinación de espacios y usos, y el carácter dogmático del propósito’ (paper presented at the ‘Congreso Internacional de Alojamiento Colaborativo’, University of Almería and Illes Balears, Almería, 22 November 2019).

<sup>109</sup> Official Gazette of the Generalitat of Catalonia n. 5090, 13.3.2008.

the rental of dwellings located in Catalonia and governed by the LAU 29/1994. Landlords can receive an amount equivalent to three months of rent in the event of a judicial action seeking the termination of the lease contract due to the non-payment of rent.

Furthermore, the Catalan Housing Agency has implemented a programme that aims to help local authorities reach agreements with owners of empty dwellings, so that they can increase the stock of public housing.<sup>110</sup> The agreement between the Habitat 3 Foundation<sup>111</sup> and the local authority of Barcelona has a similar purpose. In both cases, the agreement provides a number of benefits for landlords (for example guarantees relating to the payment of rent, such as the above-mentioned *avalloguer*).

Lastly, art. 5 of Catalan Act 24/2015 of 29 July<sup>112</sup> establishes that, before initiating any mortgage enforcement procedure or eviction proceeding for non-payment of rent, large landlords (for example, banks or individuals holding more than 15 properties) must offer lessees facing eviction (if the family is at risk of residential exclusion) a rent below market price to remain in the dwelling, which can be fixed for up to seven years (after the amendment enacted by Decree-law 17/2019). A similar provision is foreseen in art. 59 quáter of the Act of the Autonomous Community of Murcia 6/2015 of 24 March<sup>113</sup> and art. 12 of the Act of the Autonomous Community of Valencia Act 2/2017 of 3 February.<sup>114</sup>

### Intermediate Tenures ('Ownership Minus')

There are a number of limited property rights that may be used as 'intermediate tenures' to facilitate access to housing, but none have created an alternative housing market, offering genuine options outside the homeownership and rental markets. Some examples include:

- (a) *The rights of usufruct (arts 467 ff. CC), use or habitation (arts 523 ff. CC).* The former entitles the holder of the right to receive all fruits of the property and to transfer the right without the owner's consent, but the regulation of the right of usufruct is still based on rural economy.<sup>115</sup> This may explain why the vast majority of usufructs are created in the

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<sup>110</sup> <http://agenciahabitatge.gencat.cat/>, accessed 15 October 2021.

<sup>111</sup> [www.habitat3.cat](http://www.habitat3.cat), accessed 15 October 2021.

<sup>112</sup> BOE n. 216, 9.9.2015.

<sup>113</sup> BOE n. 103, 30.4.2015.

<sup>114</sup> BOE n. 56, 7.3.2017.

<sup>115</sup> F. Rivero Hernández, *El Usufructo* (Cizur Menor: Civitas Thomson Reuters 2010).

practice of law in the family and succession fields. It is true that the right of usufruct may be created for modern uses, such as estate planning, to retain control of corporations, to get profits from securities (arts 561–2 ff. Catalan civil code, CCC<sup>116</sup>) or even for housing purposes on the basis of the right to freely draw up any legal contract (art. 1255 CC). However, this would need a proper regulation clarifying the rights and duties of the parties (for example, the holder of the right does not enjoy the protection offered by the LAU, and neither the owner nor the holder of the right may have access to public subsidies). As for the use of the whole dwelling (right of use) or rooms (right of habitation), they are primarily designed to be created *intuitu personae*, even though they may have an economic nature and may be transferred to third parties with the owner's consent (this is expressly stipulated in art. 562–4 CCC).<sup>117</sup> However, only 208 property rights of use and habitation were constituted before a notary in exchange for a consideration in Spain in 2018. The total number has not exceeded 300 since 2014.<sup>118</sup>

