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TEGOVA
The European Group of Valuers' Associations

Alstom TGV-M – 5th generation High Velocity Train (modular)
Entry into service in 2026

Image derived from photo by Alstom SA. 2018

EXIT THE TUNNEL

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EDITORIAL

Exit the tunnel

In his preface to EVS 2020 "written in the eye of the storm", Krzysztof Grzesik wrote that the valuation profession is never more vitally relevant than in times of crisis: "Gone are the false certainties about value. Vanished, the faith in algorithms crunching out-of-date data. Badly shaken, the confidence of so many that they could gauge the market for themselves. In crisis, valuers come into their own, relying on their experience, intuition and intimate local market knowledge to ascertain value. Valuation practice is the conciliation of a paradox: deriving value from hard evidence while also identifying market phenomena with a lasting impact on value."

The immense burden on valuers is that, counterintuitively, the 'market cyclicality' that they need to be so conscious of is volatile and events-based: markets in general and real estate markets in particular are subject to all sorts of extraneous phenomena and, increasingly, to geopolitical events. Or, as Jeremy Moody put it "Valuation is finding where supply and demand, *with all the human behaviours behind them*, balance." [1]

On top of this, EU law now commands the valuer to look beyond 'spot' market value and produce a 'property value' taking account of 'prudently conservative valuation criteria' in which, inter alia, "the value is adjusted to take into account the potential for the current market value to be significantly above the value that would be sustainable over the life of the loan". This entails having at least a feeling for events beyond 'the date of valuation'.

But valuers are human and are as subject to the Zeitgeist as anyone. And that's the rub, because crisis by nature is anxiety-inducing. It's hard to see and think clearly "in the eye of the storm", in a Europe that seems the hapless victim of war and trade war, economic decline, lost opportunity and lost control.

Valuer! Pause. Breathe. Consider.

To paraphrase an old joke that Germans make about themselves: "Europeans never see the end of the tunnel, and when they do, they build a longer tunnel." Tunnels cause tunnel vision and it's high time to exit.

"The EU is the largest trading power in the world and has new power to deal with foreign coercion."

Europeans didn't build the Union to become a superpower, they did it to stop hurting themselves, but in so doing, they packed some serious muscle:

- A single market for 450 million EU citizens and the 60 million more who want in and are adapting their laws and economies in consequence.
- The EU is the largest trading power in the world and has new power to deal with foreign coercion: Regulation (EU) 2023/2675, known as the Anti-Coercion Instrument (ACI). It serves to counter foreign countries that apply or threaten to apply trade measures "in order to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State, thereby interfering in the legitimate sovereign choices of the Union or a Member State". It empowers the Commission to take some *or all* of the following measures: customs duties, restrictions on import/export of goods, exclusion from public procurement, restrictions on access of foreign direct investment, on protection of property rights, on financial services, chemicals and phytosanitary products.
- Add to this the EU's 'soft power' much mocked in these violent times but that is really not 'soft' at all: those who trade with Europe but must adapt their products and services to European norms*. Much in the news these days is the displeasure that the EU AI Act and Digital Services Act have caused to certain important foreign persons.
- The EU is not an educational, scientific or technological loser. In those fields, it's a waking beauty.[2]
- The EU climate legislation that reputable oracles assure us is doomed to rescindment but somehow never is[3], ensures a carbon-free future that's not just handy for staying alive, but competitive as well. It could be that thanks to the nimbleness single states potentially have compared to the EU, the previous U.S. regime may have found a lighter touch for achieving the same result, but that's dead now anyway.
- For a long time, military might was indeed 'not the European thing', quite the contrary. But it is now, as the EU begins to integrate its military industries and militarise its economic governance and takes massive strides in armaments production.

Europe has everything it takes to control its destiny and is acting on it. The market safety, resilience and stability that this ensures should be a conscious consideration in valuation analysis.

Michael MacBrien, Editor

1 "The dawn of an uncertain era – The Era of Risk?" – Guest Editorial, European Valuer N° 28, December 2022

* There's a good example in this issue in the final part of the analysis of the Construction Products Regulation.

2 "EVS 2025 and the Blue Book constellation at Europe's cutting edge" – Editorial, European Valuer Journal N° 34, October 2024

3 "The end of the most valuation-rich legislature in the history of the Union" – Editorial, European Valuer Journal N° 33, June 2024

Relations with other standard setters

Top representatives of TEGOVA (Paulo Barros Trindade, Tristan Bons, Krzysztof Grzesik, Michael MacBrien) the IVSC (Alexander Aronson, Nick Talbot), and RICS (Ben Elder, Jonathan Fothergill, Fausta Todhe) met at the latter's HQ in London on 14 February to compare notes and exchange views on current valuation standards. Topics included the growing influence of AI on valuation practice but the main focus was on the question of prudently conservative valuation criteria under Basel III and the Capital Requirements Regulation (CRR). They noted significant divergence on two levels:

First, IVSC has not for the moment developed a position and RICS is still working on guidance it being noted that outside of the EU, there has been no regulatory uptake. The EU, on the other hand, imposes the concept in the new CRR and consequently, TEGOVA has produced a dedicated guidance note in European Valuation Standards 2025. That is now settled TEGOVA policy.

Second, RICS takes the view that the estimation of value, comprising prudently conservative valuation criteria, should be based on market sector by sector research possibly conducted at the regional level, whereas TEGOVA's EVS guidance is in lockstep with the CRR's clear instruction that the task falls to the independent valuer.

Nonetheless, the parties agreed on the benefit of this kind of exchange between the international standard setters.

From left to right : Michael MacBrien, Adviser to TEGOVA; Krzysztof Grzesik, Immediate past Chairman of TEGOVA, Jonathan Fothergill, Investment and Valuation Advisory, Global Valuation Team, RICS; Fausta Todhe, Senior EU Public Affairs Manager, RICS; Nick Talbot, Chief Executive, IVSC; Ben Elder, Global Director of Valuation, RICS; Paulo Barros Trindade, Chairman of TEGOVA; Alexa nder Aronsohn, Technical Director, IVSC; Tristan Bons, Deputy Director, Vastgoed Nederland (for TEGOVA)

EVS 2025 AT A GLANCE

Michael MacBrien

#01

EVGN 1 Applying European Valuation Standards in wartime circumstances

The Guidance was originally undertaken at the request of the State Property Fund of Ukraine (SPFU), was drafted by the European Valuation Standards Board working with TEGOVA's Ukrainian members the Ukrainian Association of Bank Valuation Specialists and the Ukrainian Society of Appraisers, and was delivered to the SPFU on 20 December 2022.

Though designed for the context of the Russian invasion of Ukraine, the Guidance is valid for wartime circumstances generally.

It applies to:

- *The assessment of war damage to individual properties and businesses, as is being undertaken by valuers for clients*
- *The assessment of the costs of post-war reconstruction*

The assessment of war damage to individual properties and businesses, as is being undertaken by valuers for clients

The circumstances of war do not disapply EVS but rather pose particular and challenging circumstances. It is important to understand how they provide support for professional valuations in such extreme circumstances, which may vary from property still being under hostile occupation, through total destruction and significant damage to looting.

In the circumstances of armed conflict, occupation, war damage and their aftermath, the valuer assessing the loss to a business may very often find that the information available is limited and incomplete, not of the quality that would usually be found for the same assets in a conventional peacetime situation. It may prove necessary to rely more on evidence that would normally be of lesser weight in the hierarchy of evidence, yet may be of better quality than is available for the direct evidence that would ordinarily be preferred. This is an extreme version of the problem that can be encountered in valuing assets that are rarely found or have very limited markets.

With the various possible uses of the report and the potential for the valuer to be called as an expert witness in an assessment review, tribunal or court, the report should clearly explain the position with relevant evidence so that a third party can understand from it:

- *What has been valued, with details of the property and the damage or other loss*
- *How the loss arose from the war*
- *How the opinion as to value was formed*

The valuer is not determining any compensation or payment but is providing a professional and objective view on which a claim for compensation or payment may be based. The valuation might be scrutinised or challenged as part of the process by which the claim is determined, whether by a court, a tribunal, a commission or other body. The valuer may need to explain the expert opinion in that process, perhaps under hostile challenge.

Even more than ordinarily, the expectation of objectivity is critical in appraising the damage, how it arose and is properly valued. The very demanding context of such a war and the natural desires of clients are likely to test that quality but it is a quality that is essential to the preparation of claims that will be sustained under review or challenge.

That prospect of challenge reinforces the need to be aware of any conflicts of interest and disclose them.

This part also reviews:

- *Terms of engagement*
- *Inspection*
- *Evidence of the property to be valued*
- *Evidence of the relevant market and costs*
- *Methodologies*
- *The valuation report (including inter alia describing the property as it was and recording the loss or damage, stating how it arose from the war)*
- *Beyond the valuation – additional items of claim*

The cost of post-war reconstruction

This second issue being considered is a very different question as it is very clearly an assessment of cost of building anew. This is not a task of assessing compensation, reparation or restitution. Achieving better properties may be exactly what is in mind. This assessment is not a Market Value at all but one of costs assessed to a specification, including construction costs with fees and required payments as well as any land acquisition and finance costs that might be necessary.

This part reviews:

- *Inclusion of costs for necessary demolition, the removal of explosives, decontamination, remediation and the management of residual risks*
- *Comparing the resulting assessment with the Market Value of the reconstructed property*
- *As the assessment can only be as at the date it is made even though the actual work will be at an unknown post-War date, the GN suggests it would be practical for it to be prepared in conjunction with the valuation of loss, making efficient use of the inspection and appraisal, perhaps even as two distinct parts of one report.*
- *The GN reviews the many challenges of wartime cost assessment including, inter alia, time lags in the reconstruction process, immediate and longer term works, determining the standard that is to be expected for reconstruction and the particular costs of remediation, decontamination, explosives clearance and demolition.*

The Guidance Note is completed by an illustration of a property under occupation when the valuation is made.

#02

EVGN 4 Valuation of agricultural property

This Guidance Note considers general principles whose application will vary between countries even inside the EU and its Common Agricultural Policy. With that caution, **markets in agricultural land can be seen to lie at points along several possible spectrums, as to whether:**

- *There is an active market in the sale and letting of farmland*
- *There is greater or lesser national legislative intervention in land ownership, transactions and lettings*
- *The market is transparent or not as to transactions and prices*
- *The business of food production (and other activity) depends on the land itself as a factor of production or depends on high investment in production facilities on the land when the value may lie more in the business than the land as premises*
- *The Market Value of land just reflects its food production potential or is influenced by a wider range of factors*

The structures for landownership, occupation and use of agricultural and related land will vary with national or local history as between:

- *When and where agriculture came to be seen more as a business and mechanised*
- *Different regimes for the inheritance of landownership*
- *Past patterns of radical political change and land reform*
- *The level of official intervention in land transfers, there often being more political concern about rural land than other property*
- *Legislative intervention in the arrangements for letting farmland*
- *Those areas that saw the collectivisation of agriculture with the differing ways in which that legacy has been handled*

Changing global circumstances are bringing new factors into agriculture and so the valuation of its property, including:

- *The unfolding of climate change with its impact, the measures taken to mitigate it and how land-based businesses in global supply chains adapt to increasingly volatile and extreme weather conditions both at home and abroad*
- *Growing constraints on the availability of water for farming and so the need for its optimal management, especially where it is critical to the farming use of the land*
- *With many inputs such as fertilisers in global supply chains and much produce being sold into them, changes in and disruption of world markets have an influence as do the changing tastes of consumers around the world*
- *The rapid development of new technologies for farming, from the use of big data and drones to robotics and other automation*
- *The growing expectations of environmental management in farming and of rural land to reduce its wider impact on such issues as water quality, flooding, air quality, biodiversity and climate change while also developing new techniques to work within growing economic and regulatory limitations on the use of crop protection products*

In many cases, **regulatory permissions impose a key constraint relevant to the value of land** such that a secure permission may add to the value of land and lack of it might diminish that value.

The Guidance Note reviews:

- *Application of European Valuation Standards*
- *Valuation methodology*
- *Determination of Market Value*
- *Agricultural land, farms and estates**
- *Agricultural crops and other assets**
- *Perennial crops**
- *Forestry**
- *Climate change*
- *Technology, data and agricultural property*

*An integral part of this Guidance Note and of EVS 2025, these sections are on the TEGOVA website, not in the hard or electronic copy of the Blue Book.

There is a template **EVS Agricultural Valuation Report** in Annex.

EVS 2025 AT A GLANCE

#03

EVIP 1 Valuing in non-transparent markets

Ideally, market analysis for property valuation is based on transaction prices and characteristics of sold properties from sales contracts or other documents. This is possible for some European countries where property prices are officially recorded.

However, in markets where access to real transactions is difficult, offer price information becomes useful. In some countries, there are problems with the availability of transactional data — contracts are not recorded or access to them is expensive, thus unattainable for a single valuer. Sometimes the reliability of information on property prices contained in sales contracts is insufficient. The transaction prices stated in the deeds may be actual prices (equal to the amount for which the property was purchased), or they may be "spurious". Actual prices primarily include market prices, but "amateur prices" also appear, i.e. the actual amounts that were paid for the properties, but influenced by the subjectivity of the seller and/or the buyer. 'Spurious' prices, on the other hand, arise when the parties to a transaction wish to understate or overstate the transaction price. Underpricing may aim to reduce the tax base associated with the purchase of the property, and overpricing may support an overvaluation of the mortgage security or a reduction in the minimum deposit required to obtain a loan.

In addition, the information contained in notarial deeds is limited to basic address data and laconic characteristics, which makes it impossible to identify the differentiating features of properties and to study the contribution of the influence of individual features to price formation.

The disadvantages of using only transaction prices for market analysis and property valuation encourage the use of offer prices. The lack of market transparency caused by not disclosing the true consistency of sales prices makes it necessary for valuers to use offer prices as a comparative element or one such element in a market approach.

The IP considers:

- *How the offer price is determined and what it derives from*
- *Observation of bidder behaviour*
- *The large range of offer prices*
- *The importance of analysing the lack of correspondence with actual sale prices and how a valuer experienced in a given market can judge the relationship between offer prices and likely sale prices*
- *The importance of the scale of transactions in the market relative to the size of the offer and the two types of market imbalance (seller's market and buyer's market)*
- *In an environment of dynamic market changes combined with the time lag factor in obtaining transaction prices, the importance of keeping track of property sales offers despite the fact that these are only a proxy for transaction prices*

OTHER REAL ESTATE VALUATION

Photo by eugenesergeev, iStock

#04

Real estate market trends in wartime Ukraine

Iryna Ivanova,
Oleksandr Drapikovskyi

Introduction

A certain degree of uncertainty is inherent in any valuation, when it reaches a critical level it complicates the valuation process and can significantly impact the investment decisions and other choices of those relying on the valuation. The main source of heightened uncertainty, which is easy to feel but difficult to measure, is market instability, which occurs as a result of sudden economic and political crises and manifests itself in atypical behaviour of market participants.

An appraiser's job gets even more complicated when the real estate market is in a state of global disruption, as is the case in Ukraine following Russia's armed aggression.

Heightened uncertainty does not mean that we cannot perform a valuation, but it does require additional effort from appraisers to adequately reflect the expectations of market participants and their reactions to current challenges.

In the context of martial law, we see radical changes in supply and demand, people's perception of the comfort and security of real properties, and their requirements as to the location of those properties, such as distance from the front line or the number of air raid sirens, as well as changes in the regional geography of construction as a whole.

At the same time, the introduction of innovative technologies designed to improve energy efficiency, accessibility, and civilian protection is completely changing not only the requirements for existing and future properties, but also the priorities of market participants.

This article focuses on only one segment, but a very important one for the real estate market: residential property, which is the most sensitive to changes in living conditions and allows us to track the main trends in Ukraine's real estate market during the war.

"A shortage of existing supply compared to the current level of demand for residential property has become one of the drivers of residential construction, despite all the risks."

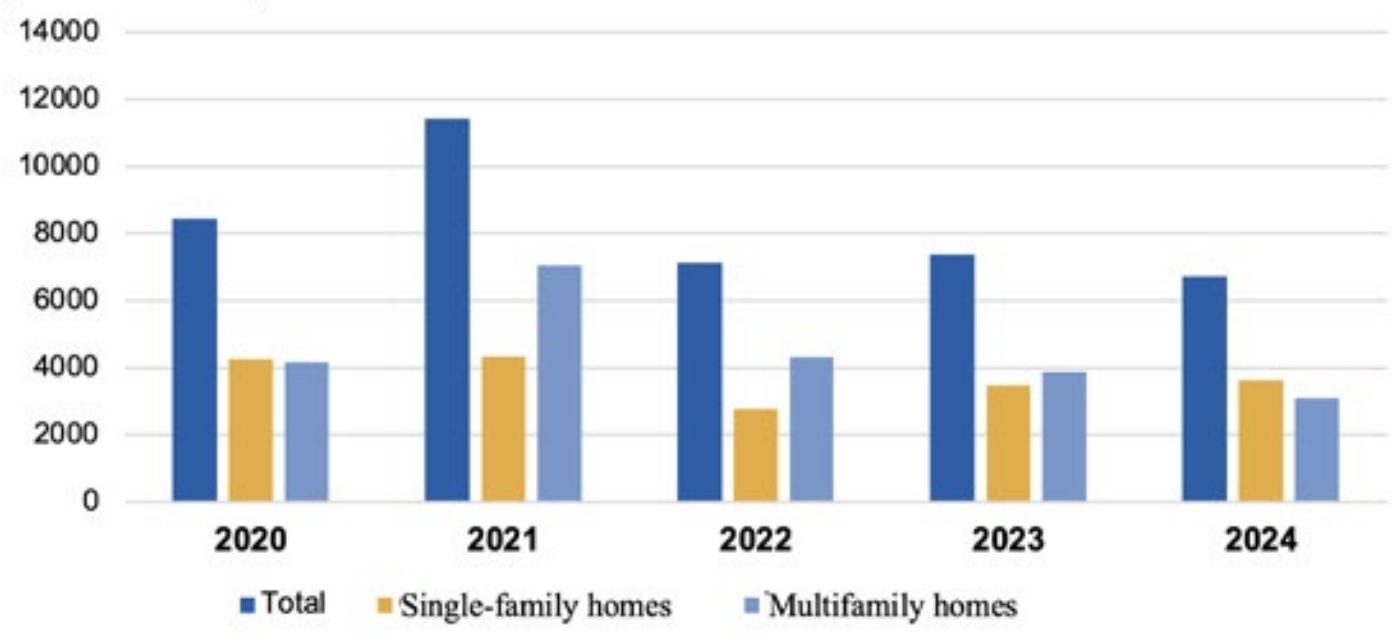
The transformation of demand in the residential property market

The full-scale invasion has caused significant internal migration of Ukrainians to safer regions, where the demand for housing rentals and purchases has risen substantially.

According to data from the Ministry of Justice, in the three years since the start of the war, public and private notaries have certified 470,100 sale and purchase agreements for apartments and single-family homes (100,700 in 2022, 172,600 in 2023, and 196,800 in 2024).

A shortage of existing supply compared to the current level of demand for residential property has become one of the drivers of residential construction, despite all the risks. Whereas the total area of residential properties put into service fell by 1.6 times in the first year of the full-scale invasion compared to previous levels due to the stoppage of construction in temporarily occupied and frontline areas and the uncertainty of the situation in the country as a whole, the supply of new homes returned to 2020 levels in 2023, despite a labour shortage and problems with logistics and the supply of building materials.

The total area of residential buildings put into service by type in 2020-2024 (m^2 of total area)



Source: The State Statistics Service of Ukraine

Single-family homes built in small, "relatively safe" developments have made up the largest share of residential construction during the war years. Mobile and modular homes have taken an important place in this type of housing, accelerating the construction process while maintaining the quality of housing. Modular homes have become an attractive option for both developers and homebuyers, as evidenced by the growing volume of foreign investment in this market segment. For example, in the Kyiv region, the Hansen Town was built with funds from the American charity organisation 'To Ukraine with Love', in the Kharkiv region, the German company CAPAROL is investing in housing reconstruction, in the Uzhhorod region, the Israeli company ZEZMAN GROUP and in the Lviv region, the Ukrainian-Korean Investment Group.

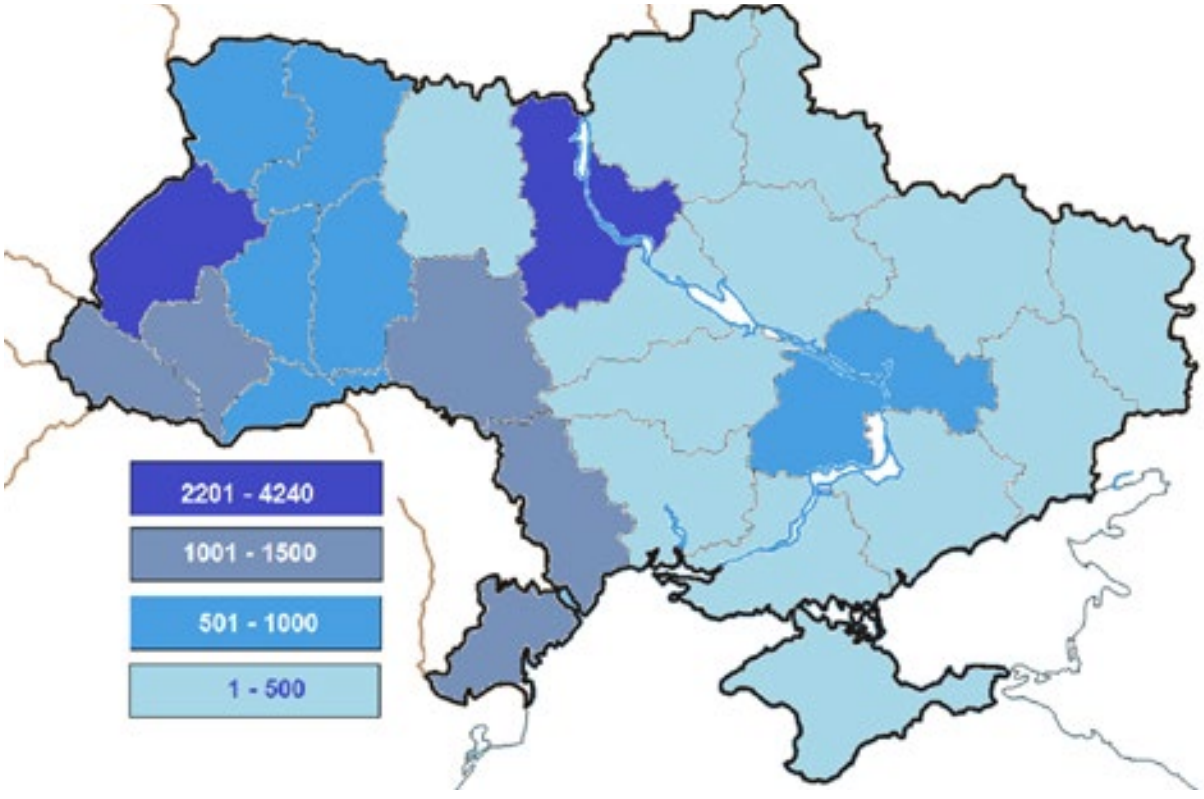
"...migration processes happening within the

country have led to a greater trend of renting rather than owning."

Construction of multifamily housing, the demand for which is quite high among domestic migrants, has been somewhat slower to recover. Properties of this type are also attractive to investors, who buy apartments with the intention of renting them out. It should be noted that the migration processes happening within the country have led to a greater trend of renting rather than owning.

Apartments adapted for both co-habitation and professional needs are becoming increasingly popular, as they are very close to the format of social housing, providing the most comfortable and affordable rental housing for ordinary Ukrainians, especially for young professionals with flexible working hours. The demand for small-sized apartments is also making a comeback, primarily due to the low prices of such real estate.

The total area of residential buildings put into service by region in 2022-2024 (1000m² of total area)



The concentration of construction volumes in certain regions has been accompa-nied by an increase in suburbanisation processes, where both single-family and multifamily housing has been built not only in the regional centres, but also in their suburbs, primarily in such cities as Kyiv, Lviv and Odesa.

The construction of multifamily housing complexes in the suburbs has been driven by two main factors: first, the location a safe distance from critical infrastructure facilities, industrial enterprises, etc.; and second, convenient transport access to city centres.

Technological innovation in residential construction

Security is becoming a key factor in Ukraine's residential real estate market. Since the start of the war, this concept has become multifaceted; it includes various measures to ensure comfortable and high-quality living, even under rather unfavourable external circumstances.

Security solutions are governed by the relevant regulatory framework, which has undergone substantial changes since the start of the full-scale invasion. By law, all new housing complexes must have shelters, which may be dual-purpose structures, such as underground garages converted into bunkers or specially created spaces that comply with state building codes.

There are also **new requirements for the structural elements of residential buildings**, providing for the use of modern non-flammable and impact-resistant materials, heavy-duty facade systems, multi-layered glass, reinforced frames and materials that minimise the risk of facades being destroyed by external forces.

Building codes also regulate the installation of fire-prevention systems and auton-

omous power supply systems that allow properties to remain operational during emergency and stabilisation outages.

"By law, all new housing complexes must have shelters, which may be dual-purpose structures, such as underground garages converted into bunkers or specially created spaces that comply with state building codes."

Energy saving has become an important

criterion for selecting a home, especially in the context of energy shortages and rising rates. The trend towards energy-saving technology started even before the full-scale invasion, but since the start of attacks on Ukraine's energy infrastructure, energy-saving technologies have acquired new strategic significance.