- (b) *The right to build.* This right is regulated at both national (arts. 53 and 54 Royal Legislative Decree 7/2015, of 30 October, approving the revised text of the Urban Land and Rehabilitation Act)<sup>119</sup> and Catalan levels (arts 564–1 ff. CCC) and separates the ownership of land and the ownership of any buildings constructed on the land (a multi-storey building, for example) for a certain period of time (maximum 99 years), at the end of which the title of what has been built reverts back to the owner of the land free of charge, unless otherwise agreed. The right to build may be used for housing purposes, as has happened in Barcelona.<sup>120</sup> Nevertheless, there are limitations regarding the legal position of the holders of the right (*superficiarios*).<sup>121</sup>

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<sup>116</sup> Spain is a multi-legal system, so six regions (Autonomous Communities) have their own private law systems on the basis of art. 149.1.8 CE. Catalonia has passed its own rules on property rights.

<sup>117</sup> J.A. Fernández Campos, 'La transmisibilidad de los derechos reales de uso y habitación (análisis de los artículos 523 y 525 del Código Civil)' (1999) *Anales de Derecho* 17, 85 ff.

<sup>118</sup> According to the statistics provided by the Notarial Statistical Information Center. Source: [www.notariado.org/liferay/web/cien/estadisticas-al-completo](http://www.notariado.org/liferay/web/cien/estadisticas-al-completo), accessed 1 July 2020.

<sup>119</sup> BOE n. 261, 31.10.2015.

<sup>120</sup> Source: <https://habitatge.barcelona/es/acceso-a-vivienda/el-parque-publico-de-vivienda>, accessed 26 June 2020.

<sup>121</sup> S. Nasarre Aznar and H. Simón Moreno, 'Fraccionando el dominio: las tenencias intermedias para facilitar el acceso a la vivienda' (2013) 739 *Revista Crítica de Derecho Inmobiliario* 3076 ff.



- (c) Finally, a brand-new type of ownership-like tenure called *intermediate tenure*<sup>122</sup> was regulated by Catalan Act 19/2015 of 29 July,<sup>123</sup> which introduced *temporal ownership* and *shared ownership* into the Catalan Civil Code on the basis of the English leasehold (but without any feudal reminiscences) and shared ownership schemes, respectively. The latter was introduced in the UK over the course of the 1970s–80s and today represents less than 1 per cent of all households in England; however, the supply has increased substantially in recent years. The majority of respondents to the British Social Attitudes Survey in 2018 said they would choose to buy a home (87 per cent) rather than rent one (12 per cent).<sup>124</sup> Like the English scheme, the Catalan intermediate tenures offer the opportunity to move into full homeownership, provide security of tenure and support community stability.<sup>125</sup>

On the one hand, the *temporal* ownership tenure confers on its holder the ownership of an asset (any immovable and certain movables) for a limited and specified period (which may not be less than ten years for real estate and one year for movables, nor higher, in any case, than 99 years; art. 547–4.(3) CCC) as a consequence of a legal transaction *inter vivos* (for valuable consideration or gratuitously) or *mortis causa*, at the end of which the temporal ownership will revert back to the previous owner, who may also be the transferor or a third party who has acquired the right of reversal (arts. 547–1 ff. CCC).

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<sup>122</sup> Learn about the concept of intermediate tenures and about the housing access problems in Spain at S. Nasarre Aznar and H. Simón Moreno, n 70, 3063 ff.; S. Nasarre Aznar, ‘La propiedad compartida y la propiedad temporal como tenencias intermedias de acceso a la vivienda y a otros bienes en el Derecho civil de Cataluña y su extensión al resto del Estado’, in S. Nasarre Aznar (ed), *Bienes en Común* (Valencia: Tirant lo Blanch 2015) 776 ff.; and R.M. Garcia Teruel, N. Lambea Llop and E. Molina Roig, ‘The new intermediate tenures to facilitate access to housing’ (2015) *Revue de Droit bancaire et financier* 2.

<sup>123</sup> BOE n. 215, 8.9.2015.

<sup>124</sup> See UK Parliament, ‘Shared ownership (England): the fourth tenure?’ (2020), available at <https://commonslibrary.parliament.uk/research-briefings/cbp-8828/>, accessed 30 October 2020; and Ministry of Housing, Communities & Local Government, ‘Public attitudes to house building: findings from the British Social Attitudes survey 2018’ (2019) 50 ff, available at [www.gov.uk/government/publications/public-attitudes-to-house-building-findings-from-the-british-social-attitudes-survey-2018](http://www.gov.uk/government/publications/public-attitudes-to-house-building-findings-from-the-british-social-attitudes-survey-2018), accessed 30 October 2020. Homeownership is correlated with a good investment, security and the freedom of the owner.

<sup>125</sup> C. Sinn and S. David, ‘Shared ownership 2.0. Towards a fourth mainstream tenure’ (Final Report 2015), available at [www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/Shared%20Ownership%202.0%20towards%20a%20fourth%20mainstream%20tenure.pdf](http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/Shared%20Ownership%202.0%20towards%20a%20fourth%20mainstream%20tenure.pdf), accessed 28 October 2020.

On the other hand, the shared ownership tenure confers on the material owner (for example the buyer) a property share of the thing (movable or immovable property in question) which entitles him to the full possession, use and exclusive enjoyment of the whole thing (any immovable and certain movable assets) and the right to gradually acquire the remaining quota that may remain in the hands of the seller (formal owner) in the course of the following 30 years, unless otherwise agreed, with a maximum time limit of 99 years (arts 556.1 ff. CCC). The material owner has the exclusive use of the property and may sell or mortgage his share, but without compromising the integrity or functionality of the property. The buyer is not allowed to alter the structural elements of the property.

The English shared ownership scheme has been criticised as the legal rights of buyers fall short of those offered by freehold ownership or indeed ordinary leasehold (they have limited security of tenure), so there is no ‘sharing’ or an asset jointly owned; the complexity of the institution and the absence of a secondary market have also been pointed out.<sup>126</sup> On the contrary, in Catalan law the shared ownership scheme is deemed to be a special true co-ownership situation between the parties, despite the unequal distribution of rights and duties. As the scheme grants ownerships rights to the buyer, it guarantees security of tenure, it is less complex than the English counterpart and it provides legal certainty, for example to mortgage loan providers.

These new ownership-like intermediate tenures have the potential<sup>127</sup> to provide a route to sustainable homeownership for those who prefer this type of tenure (the vast majority, as explained above) but who cannot afford to take on full ownership without the risk of becoming over-indebted. Thus, these new options can be perceived as a way to distribute<sup>128</sup> this desired and secure type of tenure to those that have been unable to access it over the past 15 years and who are suffering from precarious living conditions, landlordism and expensive leases.

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<sup>126</sup> See the contribution to this volume of Dr. Mark Jordan.

<sup>127</sup> For more details on the current developments regarding these types of tenures in Catalonia see S. Nasarre Aznar, n 27, 546 ff.

<sup>128</sup> The distributism pushed forward by G.K. Chesterton and H. Belloc, among many others, was influenced by the social doctrine of the Catholic Church, which supports this ‘utilitarian’ approach to ownership towards the full universal realisation of people. In this vein, ownership (and homeownership is a paramount part of this) allows people to be free (both from the market rules and from the State rules), thus helping to achieve their full realisation as human beings.

### **Golden Visa Programme (Ownership ‘Plus’)**

Golden Visas are programmes designed for investors from outside the EU, who may obtain residence or nationality<sup>129</sup> by investing in real estate.<sup>130</sup> The Golden Visa programme is regulated in Spain by Act 14/2013 of 27 September, on support for entrepreneurs and their internationalisation.<sup>131</sup> As a result, if real estate is acquired in Spain for a minimum value of 500 000 euros (what the law calls ‘significant investment’),<sup>132</sup> residence is granted in exchange. This investment is per person and comes free of charge or encumbrance. The beneficiaries are foreign individuals who are nationals of a State that is not a member of the EU or the European Economic Area and which is not considered a tax haven according to Spanish regulations (see Royal Decree 1080/1991 of 5 July).<sup>133</sup> The granting of visas and residence permits is facilitated and expedited for reasons of economic interest in order to attract investment and talent to Spain. In other words, Act 14/2013 wants to attract investment from foreigners with high purchasing power, with a special focus on residential tourism; that is, it aims to reduce the degree of seasonality of tourism activity.<sup>134</sup> The Golden Visa programme’s procedures are faster than the ordinary application process; for example, they are processed by the Large Enterprise and Collective Strategies Unit, they are resolved within 20 days and silence (no reply) indicates a positive outcome (art. 76.1 Act 14/2013), whereas the ordinary system has an average processing period of three months and silence is considered a negative outcome.<sup>135</sup>