Technological innovations in real estate development – energy efficiency, accessibility, and civilian protection – have boosted the attractiveness and efficiency of housing in terms of ensuring the maximum protection of residents.

Housing prices in new construction

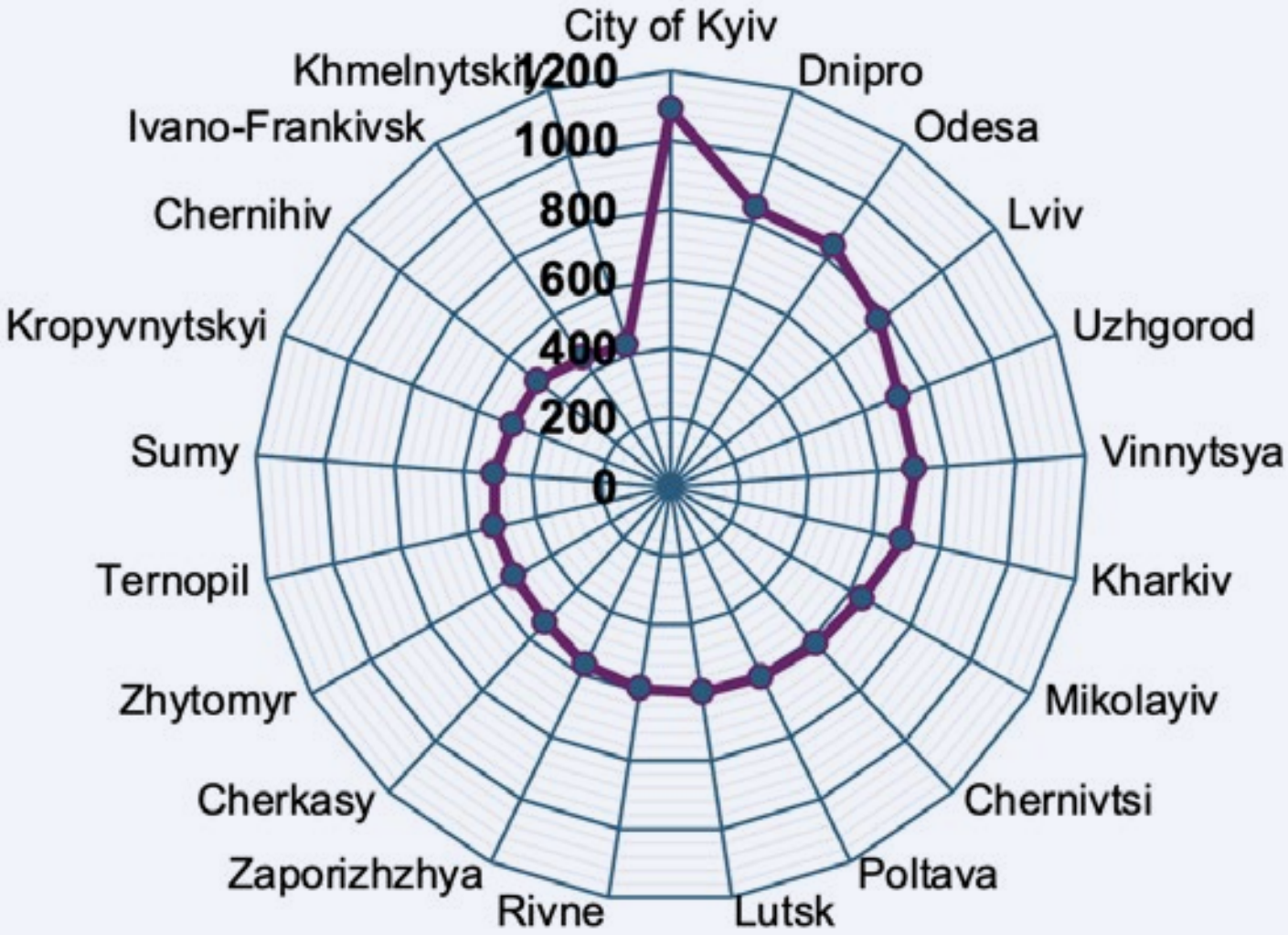
The introduction of innovations in residential construction has raised the cost of housing in new buildings but has not reduced demand for them. In general, the price of one square metre in these properties was 1.4 times higher in 2024 compared to the pre-war period.

The greatest price growth has been observed in the western regions, where the cost of one square metre of newly built housing rose by 45-82%.This increase was driven not only by the relocation of some businesses from temporarily occupied and frontline areas, but also by the creation of new formats for workplaces, above all for industrial parks, more than half of which are located in the western regions.

This led to an inversion of Ukraine's traditional price distribution scale based on the hierarchy of cities by population, where cities with a population of more than one million – Kyiv, Kharkiv, Dnipro and Odesa – dominated.

Today, the four cities with the most expensive newly constructed housing are Lviv, Kyiv, Uzhhorod and Dnipro.

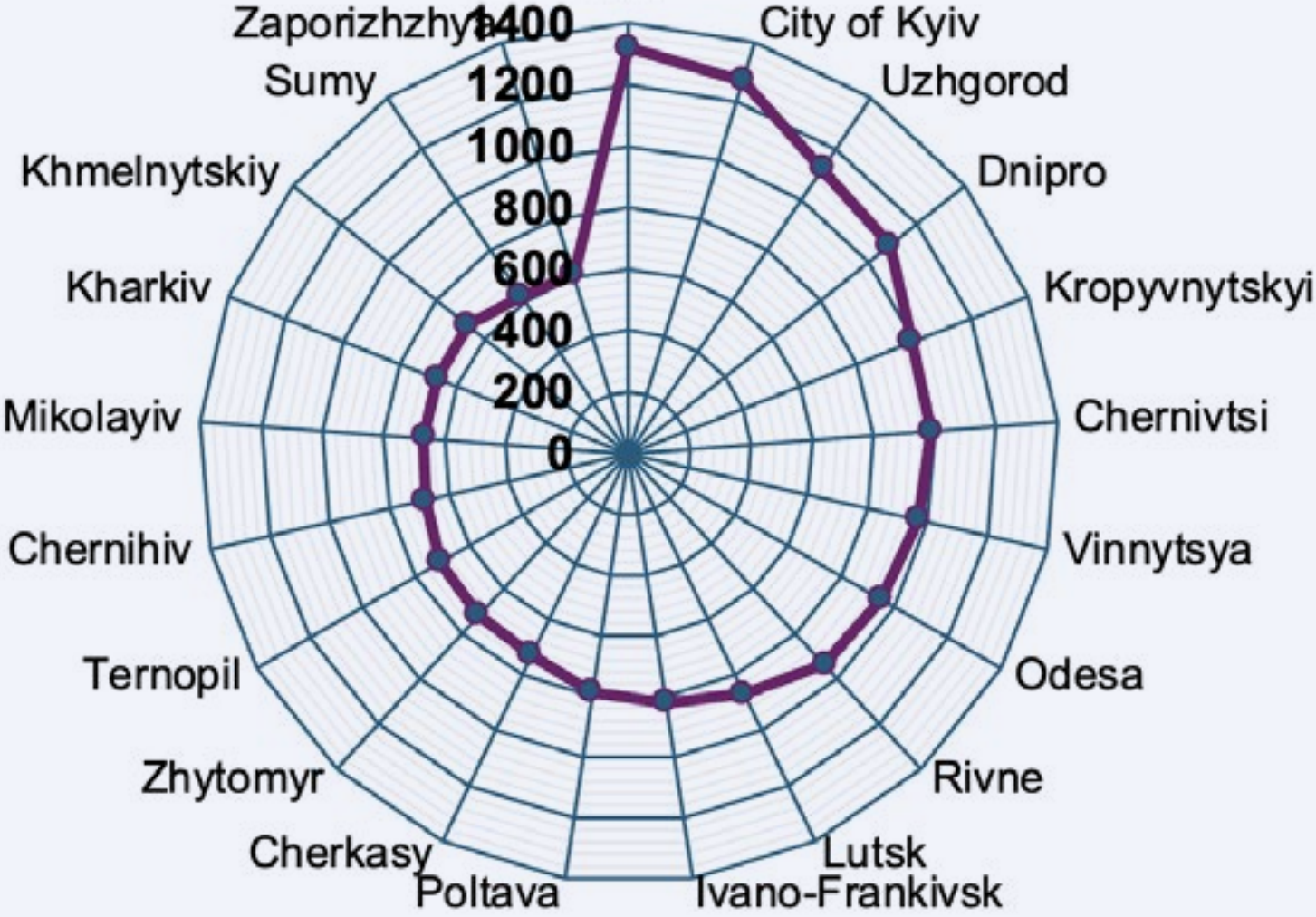
Housing prices in 2020
(USD/m² of total area)



Source: GIS Uvecon

Housing prices in 2024
(USD/m² of total area)

Lviv



Source: GIS Uvecon

These "price geography" changes have occurred in the commercial and industrial real estate markets as well.

Conclusions

The trends observed in Ukraine's wartime residential market have been driven by a number of factors, both external (geopolit-ical) and internal (innovative technologies in the construction industry) that have led to a change in priorities in the demand for housing, which must be taken into account by appraisers.

However, understanding the nature of these trends does not reduce the degree of valuation uncertainty in the face of market instability, primarily due to the situation at the front and the level of support for Ukraine among the international community.

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OTHER REAL ESTATE VALUATION

Photo by eugenesergeev, iStock

#05

Belgium: a happy real estate country, but for how long?

Ibrahim El Idrissi

In Belgium, property and rent remain affordable compared to many other European countries as the kingdom has used ingenious urban planning and transportation policies to foster a rare degree of social cohesion with a stable and inclusive real estate market where different social groups meet and connect in the heart of the city.

However, despite this positive balance, the rental market in Belgium has faced increasing scarcity in recent years with dozens of applicants for each rental property, requiring many people to spend long periods of time looking for a suitable home. This pressure on the rental market poses a challenge to the stability of the housing sector and calls for innovative solutions.

This shows that even a market with such strong fundamentals has to reckon with external and internal forces that can upset its delicate balance. Belgium, like other countries, faces a series of complex challenges and it has not invented any miracle solutions, but the modernisation of its traditional mix of social consciousness, business practices and government policies may serve as a model beyond our borders.

Most of Belgium's challenges are easily recognisable throughout Europe:

- rising construction and renovation costs, driven by energy efficiency and sustainability regulation and global inflation in material prices;
- labour shortages igniting labour costs;
- an aging population living in large empty homes while the young struggle;
- and recomposed families multiplying demand for individual housing units.

All these factors combine to put unprec-edented pressure on the existing housing supply. For Flanders, Belgium's economic centre of gravity and most populous region, add to this a scarcity of building land due to a nitrogen issue and strict restrictions on new green building sites.

"... even a market with such strong fundamentals has to reckon with external and internal forces that can upset its delicate balance."

Balancing affordability

and quality

However, what sets Belgium apart from many other European markets is its remarkable ability to balance affordability and quality despite these challenges. Where countries such as the Netherlands and Sweden face huge inefficiencies in their rental markets – often making ownership the only viable option even for those who can scarcely afford it – Belgium continues to offer relatively affordable rental housing within a strong property market. This balance contributes to social cohesion and acts as a buffer against the inequality that often accompanies exploding property prices.

"While the preference for ownership remains a constant, the way

Belgians interpret this value is evolving."

It is tempting to simply attribute this success to historical factors, such as low land prices in the past or a solid tradition of tax incentives, such as the now phased-out mortgage deduction. But the truth is that Belgium still benefits today from its unique combination of pragmatism, capacity for dialogue and compromise, inventiveness and a deep-rooted cultural awareness of the value of housing as a human right and social/economic tool.

1. Belgium's foundations: stability and confidence

1. The culture of ownership

Belgium stands out within Europe for its deeply rooted property-oriented culture. For Belgian families, home ownership is not simply an investment, but an essential element of financial security, social status and family values. This ownership transcends the purely economic and reflects a broader cultural outlook: the desire for stability, responsibility and connection to one's surroundings.

A historical basis for ownership

The preference for ownership in Belgium has deep historical roots. After World War II, home ownership was promoted as a form of economic reconstruction and stability. Subsidies, tax breaks and mortgage interest deductions created an environment in which it became attractive and feasible for a broad public to acquire their own homes. Moreover, this ownership strategy reflected a widely held vision in which home ownership was seen not only as an economic tool, but also as a social pillar that strengthens family ties and promotes a local sense of community. This policy has had a lasting impact on how Belgians understand and value their relationship to property.

Intergenerational transfer: property as family capital

Another strong Belgian feature is the role of intergenerational transfer within the property market. Passing ownership from one generation to the next contributed to market stability. Because of these transfers, properties often remain off the market and are not subject to the rapid price fluctuations seen in many other European countries. This helps explain why the Belgian property market has shown remarkable resilience during periods of economic uncertainty.

The role of cultural values in home ownership

Belgium's ownership bias meshes with the country's broader cultural values. Stability, responsibility and concern for one's surroundings are core values reflected in the way Belgians own and manage property. Owning a home goes beyond meeting a personal need: it is often seen as a contribution to the community and as a way of anchoring one's place in society.

At the same time, this ownership orientation is not static. While the preference for ownership remains a constant, the way Belgians interpret this value is evolving. Among younger generations in particular, awareness of sustainability and efficient use of space is growing, leading to innovations such as shared ownership, co-housing and renovation of existing properties.

"Belgian households

have access to finance without being exposed to the risks that often cause volatility in other markets."

2. Accessible mortgages: stability and social mobility

The Belgian mortgage market stands out in Europe for its remarkable balance between accessibility and stability. Thanks to a conservative lending culture and a focus on predictability, Belgian households have access to finance without being exposed to the risks that often cause volatility in other markets. This combination of prudent banking practices and supportive policies has resulted in a robust and resilient property market.

The importance of fixed interest rates

The majority of mortgages in Belgium are concluded at fixed rates offering homeowners the security of stable monthly costs while strengthening the overall resilience of the market. Fixed rate predictability creates a stable environment in which both lenders and buyers have **confidence**, even in times of economic uncertainty.

A low dropout rate: a market that works

The conservative approach of Belgian banks is a key factor behind the **low mortgage default rate**. Lenders apply strict criteria when evaluating loan applications, ensuring that loans are only granted to households that are actually able to meet their obligations thereby stabilising the property market and preventing households from getting into financial trouble.

Supporting young buyers: building wealth for the future

Governments play a key role in promoting mortgage accessibility for young and first-time buyers through various incentives such as grants, preferential loans and tax breaks. Despite this, many young Belgians now face difficulties in buying their first home. This is due to the limited availability of affordable housing, coupled with rising construction costs.

2. The construction cost challenge: pressure on stability

Since the pandemic, global supply chain disruptions and rising demand for raw materials have significantly driven up prices for building materials and labour with the inevitable knock-on for affordability.

Material shortages: a global problem with local consequences

Materials such as steel, concrete, timber and insulation products have become significantly more expensive, due partly to production constraints during the pandemic, but also to geopolitical tensions and inflation. This has forced project developers and contractors to drastically adjust their strategies and budgets.

In addition, increasing demand for raw materials from emerging economies and the transition to green technologies have further intensified competition for these materials, leading to longer delivery times, rising prices and increased uncertainty in the construction industry. For many developers, this means having to choose between absorbing these costs, passing them on to buyers, or delaying projects, which in turn increases pressure on the housing market.

Sustainable construction: high costs, long-term benefits

Another major factor in the rise in construction costs is the growing emphasis on sustainable construction and energy efficiency. While this is a positive development for combating climate warming, it entails higher initial costs. Energy-efficient materials such as triple-glazing, high-quality insulation and solar panels, as well as techniques such as heat pumps, require significant investments.

Market impact

Rising construction costs are having a profound impact on the Belgian real estate market. New construction projects are becoming less accessible to first-time buyers and buyers with limited budgets, further increasing pressure on the existing housing market. At the same time, developers have to get creative to operate within the financial constraints of buyers, for example by building more compact homes or focusing on collective housing.

The higher cost of renovation projects also makes it more challenging for existing homes to meet stricter energy performance standards, leading to a wider gap between new construction and older properties. This increases the risk of a dichotomy in the market, with sustainable, modern homes becoming increasingly unattainable for large sections of the population.

"More than ever, the sector needs public and private parties to work together to find creative

solutions, but this is something Belgians are good at. The county's 'compromise culture' works well here."

Balancing between short-term and long-term

The challenge of rising construction costs calls for a balanced approach. On the one hand, the cost of sustainable construction must remain manageable to avoid further eroding housing affordability. On the other, it is essential to continue investing in sustainability and innovation to meet climate targets and future buyer demand.

More than ever, the sector needs public and private parties to work together to find creative solutions, but this is something Belgians are good at. The county's 'compromise culture' works well here. Subsidies for energy-efficient materials, simplifying administrative processes and innovative financing models can help mitigate the impact of rising costs and ensure accessibility to new construction and renovations.

3. Innovation and forward-looking solutions

1. Addressing the scarcity of building land

Constraints on available land have prompted innovative solutions. Previously controversial **vertical urban development** is now one of the main trends stemming from the need to use available space more efficiently. In addition, the **repurposing** of industrial sites and vacant buildings is increasing, contributing to urban renewal and adding a modern and sustainable dimension to the property market, by using energy-efficient technologies and communal facilities.

2. Sustainability in construction

Sustainability permeates Belgian construction. Through a combination of government policies, tax breaks and awareness among homeowners, making homes more sustainable is strongly encouraged.

Green technologies: efficiency and added value

In Belgium, the integration of green technologies into both new construction projects and renovations is accelerating. Solar panels, heat pumps, high-efficiency boilers and innovative insulation materials are rapidly becoming the norm, increasing the market value of homes. It is excellent that EVS 2025's EVS 6 'Valuation and Energy Efficiency' not only requires valuers to take account of this factor in their estimation of market value but even provides a residual approach to doing so. This is very timely given that in Belgium potential buyers increasingly see these sustainable investments as an important asset in the face of rising energy prices and stricter energy performance standards.

A special aspect of the Belgian approach is the active role of government. Through subsidies and tax breaks, such as tax deductions for energy-saving investments, sustainability is made financially viable for a broad public. This has led to a significant increase in the use of green technologies, with the added benefit of reducing energy consumption per dwelling and relieving the burden on the collective energy network.

Circular economy: building with a conscious footprint

Demolition projects increasingly seek selective dismantling, recovering and reusing valuable materials such as steel, bricks and wood, reducing the industry's carbon footprint and lowering the cost of new construction projects. Initiatives such as the establishment of building materials banks and partnerships between demolition companies and property developers are mainstreaming circular construction practices.

3. Co-housing: living together in a changing society

Co-housing, or communal living, is trending in Belgium, especially among younger generations and retirees. This form of living provides an answer to contemporary challenges such as rising housing costs, loneliness and the need for more sustainable living environments. By sharing common spaces and facilities, residents save costs and build a keen sense of community.

Co-housing: more than living

Co-housing projects combine private living spaces with shared facilities such as gardens or workspaces and meeting spaces. Each resident has his or her own co-housing apartment with its own kitchen, bathroom and toilet. People voluntarily share spaces, such as the living room or workspace, and manage them together. This type of living captures the imagination of a society that increasingly values connection, collaboration and efficient use of resources.

Examples of innovative co-housing projects

In Belgium, there are now several successful co-housing initiatives that serve as inspiration for other projects. One example is Co-housing Dubbeltuupe in Ghent, located in the sustainable neigh-borhood De Nieuwe Dokken. This project consists of a number of apartments, with residents sharing common spaces such as a coworking space, a multipurpose room and a large roof terrace in addition to their private homes. The project emphasises the importance of sustainability and a sense of community and is part of a circular district that focuses on ecological and social renewal.

Such projects show that co-housing is not just a niche market but is becoming increasingly mainstream. Double-tuupe, with its focus on communal responsibility and sustainable amenities, offers a model that can also be applied on a larger scale.

Policy support and incentives

The growth of co-housing in Belgium is stimulated by a supportive municipal and regional policy framework. Municipal subsidies and regulations facilitate cohousing projects, while collaborations between developers, architects and local authorities encourage innovative solutions. In addition, cities such as Brussels and Ghent have launched plans to include co-housing initiatives in urban redevelopment projects. Financial incentives such as tax breaks and subsidies encourage residents to participate in these innovative forms of housing. Policies also focus on lowering administrative barriers, making it easier for groups to create shared housing.

The local and regional authorities now need to complement this with planning reform. Simplifying administrative procedures and reducing lead times for building permits can significantly increase the speed of co-housing development.

Conclusion

What makes Belgium special is the balance between tradition and progress. The deep-rooted values of ownership, family cohesion and local communities are complemented by forward-looking solutions that respond to sustainability, affordability, urban growth and changing mores.

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#06 How to apply environmental and climate criteria to property valuation under the EU Taxonomy

Ana Calderón Martínez

New paradigm

There is a new paradigm for property valuation: understanding environmental and climate criteria and determining how they impact valuation.

EVS 2025 came into effect on 1 January 2025. Of the many important topics covered, two stand out: EVS 6 Valuation and Energy Efficiency, and PS 6 on Valuation and Sustainability. The first contains binding obligations on energy efficiency and sets out while the second serves to assist and guide valuers in the broader application of environmental and climate criteria when valuing property and sets the focus of this article in the context of the EU taxonomy on sustainable activities (EU Taxonomy).

The EU Taxonomy is the classification system for economic activities that translates the European Union's climate and environmental targets into investment criteria for specific economic sectors and activities.

The EU Taxonomy defines **six environmental objectives and criteria** for assessing the sustainability of economic activities and investments. It lists the activities considered sustainable and contributing to at least one of these targets, and ensures transparency in investments that promote sustainable development.

Source: GIS Invecon

All aspects of the property sector now form part of the EU Taxonomy, with the associated reporting requirements for publicly listed and large companies.

"All aspects of the property sector now form part of the EU Taxonomy, with the associated reporting requirements for publicly listed and large companies."

From 2024, European banks, insurance companies and other financial institutions are required to report on how they comply with the EU Taxonomy, using sector-specific key performance indicators (KPIs) to publish their sustainability indicators.

Banks and real estate investors believe that buildings aligned with the EU Taxonomy should be valued higher than those that are not. This value can be defined as a sustainability ratio.

Real estate valuations, introduction of new criteria

In this context, property valuations become increasingly challenging with publicly listed and large companies requiring valuers to apply the criteria, that is, carry out an Environmental Sustainability Assessment of buildings making it possible to define whether the property is in line with the EU Taxonomy and determine its Sustainability rating. In other words, the valuer will be asked to complement the valuation proper with a sustainability assessment for banks and stakeholders, adding considerable value which will need to be compensated accordingly.

Valuers cannot handle this huge task alone. Entities and institutions with recognised expertise in the area will have to be involved using the building sustainability measurement tools they have developed.

"...the valuer will be asked to complement the valuation proper with a sustainability assessment for banks and stakeholders, adding considerable value which will need to be compensated accordingly."

Creation of a new tool

It was to this end that, in Portugal, ANAI, ADENE and Systemic came together to develop the "Environmental Sustainability Assessment of Buildings" tool aligned with the EU Taxonomy.

The tool is still under development, but will become available to all stakeholders in the property sector in the course of the year, with an area reserved for valuers and other professionals.

In the tool, the valuer will need to provide a range of information about the building being assessed. Currently an excel file, it will ultimately be a user-friendly platform for valuers with much accessible information, for example, on the EPC. There will be training courses for optimal use.

The relevant environmental sustainability indicators will be assessed against the EU Taxonomy criteria.

The **climate change adaptation criterion** identifies the building's physical and climate risks, such as heat waves, rural fires, droughts, high winds, flooding, storms and coastal overtopping, snowfall and cold spells. This criterion will assess whether or not to implement adaptation solutions to reduce the risks identified for the building.

The tool recognises *LEED* or *BREEAM* properties, or *Lidera* in Portugal, as certifying the sustainability of buildings in line with the EU Taxonomy.

The **water resources criterion** identifies how the building uses water and reserve resources. This includes defining its water class, if any.

For the **pollution criterion**, valuers can include information about the products in the tool. If they have access to the technical data sheets and their respective Environmental Product Declarations (EPDs), EPDs provide a standardised environmental profile based on a life cycle assessment and data are developed through a life cycle analysis (LCA) in accordance with European standards. The property manager/owner may provide information on the various products with EPD declarations. Alternatively, valuers having the references for these products may access various portals to consult the respective EPD declarations. The tool has a field for entering these declarations, if any.

EPD Declarations quantify environmental information about the life cycle of a product, enabling comparisons between products that fulfil the same function.

"...the tool is a groundbreaking fast-track for valuers to attain meaningful, non-greenwashed sustainability assessments for buildings."

The **criterion on the sustainable protection of healthy ecosystems** is also incorporated, based on the building's location and its relationship with protected areas.

After completing the fields available in the tool, the results for the buildings sustainability indicator are displayed as well as its vulnerability to physical risks and its ranking in relation to the EU Taxonomy.

As ANAI is a non-profit organisation and will manage the tool, the costs of using it will be those necessary and sufficient for its maintenance. ANAI intends to make the tool available to all valuers in Portugal for its members and non-members, as well as to non-Portuguese valuers, as an English version is planned.

In short, the tool is a groundbreaking fast-track for valuers to attain meaningful, non-greenwashed sustainability assessments for buildings.

About the partners in the 'Environmental Sustainability Assessment of Buildings' tool project

ANAI – **Portugal's National Association of Real Estate Valuers** (Associação Nacional de Avaliadores Imobiliários) represents the interests of property valuation professionals, promoting the profession's greater recognition and status within society.