Statistical data for the purchase of housing by foreigners for a minimum value of 500,000 euros is shown in Figure 1.1.

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<sup>129</sup> J. Dzankic, ‘Investment-based citizenship and residence programmes in the EU’ (2015) EUI Working Paper RSCAS 2015/08, 1–33; and J. Montezuma and J. McGarrigle, ‘What motivates international homebuyers? Investor to lifestyle “migrants” in a tourist city’ (2019) 21 *Tourism Geographies* 2, 214 ff.

<sup>130</sup> For more information, see D. Marín Consarnau and E. Rivas Nieto, ‘Golden Visa por inversión en inmuebles, residencia y tributación ¿una cuestión resuelta?’ (2018) *Revista de Contabilidad y Tributación*, CEF, 428, 5 ff.

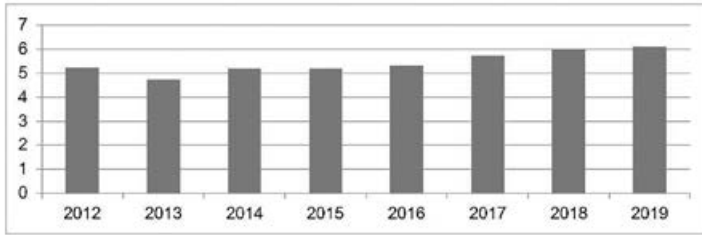
<sup>131</sup> BOE n. 233, 28.9.2013.

<sup>132</sup> Art. 63. There are other examples of ‘significant investment’ in the law: investment in public debt, shares/participations in companies, investment funds, bank deposits and/or business projects.

<sup>133</sup> BOE n. 167, 13.7.1991.

<sup>134</sup> Ministerio de Empleo y Seguridad Social, el Ministerio de Asuntos Exteriores y Cooperación, el Ministerio de Economía y Competitividad y el Ministerio de Interior, ‘Informe sobre la aplicación de la Sección de Movilidad Internacional de la Ley 14/2013’ (2015) 26.

<sup>135</sup> First Additional Disposition of Organic Act 4/2000, of 11 January (BOE n. 10, 12.1.2000).



*Note:* Data extracted from the annual reports of the ERI (Real Estate Registry Statistics) by the Property Registrars of Spain, available at [www.registradores.org/actualidad/portal-estadistico-registral/estadisticas-de-propiedad#portlet\\_com\\_liferay\\_journal\\_content\\_web\\_portlet\\_JournalContentPortlet\\_INSTANCE\\_deivRWA9msX5](http://www.registradores.org/actualidad/portal-estadistico-registral/estadisticas-de-propiedad#portlet_com_liferay_journal_content_web_portlet_JournalContentPortlet_INSTANCE_deivRWA9msX5), accessed 1 July 2020.

*Source:* own elaboration.