ADENE (Agência para a Energia) is Portugal's National Energy Agency. It is a private non-profit association that is officially recognised as a public utility agency and promotes public interest activities in the field of energy, efficient use of water and energy efficiency in mobility.

Systemic is a sustainability consulting company whose mission is to promote critical and visionary thinking, stimulating the intellectual and emotional awareness of each agent of change to encourage future organisations to provide products and services that contribute to building a responsible market economy.

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BUSINESS VALUATION

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#07

Cash flows and discount rates modelling for different

valuation subjects, valuation purposes and bases of value

Nina Milenković

Nina Milenković's ***Common Errors in Determining Discount Rates*** *(European Valuer Issue n° 25, March 2022) grounded in practice and experience more than theory, was one of this journal's best-received articles. The current piece is the first in a series.*

1. Introduction

In valuation practice, it is not uncommon for clients or colleagues unfamiliar with valuation to ask how it is possible to use different discount rates for the same company in the same report. To provide a correct answer, it is necessary to start with the essence and meaning of the discount rate.

The discount rate represents the key link between the cash flows generated by the valuation subject, and its value. Therefore, the primary prerequisite for correctly determining the discount rate is ensuring consistency between the discount rate and the cash flow it is applied to.

Cash flows are determined by the valuation subject, meaning they depend on the source generating them: equity, invested capital, a particular intangible asset, total assets used for primary business operations, etc. Following the principle of consistency, each valuation subject corresponds to its "own" discount rate.

Additionally, the same valuation subject can be viewed from different perspectives, i.e., valued for different purposes. Some of the most common valuation purposes are: buying or selling the company, tax purposes, impairment testing, restructuring, etc. In such cases, the cash flows remain the same, but certain components of the discount rate change.

Finally, as valuation purpose determines methodology, it also determines basis of value. For example, the company seller would usually ask for market value, while the buyer could ask for market value, investment value or synergistic value.

This paper describes the specific characteristics of cash flows for particular valuation subjects, as well as adjustments of discount rate components for specific valuation subjects and for some of the most common valuation purposes. An illustrative example of a telecommunications company operating in multiple countries in the Balkans is presented. For simplicity, only cash flow examples related to operations in Serbia are shown.

2. General definition of the discount rate

The discount rate is most commonly defined as the cost of capital. However, it is either the rate of return on equity required by investors (in the case of equity valuation) or a combination of the return on equity capital and the cost of debt (in the case of invested capital valuation).

The weighted average cost of capital (WACC) is usually determined as follows:

$$WACC = r_E \frac{E}{V} + r_D (1-t) \frac{D}{V} \quad (1)$$

where r_E = cost of equity or required return on investment in a company
where r_D = cost of debt before tax
E = equity
D = borrowed capital (debt)
V = invested capital (E+D)
E/V = share of equity in invested capital

D/V = share of debt in invested capital

t = tax rate

The cost of equity (CoE) is determined using a modified CAPM model:

$$r_E = r_f + \beta \cdot ERP + CRP\ (+SRP) \qquad (2)$$

r_f = risk free rate of return

β = beta coefficient, measure of systematic risk

ERP = market risk premium for equity (shares), the difference between the rate of return on a market portfolio of shares and the risk free rate

CRP = country risk premium

SRP = specific company risk

The significance of individual components and methods of their determination are extensively described in various studies, including Fernandez (2023) and Milenković (2022).

WACC is often used as a basis for derivation of specific discount rates, e.g. for impairment testing, valuation of intangible assets, economic obsolesce assessments on CGU level in property, plant and equipment valuation, etc.

3. Cash flows and discount rates depending on valuation subject and purpose

Cash flows used in valuations must reflect the valuation subject and purpose. In other words, when forming cash flows, the valuer has to ensure the following:

- All cash inflows and outflows generated by the valuation subject and significant from the perspective of the valuation purpose and appropriate basis of value are included.
- Cash flows are projected over the entire useful life of the subject of the valuation.
- The value at the end of the discrete projection period (so-called residual or terminal value) is determined in an appropriate manner.

The cash flow components whose presence in the majority of models is most often unquestionable are revenues and expenses from operations, resulting in EBITDA (earnings before interest, taxes, depreciation, and amortisation), while those that are most frequently determined depending on the purpose of the valuation are inflows and outflows related to financing and taxes.

The inclusion or exclusion of certain components can be carried out based on the logic and judgement of the appraiser, but it can also be mandatory, i.e., prescribed by specific standards. For example, International Accounting Standard 36 – Impairment of Assets requires that the cash flows and discount rate used to determine the value in use be before taxation.

Some of the most common characteristics of cash flows for particular valuation subjects and valuation purposes or bases of value are presented in Table 1.

	Market Value (Equity)	**Market Value (Enterprise Value)**	**Invest-ment value (Equity)**
Useful life	Indefinite	Indefinite	Indefinite
Debt Servicing	After	Before	After
Taxation	Mainly after	Mainly after	Mainly after

Working Capital	Required	Required	Required
Residual Value	Capitalisation or market multiple	Capitalisation or market multiple	Capitalisation or market multiple
Discount Rate	Cost of Equity	WACC	Cost of Equity

	Corporate Brand Valuation	**Impairment of Goodwill**
Useful life	Mainly Indefinite	Mainly Indefinite
Debt Servicing	Mainly before	Mainly before
Taxation	Mainly after	Before
Working Capital	Not required, often indirectly included	Required
Residual Value	Mainly capitalisation	Capitalisation
Discount	Derived from WACC	WACC

Rate		

	Impairment of Assets	Restructuring
Useful life	Finite, the remaining asset life	Depends on the scenario
Debt Servicing	Before	After
Taxation	Before	After
Working Capital	May or may not be required	Required
Residual Value	Remaining (residual) value	Depends on the scenario
Discount Rate	Derived from WACC	Cost of Equity

Table 1: Characteristics of Cash Flows for Different Valuation Subjects, Valuation Purposes and/or Bases of Value

	Market Value (Equity)	Market Value (Enterprise Value)	Invest-ment value (Equity)
Taxation	Consistent with cash flows	Consistent with cash flows	Consistent with cash flows
Capital Struc-ture	Market	Market	Actual or Target
Cost of Debt	Market	Market	Actual
Addi-tional Risk Pre-miums	SCR* from market par-ticipants' perspective	SCR from market par-ticipants' perspective	SCR from particular investor's perspective

	Corporate Brand	Impairment of

	Valuation	Goodwill
Taxation	Consistent with cash flows	Before
Capital Structure	Mainly Market	Market
Cost of Debt	Mainly Market	Market
Additional Risk Premiums	SCR plus additional premium for intangibles	SCR from market participants' perspective

	Impairment of Assets	Restructuring
Taxation	Before	Consistent with cash flows
Capital Structure	Market	Actual or Target
Cost of Debt	Market	/
Addi-	SCR from market	SCR plus additional

tional Risk Pre-miums	participants' perspective	risks for specific scenarios

Table 2: Discount Rate Components for Different Valuation Subjects, Valuation Purposes and/or Bases of Value

***Specific Company Risk**

Consistency between cash flows and discount rate is a MUST for every valuation. To ensure that, a valuer has to choose discount rate components carefully.

Some requirements are straightforward to fulfil and come down to the choice of the component value (actual or market capital structure, actual or market cost of debt, inclusion or exclusion of additional risk premiums). Taxation adjustments are somewhat more complicated, especially since they also affect the beta coefficient when adjusting for leverage (for more on adjusting the beta coefficient, see

Milenković, 2022).

Namely, most components of the WACC, except for the cost of debt, are empirically determined based on data that assumes post-tax returns. Therefore, in practice, valuers either recalculate individual Cost of Equity components (or whole CoE) to pre-tax ones and calculate WACC using pre-tax cost of debt, or just calculate post-tax WACC and then gross it up by tax rate. Both methods are approximate and do not provide an accurate result because they do not account for the dynamics of cash flows and, therefore, the dynamics of taxation. The only completely correct method is to calculate the post-tax discount rate, apply it to post-tax cash flows, and then, based on the resulting value, determine the pre-tax WACC (using pre-tax cash flows and an iterative process).

4. An illustrative

example: telecommunications company

To illustrate the considerations discussed, an actual telecommunications company is analysed. Although the company operates in multiple countries in the Balkans , only the Serbian operations are presented. The valuation date was 31 December, 2015. The valuation equity and corporate (umbrella) brand as well as impairment tests of goodwill and assets were actual projects, while valuation of investment value and restructuring are included for illustrative purpose.

Data sources for WACC components included:

- Risk-free rate: AAA bond yields from the European Central Bank
- Beta: Peer group from the Infinancials (nowadays Infront)

database

- ERP (Equity Risk Premium), CRP (Country Risk Premium), and SRP (Specific Company Risk): KPMG analyses
- Cost of debt: National Bank of Serbia for market rate, company's data for actual rate
- Debt/Equity ratio: Peer group from the Infinancials (nowadays Infront) database for market ratio company's data for actual one

Table 3 presents the discount rates applied to different valuation subjects and purposes for the telecommunications company.

The example clearly illustrates the impact

	Market Value (Equity)	Market Value (Enter-	Invest-ment value

		prise Value)	(Equity)
Tax rate	15%	15%	15%
Unlevered beta	0.53	0.53	0.53
Relevered beta	0.72	0.72	1.00
Debt/Equity Ratio (D/E)	0.43	0.43	1.04
Equity in Invested Capital E / (E+D)	0.70	0.70	0.49
Debt in Invested Capital D / (E+D)	0.30	0.30	0.51
Risk-free Rate (Rf)	1.59%	1.59%	1.59%
Equity Risk Premium (ERP)	6.50%	6.50%	6.50%
Country Risk Premium (CRP)	2.90%	2.90%	2.90%
Specific Company Risk (SCR)	2.70%	2.70%	3.50%

Cost of Equity, post-tax	**11.89%**	**11.89%**	**14.48%**
Cost of Debt, pre-tax	5.17%	5.17%	6.80%
Cost of Debt, post-tax	**4.39%**	**4.39%**	**5.78%**
After-tax Discount Rate	**11.89%**	**9.64%**	**10.04%**
Additional Risk Premium			
Pre-tax Discount Rate (grossed up)			
Pre-tax Discount Rate (iterative calculation)			
Applied Discount Rate	**11.89%**	**9.64%**	**10.04%**

	Corporate Brand Valuation	**Impairment of Goodwill**
Tax rate	15%	15%

Unlevered beta	0.53	0.53
Relevered beta	0.72	0.72
Debt/Equity Ratio (D/E)	0.43	0.43
Equity in Invested Capital E / (E+D)	0.70	0.70
Debt in Invested Capital D / (E+D)	0.30	0.30
Risk-free Rate (Rf)	1.59%	1.59%
Equity Risk Premium (ERP)	6.50%	6.50%
Country Risk Premium (CRP)	2.90%	2.90%
Specific Company Risk (SCR)	2.70%	2.70%
Cost of Equity, post-tax	**11.89%**	**11.89%**
Cost of Debt, pre-tax	5.17%	6.80%

Cost of Debt, post-tax	**4.39%**	**5.78%**
After-tax Discount Rate	**9.64%**	**10.05%**
Additional Risk Premium		0%
Pre-tax Discount Rate (grossed up)		**11.83%**
Pre-tax Discount Rate (iterative calculation)		**11.40%**
Applied Discount Rate	**11.64%**	**11.40%**

	Impairment of Assets	**Restructuring**
Tax rate	15%	15%
Unlevered beta	0.53	0.53
Relevered beta	0.72	0.83

Debt/Equity Ratio (D/E)	0.43	0.67
Equity in Invested Capital E / (E+D)	0.70	0.60
Debt in Invested Capital D / (E+D)	0.30	0.40
Risk-free Rate (Rf)	1.22%	1.59%
Equity Risk Premium (ERP)	6.50%	6.50%
Country Risk Premium (CRP)	2.90%	2.90%
Specific Company Risk (SCR)	2.70%	4.00%
Cost of Equity, post-tax	**11.52%**	**13.88%**
Cost of Debt, pre-tax	6.80%	
Cost of Debt, post-tax	**5.78%**	
After-tax	**9.80%**	**13.88%**

Discount Rate		
Additional Risk Premium	0%	
Pre-tax Discount Rate (grossed up)	**11.53%**	
Pre-tax Discount Rate (iterative calculation)	**11.05%**	
Applied Discount Rate	**11.05%**	**13.88%**

Table 3. Discount Rates for Telecommunication Company as at 31 December 2015

of individual component changes on the final rate: the capital structure changes the beta coefficient, and also the final weighting. The length of the projection period changes the risk-free rate (the useful life of the assets is 30 years, so the rate is adjusted to this period). Finally, the method of adjusting for taxation can also affect the discount rate, which can be significant in sensitivity analysis.