*Figure 1.1 Home purchasing in Spain by foreigners worth at least €500,000 (%)*

There was a progressive increase in the purchase of homes by foreign investors from 2015 to 2019, but three doubts arise after the events of recent years:

- (a) Most real estate is bought by UK nationals (13.94 per cent in 2019), but to date the Golden Visa programme has not been applied to them due to their status as Community citizens. What will happen as a result of Brexit?
- (b) The Golden Visa programme is directed at people buying real estate as an investment, but it is also influenced by personal lifestyle choices and the option of having a second residence in Spain for tourism purposes, with the attraction of the weather and the appealing Spanish way of life. Will this change as a result of COVID-19? Travel restrictions have been put in place and residential tourism must adapt to the reality.
- (c) Countries such as Portugal have implemented specific tax incentives, for example a favourable income tax regime for non-permanent residents,<sup>136</sup> with a lower tax rate (20 per cent) and exemptions.<sup>137</sup> Is it necessary

<sup>136</sup> F. Arribas da Silva, 'Portugal and foreign investors' (2019), available at [www.dlapiper.com/en/us/insights/publications/2019/04/real-estate-gazette-34/portugal-and-foreign-investors/](http://www.dlapiper.com/en/us/insights/publications/2019/04/real-estate-gazette-34/portugal-and-foreign-investors/), accessed 1 July 2020.

<sup>137</sup> Art. 126 Act 64-A/2008, of 31 December (Diario de la República núm. 252/2008, Serie 1 de 2008-12-31) and arts 23 to 25 Decree-law 249/2009, of 23 September (Diario de la República núm. 185/2009, Serie 1 de 2009-09-23).

to create tax benefits for the Golden Visa programme, prioritising high-capacity residential tourism over other housing access policies?

## EVALUATION AND RECOMMENDATION

The substandard housing options outlined above do not meet the UN requirements on the right to adequate housing.<sup>138</sup> For instance, hostels and niches do not comply with the necessary living conditions or with the space necessary for one's self-fulfilment or for complete individual freedom or privacy. There is a risk that some of these transitional solutions may become permanent due to a lack of housing alternatives in overcrowded cities. Therefore, their use should be restricted to situations that are clearly temporary and to housing emergencies, that is, as a transitional resource until new affordable housing is available that meets all constitutional guarantees. As for room rental, there is a lack of security of tenure (also present in non-consented room subletting), stability, affordability and habitability. Regarding housing cooperatives, these do not constitute a tenure model which may be easily replicated to create a third fully functional housing alternative.

As for the predominant housing tenures, that is, homeownership and tenancy, the latter is not a true attractive alternative to homeownership in terms of affordability, stability and security and access to the former is not a real option for many households, including young people and the less affluent, especially over the past 15 years. We believe that the creation of a society of rich owners and poor tenants is undesirable (especially in the context of a relatively weak welfare state), and the Catalan shared and temporary ownership options could work as a realistic and functional choice for many households to gain sustainable access to homeownership. In addition to democratisation and freedom of ownership, these new housing tenures entail advantages for both consumers (stable, affordable and flexible tenure system and less debt and family effort; no landlord), lenders (less liquidity requirements to grant mortgage loans and less default risk), public administration bodies (less need for public funding, while they may be used to promote new forms of social housing) and developers (they can sell their properties in a context where prospective buyers experience difficulties in getting access to credit; developers also get real co-responsibility in the maintenance of the property as shared owners and temporal owners are real owners of the property).

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<sup>138</sup> Office of the United Nations High Commissioner for Human Rights, 'The Right to Adequate Housing' Fact Sheet No. 21 (Rev. 1), available at [www.ohchr.org/Documents/publications/Fs21\\_rev\\_1\\_Housing\\_en.pdf](http://www.ohchr.org/Documents/publications/Fs21_rev_1_Housing_en.pdf), accessed 3 November 2020.

Therefore, Spain as a whole should work out a proper continuum of functional housing tenures that spans the spectrum from public rental housing to full ownership, which should include: several types of social housing options (while fostering public–private partnerships for proper management); intermediate tenures (shared ownership and temporary ownership, currently only present in Catalonia); different types of private leases for, on the one hand, young people and professionals who need high mobility and, on the other, households that wish to live in a stable tenure; and collaborative housing. A wider variety of functional housing tenures would create a spectrum that guarantees more adequate housing for every type of household, which would be less dependent on financial markets and would require less intrusive intervention by the public administration – meaning, all in all, more freedom for citizens.

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