When performing various valuations for the same company, in addition to logical and computational checks of the components, it is also necessary to carry out a logical check of the relationships between the calculated discount rates. If these discount rates are considered as rates of return, it is logical that assets' rate of return should be lower than equity's one, and that the highest rate of return be associated with intangible assets. However, care should be taken to compare the appropriate rates - in this case, post-tax rates, rather than the applied rates.

5. Conclusion

Valuation practice often requires that multiple different valuations be conducted for the same company, whether they concern different subjects of valuation or different purposes of valuation (and thus different bases of value). In such cases, it is important to ensure that all necessary adjustments are made to the cash flows, and then to the discount rate, in order to ensure their mutual consistency.

Special attention should be given to cash flow definitions and discount rate adjustments when valuations or impairment tests are performed for financial reporting or audit purposes. In such cases, compliance with accounting standards must be balanced with realistic and objective financial reporting.

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BUSINESS VALUATION

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#08

Primer on artificial intelligence – *Essential*

considerations for business valuers on the responsible use of AI

Based on a publication published by the Chartered Business Valuators Institute (CBV Institute*), June 2024

This primer does not constitute authoritative guidance from CBV Institute and is not intended to replace authoritative practice standards of any oversight body or jurisdiction. Where there is any contradiction or confusion between this primer and relevant authoritative practice standards, the practice standards should take precedence. This primer does not constitute legal advice.

Balancing innovation with the ethical and responsible use of emerging technologies

The promise of AI

Artificial Intelligence (AI) is promising to automate mundane valuation tasks and free up practitioners to focus on the more critical and value-added aspects of an engagement. However, the use of generative AI or other developing technologies in a valuation professional's workflow raises several risks, some of which may not be fully understood.

With enterprise adoption of generative AI expected to take off, and as more professionals "lean in" to AI in the workplace, business valuers may be wondering – what **can** I do with AI as a business valuer, and what **must** I do if I choose to use AI in my work?

What can I do with AI?

Several possible AI use cases are being explored right now by valuation providers. Levels of AI adoption and use amongst the business valuation community may vary widely – some may be beginning to explore, while others may be coding for AI-driven valuation applications. Here are two types of AI that are being used in financial services and litigation.

Predictive AI is being used to analyse large datasets to forecast trends and identify patterns, to help professionals make informed decisions. It is also being used to identify potential risks and opportunities in the market. If you use e-discovery software, you may already be using predictive AI[i]. Alternative asset manager Blackstone began recruiting data scientists eight years ago to concentrate on predictive AI "to forecast everything from budgets and sales to customer clicks on a website[ii]." Blackstone now employs over 50 data scientists and has combined predictive AI with generative AI to "instantly gain insights and recognize patterns across every possible business activity." Predictive AI technology is more established in financial services but

still presents risks;[iii] for example, a January 2024 MIT Sloan article categorizes the use of AI for financial applications such as evaluating creditworthiness, managing investment portfolios, or underwriting financial instruments as high risk.[iv]

Generative AI tools, such as ChatGPT, Copilot, Gemini, DALL-E, and Midjourney are being used to create original media such as text, images, video, or audio in response to prompts from users. These systems are often powered by large language models (LLMs), which learn patterns from vast amounts of data. While it may at first appear to be a splashy over-hyped attention-hog, generative AI was a steep development for AI software that has attracted significant investment dollars and has already been put to use in financial services. Generative AI is already being used to audit data, interpret accounting standards and tax codes, forecast sales, and help perform KPI analysis.[v] In 2023, JPMorgan Chase used genera-

tive AI "to analyse Federal Reserve meetings to try to glean insights for its trading desk."[vi] In 2024, generative AI continued its rapid integration into daily life, popping up in common software and tools (e.g., spreadsheets, meeting tools, word processors) as technology companies deployed their latest software updates. However, widespread use of generative AI is still a relatively new phenomenon, and therefore requires great caution from users – and much is being written about how generative AI can be used (or not) in business. For example, a May-June 2023 Boston Consulting Group experiment found it is great for creative tasks but can destroy value when asked to weigh nuanced qualitative and quantitative data to answer a complex business question.[vii]

What must I do if I choose to use AI in my work?

Many organizations and professional bodies are grappling with this question right now. The latest breakthrough innovations in the field of AI introduce new risk considerations for business valuers. For example, while generative AI shows great promise, experts agree that it is still "a tool in its infancy" that requires the supervision of "careful humans."[viii]

Business valuers must adhere to specific authoritative guidance relating to the use of AI issued by their designation-granting and/or oversight bodies, as well as relevant practice standards, codes of ethics, or other guidance. In Canada, as at the date of publication, CBV Institute has not issued authoritative guidance specific to the use of AI in engagements. However, Members and Registered Students must abide by CBV Institute's Code of Ethics at all times, and the Practice Standards when appropriate. CBV Institute's Code of Ethics and Practice Standards set out the fundamental principle of performing professional services with integrity, good faith and due care, regardless of the tools or technologies used.

The importance of professional judgment and professional skepticism has only been magnified by the boom in AI. AI is a tool; it does not change the existing requirements to show professional competence and due care as CBVs, and issue credible and appropriately supported valuations. – Catalina Miranda, CBV Institute Vice President of Regulatory and Standards

Irrespective of the tools and data being used as part of the professional practice of valuations, business valuers remain responsible for the accuracy, credibility and reasonability of inputs, as well as any analyses and conclusions.

Essential considerations for business valuers on the responsible use of AI

Introduction

This primer is designed to raise some considerations for business valuers who have incorporated, or may be planning to incorporate, AI into their workflow.

This primer is designed to provide information that can help business valuers decide whether they want to use AI-powered tools in practice and, if so, some considerations around the responsible use of this evolving[ix] technology.

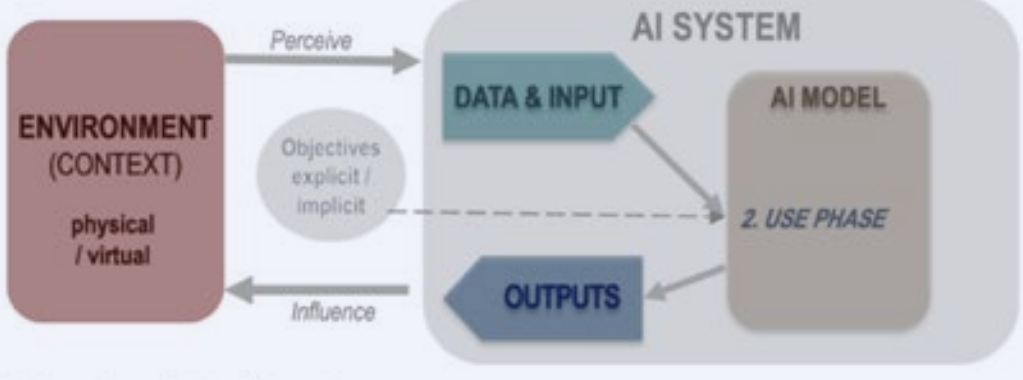
This primer does not raise all the issues, and it does not have all the answers. Further, note that this primer was developed to inform business valuation professionals (Chartered Business Valuators) in Canada, but the concepts and issues discussed in this primer are certainly applicable to professionals around the world.

CBV Institute acknowledges that the responsible use of AI will differ based on the context and the stage of a valuation engagement, ranging from data gathering and research to analysis, modeling, report writing, editing, and even marketing business valuation services. Use of AI in an engagement may vary from a significant level of reliance on AI, to only tangential or immaterial reliance. Regardless of the stage one is at, significant professional judgment is necessary in determining appropriate uses for AI in a valuation engagement.

This primer is effective as of June 2024. The AI landscape has evolved, and is evolving, very quickly. As the technology matures, new use cases are emerging, and even the definition of AI is evolving. The Organisation for Economic Co-operation and Development (OECD) updated its definition of an AI system in November 2023, included below and used as the definition of AI throughout this primer. A pair of OECD articles provide the rationale behind the revision and describe why it is challenging to achieve consensus on how AI is defined, including the difficulty of clearly distinguishing between AI and non-AI machine based systems and the general public's changing perception of which technologies are considered AI.[x]

The OECD definition of an AI system[xi]

USE PHASE (once the model is built):
An AI system is a **machine-based** system, that



- for explicit or implicit objectives
- infers, from the input it receives
- How to generate outputs such as predictions, content, recommendations, or decisions
- **that [can] influence physical or virtual environments;**

Different AI systems vary in their levels of autonomy and adaptiveness [after deployment].

Accountability and competences

Business valuers are accountable for the entirety of their work products, even those parts produced by an AI system, and therefore are responsible for any breach of the relevant designation-granting and/or oversight bodies' practice standards and/or code of ethics.

At a minimum, practitioners should be well versed in the use of any technology tool, including the benefits and risks associated with it, before using it to assist with the services they provide.

Make sure that you are not using AI in place of your professional judgment. AI is best thought of as another tool in a business valuers 's toolkit, there to assist with the tasks along the way, but not making any decisions for them. Business valuers remain ultimately responsible for the tools and data that they use, including assessing, selecting and reviewing outputs.

In Canada, an AI system cannot be considered a "specialist" as set out by CBV Institute's

Practice Standard No. 120. While the standards allow for reliance upon the work of a specialist (e.g., real estate appraisers, engineers, or equipment appraisers), where reasonable assurance concerning the specialist's reputation for competence and degree of independence has been obtained, this does not extend to the use of AI systems.

Requirements of courts or other decision makers

Business valuers practicing in litigation should stay informed on the requirements of the applicable court, tribunal, or other relevant decision-maker. It may be permissible or prohibited to use AI in certain engagements, and you may be required to disclose when work is generated or assisted by AI.

Several Canadian courts have issued "practice directions" on the use of AI, stemming from concerns about the reliability and accuracy of information generated from the use of AI. Practice directions offer procedural guidance and are supplemental to the rules of civil procedure. Practice directions as of late have provided commentary such as the following:

- When AI has been used in the preparation of materials filed with the court, **the materials must indicate how it was used.**
- Artificial intelligence tools (e.g., ChatGPT) that are used in materials filed with the court must be disclosed.
- It is essential to check documents and material generated by AI, and to verify AI-created content (i.e., include a "human in the loop").

It is still early days for Canadian legal decisions on generative AI, but there is no doubt that we will see more decisions referring to generative AI in their wording. As an example, a February 23, 2024, B.C. Supreme Court judgment reprimands a lawyer for citing two cases made up by

ChatGPT.[xii] The judgment states:

> *As this case has unfortunately made clear, generative AI is still no substitute for the professional expertise that the justice system requires for lawyers. Competence in the selection and use of any technology tools, including those powered by AI, is critical. The integrity of the justice system requires no less.*

Citation styles

The practice directions provide minimal instruction on how to disclose the use of AI. The three most common citation standard setters provide some additional helpful guidance for disclosing use of generative AI: MLA Style – Generative AI, APA Style – ChatGPT, or Chicago Style – Generative AI.

Accuracy and bias

CBVs cannot make or associate themselves with any statement that they know, or should know, is false or misleading (Section 201 of CBV Institute's Code of Ethics) – a common requirement of many professional organizations. While popular media is full of examples of false or misleading content created by the widely available generative AI tools, all AI systems present risks related to accuracy and bias.

AI is not neutral: AI-based decisions are susceptible to inaccuracies, discriminatory outcomes, embedded or inserted bias. – UNESCO[xiii]

Inaccuracies and bias in AI systems have several causes and varying effects.[xiv] It can arise in the data used to train the AI system, a phenomenon known as the "garbage in, garbage out" effect – when trained on biased or poor-quality data, AI gives biased or poor-quality outputs. For example, Stable Diffusion, an AI image-generation model, has been criticized for amplifying racial and gender disparities when generating images related to job titles and crime.[xv] Bias can also arise from the code, exemplified by several lending discrimination lawsuits which allege that an algorithm set to exclude mortgage applicants from certain ZIP codes, educational backgrounds, or area codes, may have discriminated against minority and female applicants.[xvi]

In generative AI chatbots, "hallucinations" are also of concern. ChatGPT has been criticized for inventing information and presenting it as fact.[xvii] When a chatbot does not understand the context of a particular situation, it may generate irrelevant or inaccurate responses. In other words, it makes stuff up! When a chatbot cites its secondary sources, take care to "click through" to ensure that they are well-recognized and reliable sources (e.g., official government websites, trade magazines, reputable news organizations, commonly referenced commercial publishers, peer-reviewed articles). While vetting the quality of the sources, also ensure that the chatbot has not omitted something of relevance that appears in the source documents, or inserted something (potentially made up!) that it has not attributed to a source.

Always review, test, verify, and critically assess outputs (i.e., predictions, content, recommendations, or decisions) from AI systems before adopting them or disseminating them to others (co-workers, clients, etc.). Never rely solely on AI-generated content without review.

Cautions from chatbots

When signing up to generative AI chatbots it is commonplace to read and agree to a disclaimer about accuracy and bias. Similar cautions appear in chatbot FAQs. Here are a few we encountered in 2024.

Gemini will not always get it right[xviii]

Gemini may give inaccurate or offensive responses. When in doubt, use the Google button to double-check Gemini's responses.

Are Copilot's AI-generated responses always factual?[xix]

Copilot aims to base all its responses on reliable sources – but AI can make mistakes, and third-party content on the internet may not always be accurate or reliable. Copilot will sometimes misrepresent the information it finds, and you may see responses that sound convincing but are incomplete, inaccurate, or inappropriate. Use your own judgment and double check the facts before making decisions or taking action based on Copilot's responses.

Transparency and explainability

Business valuers must not rely on the output of technology without an understanding of whether the output is credible. The problem is that AI systems are complex – understanding how they arrive at specific outputs or decisions can be challenging, and some AI systems can generate convincing novel content that looks human-generated. Also, the technology is changing at a rapid pace and AI is being incorporated into existing software systems, sometimes without proper awareness. This raises several concerns around transparency and explainability (T&E): the extent to which an AI system's workings, and the logic behind its outputs, can be understood.[xx]

Explainability of model outputs enhances the ability to mitigate the risks and unintended outcomes associated with using them and supports model soundness and accountability. – Office of the Superintendent of Financial Institutions (OSFI - Canada)[xxi]

Insufficient T&E carries the risk of inadvertently breaking laws, infringing rights, or causing harm. In addition, the principles of T&E are embedded in CBV Institute Practice Standards, which include the minimum requirements to be followed by CBVs in developing and communicating valuations that are credible and properly supported, and its Code of Ethics. Similar principles are similarly included in many other professional organizations' standards and codes of ethics.

- For example, to comply with CBV Institute's valuation report standards, a valuation report must include a scope of review that clearly identifies the specific information on which the valuator relied to arrive at a conclusion. The valuation report must also disclose sufficient information to allow the reader to understand how the valuator arrived at the conclusion expressed. Furthermore, valuators are obligated to communicate any key assumptions made in arriving at the valuation conclusion.

- Equally as important, CBV Institute's Code of Ethics sets out the CBV profession's commitments to a high standard of behaviour, honesty, prudence, competence, objectivity, truthfulness and impartiality, including the provision of professional services with adequate due care.

Here are some useful T&E questions to keep in mind when testing out AI systems:

1. What is the tool doing? Specifically, what is being automated?
2. Would you be able to duplicate the results without using the AI tool (ignoring the time it would take to process vast quantities of data)?
3. What inputs are used, for what purpose, and what might affect the

system's outputs, recommendations or decisions?

4. Do you have the information you need to understand the benefits, risks and limitations? Keeping in mind that the benefits, risks and limitations to you and to your client, the court, or other third-parties may differ.
5. Who can access the inputs, prompts and outputs?
6. Does the output have an audit trail to the underlying source documents?
7. Is it a "black box", or are you able to maintain appropriate oversight, proportionate to the significance of the outcomes and/or risks associated with using the system?
8. Does the nature and extent of the interaction with the AI system merit disclosure of its use?

Theoretical practice

examples illustrating the complexity of assessing outputs from AI

Business valuers have a wealth of experience critically assessing data and inputs which they can draw from when assessing outputs generated using AI. For example, business valuers are familiar with assessing a **company comp set** generated by Capital IQ (or the equivalent using Bloomberg, FactSet, PitchBook, Refinitiv/LSEG, or other similar data providers). These tools generate a list of comparable companies/transactions based on a set of rules around the industry classification, market capitalization, enterprise value, or other data. Business valuers approach these rule-generated comp sets with a high level of professional skepticism, incorporating qualitative as well as quantitative factors into their own independent analysis.

Assessing comp sets generated by AI systems that use more advanced technology such as machine learning may present additional challenges. Machine learning is a set of techniques that allows machines to improve their performance and usually generate models in an **automated** manner through exposure to training data, which can help identify patterns and regularities, rather than through explicit instructions from a human.[xxii] Using machine learning, the AI system (rather than a set of rules fixed by a human programmer or user) may be generating the recommendations or decisions regarding the comp set, based on the training data, which includes patterns it has identified in large data sets or previous prompts. Two potential issues arise: (1) the AI system may be generating the outputs without specific instructions from a human (referred to as **autonomy** in the OECD's definition), based on a pattern that is not transparent to the user and may be ever evolving into something more complex or superior (or worse) to its previous state (referred to as

adaptiveness in the OECD's definition); and (2) the training data includes heaps of information of a potentially unknown or unknowable quality. For example, the training data could theoretically include sources that vary widely in their credibility, such as: public company filings, analyst reports, news sources, stock consumer chatter on reddit, and stock pundits' blogs or social media. Understanding that anything input into the AI system could serve to feed the outputs, it is easy to see that poor quality training data can lead to poor quality outputs. This poses a unique challenge, because, in the words of Kate Soule, Program Director, Data and Model Factory at IBM Research, "there is so much data that these models have been trained on; even if you had a whole team of human annotators, you wouldn't be able to go through and actually vet every single data point."[xxii] Based on this theoretical example, while the technology is complex and often opaque, the business valuer's approach may not need to change – just continue to assess

the outputs with a high level of professional skepticism (i.e., review, test, verify, and critically assess outputs to determine whether they are credible). In other words, do not trust outputs from any technology simply because it is "advanced" or makes other claims (e.g., claims that it removes "human bias" by relying on machine learning or algorithms).

Assessing writing from generative AI requires a high-level understanding of the technology. For instance, according to ChatGPT's creator company OpenAI, a generative AI chatbot (a different type of AI system than the one described in the above company comp set example) works by "reading" a large amount of existing text and "learning" how words tend to appear in context with other words.[xxiv] It then uses what it has learned to predict – using probabilities and a sprinkle of randomness – the next most likely word that might appear in response to a user request.[xxv] Importantly,

"they do not necessarily know if what they are generating is true or false."[xxvi] What does this mean in practice? If a business valuer wants to use ChatGPT **to assist in writing the industry overview section** (or any other aspect of a valuation report) they may get some fact and some fiction, and it may not be clear which is which. The outputs from generative AI tend to sound authoritative and factual even when they are not – they must be verified with trusted sources and informed professional judgment.

Furthermore, some AI systems can continue to evolve after their design and deployment (for example, recommender systems that adapt to individual preferences or voice recognition systems that adapt to user's voice).[xxvii] Presumably this raises potential issues of bias, but it is likely more complex than this primer can surmise.[xxviii]

In summary, and as advised by UNESCO, "AI decisions are not always intelligible to humans."[xxix] To illustrate this, UNESCO asks,

"would you want to be judged by a robot in a court of law… even if we are not sure how it reaches its conclusions?" By recognizing this challenge, business valuers can approach the use of AI in a responsible and ethical manner while upholding the integrity of the valuation profession, including the provision of professional services with adequate due care.

Data privacy, cybersecurity and intellectual property risks

Business valuers should also be aware of the legal and regulatory risks, which include:[xxx]

- Data protection and privacy risks: technology companies may be able to see your input and output data. They may use any data you input (prompts, uploaded documents, etc.) to test and develop the technology, and to inform future responses to other users.

- Cybersecurity risks: using technology tools may introduce vulnerabilities to hacking, data breaches, corruption of data sources and other malicious cyber activities.
- Intellectual property risks: it is not clear how one determines the ownership of copyright in both input and output data from generative AI. Furthermore, chatbots may include inappropriate material in their responses (sensitive or confidential) or infringe existing copyrights.

Again, business valuers must be aware of the obligations under relevant codes of ethics in this regard.

Warning from OpenAI

OpenAI, the company behind ChatGPT, warns users that "conversations may be reviewed by our AI trainers to improve our systems" and "we are not able to delete specific prompts from your history. Please don't share any sensitive information in your conversations."[xxxi]

Regulation around the use of AI is in various stages of development around the globe. Business valuers should anticipate an increase in regulation around the use of AI and should remain engaged and informed. In Canada, a regulatory framework specific to AI is under development – a voluntary code was released in September 2023, the Artificial Intelligence and Data Act.

Individuals should also be aware of relevant privacy regulation (government or industry-based) in their jurisdiction. For example, the Office of the Privacy Commissioner of Canada's Principles for responsible, trustworthy and privacy-protective generative AI technologies. Individuals are advised to consult with their legal team for legal advice.

Conclusion

Emerging applications of AI are permanently changing workflows for all professionals in the information economy. It is important that business valuers use AI in accordance with relevant practice standards, codes of ethics, and laws and regulations, to ensure that they maintain the profession's high standard for ethical behaviour and due care.

Preparing for the future

CBV Institute is committed to remaining at the forefront of industry trends and emerging technologies, empowering business valuers to navigate the evolving landscape affecting the business valuation profession. We encourage Members, Registered Students, and other financial professionals, to thoughtfully explore the latest tools and trends affecting our industry, to collaborate with peers and colleagues, and to continue engaging in open dialogue with Institute leadership.

Want to build AI fluency?

- Explore constantly updated plain-language explainers on generative AI with MIDAS.
- Check out learning hubs from Microsoft, IBM, Udacity, Wired, or The Washington Post.
- Follow relevant LinkedIn accounts: Generative AI, Olivier Blais, Cassie Kozyrkov

AI & Technology Working Group

This document was prepared by CBV Institute with input from members of our AI & Technology Working Group. The AI & Technology Working Group was formed in November 2023 to gather input from practitioners on how emerging technologies may impact the CBV Institute and the business valuation profession. It consists of ten enthusiastic CBV and non-CBV volunteers, representing small, medium and large practices.

Engage with CBV Institute

The Institute would like to hear from more valuation practitioners on the most compelling use cases for AI in business valuations. We would also like to know if you have encountered or conceived of any other concerns regarding AI, specific to valuations work. Or perhaps you have thought of a different question about technology that the Institute should address? Any other feedback to share? Reach out to Heather Bennett, Senior Manager, Thought Leadership and Professional Practice at CBV Institute, at heather.

bennett@cbvinstitute.com.

All references can be found on the following page.

BUSINESS VALUATION

Photo by zodebala, iStock

#08

Primer on artificial intelligence – *Essential*

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#09 Regulation (EU) 2024/3110 (the Construction Products Regulation)

Regulation (EU) 2024/3110 of the European Parliament and of the Council of 27 November 2024 laying down harmonised rules for the marketing of construction products and repealing Regulation (EU) No 305/2011 (Text with EEA relevance[1])

Context

The original Construction Products Directive of 1989 served essentially to enable the circulation of building materials throughout the Common Market. It was largely considered too complicated and bureaucratic, as was its successor, Regulation (EU) No 305/2011 for which experience and evaluations underscored poor market surveillance, overlaps with other legislation, lack of legal clarity and the consequential administrative burdens on economic operators with particular failure of the attempts to establish simplified procedures meant to reduce burdens and costs for small and medium-sized enterprises and microenterprises. The new Regulation is intended to remedy this while also enhancing sustainability.

There is also a powerful illustration of the projection of EU rules to third countries.

The new regulation

The basis

- A Harmonised Zone covering all products subject to harmonised technical specifications *(Art. 11)*
- Member States cannot create obstacles to their circulation. *(Art. 11(2))*
- Products covered by harmonised technical specifications undergo assessment and verification and receive a declaration of performance and conformity. *(Art. 13)*
- No marking other than the CE marking may be placed on the declaration of performance and conformity. *(Art. 15(4))*

Simplification/ digitalisation

- The European Commission can decide that a product does not require testing *(Art. 56(6))*
- Exemptions from drawing up a declaration of performance and conformity for individually manufactured, custom-made or heritage products *(Art. 14)*
- Replacement of type-testing and type-calculation under certain circumstances *(Art. 59)*
- Simplified procedures for micro-enterprises *(Art. 60)*
- Possibility for a notified body (a conformity assessment body) to recognise assessment and verification by another notified body *(Art. 62)*
- Commission to set up a construction digital product passport system that shall:
  - ensure that actors along the value chain can easily access and understand product information relevant to them;
  - facilitate the verification of product compliance by competent national authorities; and
  - improve traceability of products along the value chain.

(Art. 75 & 76)

Sustainability

1. The product's declaration of performance and conformity

Includes the product's environmental sustainability performance over its life-cycle including the packaging *(Art. 15(2))*

2. Spare parts

The Commission can for certain product families and categories impose an obligation on manufacturers to make spare parts available for ten years after the last product was placed on the market. *(Art. 22(8))*

3. Sustainability labelling for consumer construction products

The Commission is empowered to adopt specific environmental sustainability labelling requirements for particular product families and categories if:

- They are typically chosen or purchased by consumers
- The product does not have a significantly different environmental performance over its life-cycle depending on its installation

(Art. 22(9))

4. Green public procurement *(Art. 83)*

The Commission is to adopt mandatory minimum environmental sustainability requirements for construction products for procurement procedures falling within the scope of Directives where contracts require them.

It has to start with impact assessments to assess the impact on demand, competition, market availability and costs.

Worlwide projection of EU rules

- **Importers**[2] shall place on the market only products compliant with this Regulation. This means that:
  - previously the non-EU manufacturer has drawn up the technical documentation
  - the product bears the CE marking
  - the product is accompanied by the declaration of performance and conformity

(Art. 24)

- **Online sales**: Products offered online are deemed to be made available on the market if the offer is targeted at customers in the Union, i.e.:
  - the economic operator uses the currency of a Member State;
  - the economic operator has used an internet domain name registered in one of the Member States, or uses an internet domain that refers to the Union or to one of the Member States; or
  - the geographical areas to which dispatch is available include a Member State.

They must bear the CE marking.

(Art. 29)

- Participation in the **digital product passport** may be offered to third countries[3] provided that their legislation is aligned with this Regulation. *(Art. 81(3), penultimate par.)*
- **Used products:** Harmonised technical specifications for new products shall apply to used products from third countries unless the harmonised technical specification explicitly provides rules for used products. *(Art. 18(1), last par.)*

[1] Applies to non-EU countries in the European Economic Area (Iceland, Liechtenstein and Norway) as they must adopt most EU internal market legislation.

[2] From outside the EU. There is no 'importing' inside the EU.

[3] Non-EU countries

European Commission, Brussels

#10 European Banking Authority (EBA) Handbook on independent valuers for resolution purposes

The Handbook opens resolution work to valuers other than just the biggest international consulting firms.

Directive 2014/59/EU lays down rules and procedures for the recovery and resolution of banks. Its Article 36 'Valuation for the purposes of resolution' stipulates that before taking resolution action, resolution authorities shall ensure that a fair, prudent and realistic valuation of the assets and liabilities of the bank is carried out by a person independent from any public authority, including the resolution authority. This is supplemented by an EBA-drafted "Independence of Valuers" chapter of Commission Delegated Regulation (EU) 2016/1075.

EBA decided to supplement the Delegated Regulation with a best practice handbook and in April 2024 invited TEGOVA[1] to a workshop at their Paris headquarters prior to their planned public consultation. TEGOVA went on inputting to EBA into the autumn.

The main sticking point in the initial draft of the Handbook was text that largely restricted valuation for resolution to the very largest firms. In Paris, the argument deployed by interested parties in favour of that restriction was that, in a bank resolution scenario where time is of the essence, only the largest firms have the critical mass and multiple skill set needed to respond "on a Friday afternoon". TEGOVA made the point that, especially but not exclusively in the smaller countries, the resolution of a big investment fund or bank regularly comes up against a situation of limited valuation resources that demands subcontracting or joint venturing *even by the largest firms* and four of the TEGOVA participants gave personal accounts of rapid and high level joint venturing.

The TEGOVA effort came to fruition in the final version:

40 The RAs (resolution authorities) could engage in discussions with the identified valuervs as additional preparatory work.

42 Where the RA engages in contact with the valuers, the RA could ask the valuers if they would or could provide their offers as one of the parties in a joint venture or employ sub-contractors. The number of potential valuers could increase by considering ex-ante joint ventures of valuers or structures that would include sub-contractors. The joint-venture or subcontracting would form, in principle, a response to the RA tender in order to address specific areas such as geographic presence, specialised areas of competence or simply to ensure sufficient capacity given the size of the institution and required time to delivery. Valuers might offer to the RA their view on what resources would be needed for different institutions or entities sizes and how these might be set-up via joint ventures or subcontractors.

44 ... "Moreover, the RAs could try to extend the list of potential valuers that may meet the qualifications, experience, ability and knowledge required to complete the valuation exercise by considering banks' specific characteristics such as size or business model."

1 The TEGOVA participants were Jean-Paul Loozen (Belgian Association of Property Valuers; BELGAVAL), Michael MacBrien (Adviser to TEGOVA), Daniel Manațe (National Association of Authorised Romanian Valuers; ANEVAR), Paulo Barros Trindade (Association of Valuation Companies and Valuers of Portugal; ASAVAL), Artūrs Žuromskis (Latvian Association of Property Appraisers; LIVA)

EU REGULATION AND CASE LAW

European Commission, Brussels

#11

CJEU Case C-417/23 – Advocate General's Opinion of

13 February 2025 – Slagelse Almennyttige Boligselskab **Public housing discrimination against 'non-Westerners'**

FORSLAG TIL AFGØRELSE FRA GENERALADVOKAT
T. ČAPETA
fremsat den 13. februar 2025 (1)

Sag C-417/23

Slagelse Almennyttige Boligselskab,
Afdeling Schackenborgvænge
mod
MV,
EH,
LI,
AQ og LO,
procesdeltagere:
BL – Danmarks Almene Boliger,
Institut for Menneskerettigheder
og
XM,
ZQ,
FZ,
DL,
WS,
JI,
PB,
VT,
YB,
TJ,
RK

mod
Social-, Bolig- og Ældreministeriet,
procesdeltagere:
Institut for Menneskerettigheder,
FN's særlige rapportør E. Tendayi Achiume,
FN's særlige rapportør Blakrishnan Rajagopa

(anmodning om præjudiciel afgørelse indgivet af Østre Landsret (Danmark))

» Præjudiciel forelæggelse – direktiv 2000/43/EF – ligebehandling af alle uanset race eller etnisk oprindelse – national lovgivning, der kræver vedtagelse af udviklingsplaner i visse boligområder, der er udpeget som »parallelsamfund« – kriteriet »indvandrere og efterkommere fra ikkevestlige lande« – begreberne »etnisk oprindelse«, »direkte forskelsbehandling« og »indirekte forskelsbehandling« «

The Danish Law on Public Housing constitutes a discrimination against 'non-Westerners' under the EU Race or Ethnic Origin Directive

NB: This is the Advocate General's Opinion on how the Court should judge, not the judgment itself, but in most cases the Court follows the AG.

The context

Under the Danish Law on Public Housing, a ***'transformation area'*** (formerly 'hard ghetto') is an area where for the last five years any two of four criteria have been fulfilled:

1. Over 40% unemployed
2. Criminal convictions at three times the national average
3. Over 60% have only primary education
4. Income less than 55% of the regional average

and in addition, over 50% of the residents are "immigrants and their descendants from non-Western countries".

According to Statistics Denmark on which the Law relies:

Western countries include the EU, Andorra, Australia, Canada, Iceland, Liechtenstein, Monaco, New Zealand, Norway, San Marino, Switzerland, the UK, the USA and the Vatican City State.

Non-Western countries include Albania, Belarus, Bosnia and Herzegovina, Kosovo,

Macedonia, Moldova, Montenegro, Russia, Serbia, Türkiye and Ukraine and all countries in Africa, South and Central America and Asia. All countries in Oceania (other than Australia and New Zealand) and stateless persons. – 88% of the world's population

Under the Law, a social housing association and the municipal council must set out in a development plan how the proportion of public housing units in the transformation areas is to be reduced to 40% by 1 January 2030. In order to achieve that goal, the development plan may envisage, among other things, the sale of properties to private developers or demolition, or the conversion of family housing into housing for young people. **In such cases, the lease of the previous tenants must be terminated**. The Law provides that the municipal council is obliged to find a rehousing solution for such tenants and to cover their costs.

The case

1. Direct discrimination

The Danish government denied that there was a discrimination at all, as the housing association is obliged by law to offer appropriate rehousing and cover the costs.

The AG considered that under Article 7 of the Charter of Fundamental Rights of the European Union, the respect of one's home is a fundamental right guaranteed under EU law and that the Court's case law recognises that the loss of one's family home is an important interference with that right. The possibility of rehousing has no bearing on the question of the difference of treatment concerning respect for one's home.

Tenants in low education and employment and high crime areas with less than 50% immigrants or their descendants are not exposed to a risk of losing their home, contrary to those living in high immigration 'transformation areas'. Therefore, even if adequate rehousing is offered to tenants in transformation areas, they are still treated less favourably in relation to tenants in comparable areas, the majority population of which are 'Western' residents.

The Danish government considered the concept of 'non-Westerners' to be too broad to be liable to affect persons of a particular ethnicity.

The AG first considered the leading CJEU case in the area of ethnic discrimination: CHEZ. A Bulgarian electricity provider mounted electricity meters to a height of over six metres in a neighbourhood that was predominantly populated by persons of Roma origin, even though it was common practice to place them at a height of under two meters. The Court considered that, in those circumstances, persons of Roma origin could be understood as an ethnic group.

The AG considered that in the current case there is no singular, identified ethnic group. What unites the ethnically diverse 'non-Western countries' group is rather the perception by the Danish legislature that this group does not possess the characteristics of the other group, that is, of 'Westerners'. The group is thus formed on the basis of, an 'ethnic origin' perception of the diverse group as strangers or foreigners, of 'us' and 'them'.

The Danish government held that if an ethnic discrimination was established, it should at any rate be viewed as positive discrimination.

The Danish Government explained that the intention behind the Law is an effort to enable and encourage the better integration of immigrants and their descendants from non-Western countries into Danish society.

The AG responded that "One may not object to such an intention. One may also not object to the finding, if scientifically substantiated, that immigrants and their descendants from non-Western countries integrate into Danish society with more difficulty than immigrants and their descendants from Western countries. It is easy to agree in that respect with the [European] Commission that, in a pluralist, democratic society, there should not be any taboo topics. Recognising the existence of a structural disadvantage of an ethnic group within a given society is, in fact, a necessary step in achieving real equality. ... EU equality law allows for measures of positive action to address such built-in inequalities ... However, recognised structural inequalities cannot be resolved by discriminating against the ethnic group that already finds itself in a more difficult position."

The AG thus proposed to the Court that it find a direct discrimination.

2. Alternative solution: indirect discrimination

The AG noted that the European Commission considered that the situations should be classified as indirect discrimination because the tenants whose leases were terminated were not chosen on the basis of an ethnic criterion but of level of income and criminal convictions of the tenants or their partners. Also, in the Mjølnerparken area, two entire blocks were sold so that all leases had to be terminated. However, among those tenants, many were Danish citizens born in Denmark not belonging to the group of 'immigrants and their descendants from non-Western countries'.

The AG proposed that if the Court were to construe the case in that way, the influence of the Law on Public Housing on the termi-nation of the leases should at least be interpreted as indirect discrimination.

Indirect discrimination occurs when statistically, one ethnic group is affected by a neutral rule more than other groups.

The AG reasoned that under the Law on Public Housing, development plans, which in some cases led to the unilateral termination of leases, are to be established only in the areas in which more than 50% of the inhabitants are 'immigrants and their descendants from non-Western countries'. "Simple mathematics applied to such a situation suggests that there is a better chance that the lease of a 'non-Westerner' will be terminated than the lease of a 'Westerner' because it is known in advance that there are more 'non-Westerners' than 'Westerners' living in the neighbourhood."

Nevertheless, the AG noted that such a particular disadvantage that one ethnic group suffers can be justified if a neutral

rule has a legitimate aim that it pursues in a proportionate way. <u>This assessment is for the national court to make.</u>

"The [positive] argument here is that measures in neighbourhoods in which the majority of the population are 'non-Westerners' are taken in order to enable their better integration into Danish society. Changing the structure of the neighbourhood is understood as enhancing such integration."

"In order to assess whether the indirect discrimination may be justified, the national court will first have to establish what the Danish legislature understands as successful integration into Danish society. At the hearing, the Danish Government explained that this would entail participation in the workforce, lack of criminal convictions and knowledge of the Danish language."

"Understanding what it means to success-

fully integrate is necessary if the Court is to move to the proportionality analysis. In that exercise, the national court must first assess whether the decrease in the number of public housing units through termination of a lease in certain neighbourhoods can achieve integration (better employment, literacy in Danish, decrease in criminality, etc.). It will likewise have to assess the consistency of that measure and whether there is a reason to take measures for the integration of immigrants and their descendants from non-Western countries only. If such a policy decision is based on prevailing social prejudice and not on scientific evidence that those immigrants integrate with more difficulty, the policy goal may be called into question."

"In the next step in the proportionality analysis, the national court has to assess whether the decrease in the number of public housing units was necessary to achieve integration. That would be so if the

same aim could not have been achieved by measures that are less restrictive for the housing rights of the tenants at issue. In that respect, ***that court might need to enter into more detail into the Danish Government's arguments that they have already tried other measures but failed.*** Finally, even if the decrease in public housing is an appropriate and necessary measure for the attainment of the goals of integration as they were set out by the legislation, ***the final step in the proportionality analysis requires the national court to balance the value of such an aim against the intensity of interference with housing rights.*** If it is found that such a right was excessively harmed, that court might find the measure disproportionate, which might then require that the legislature reconceptualise the legitimate aim of integration."

3. Conclusion

In the light of the foregoing, the AG proposed that the Court of Justice answer the questions referred by the Østre Landsret (High Court of Eastern Denmark) as follows:

(1) The term 'ethnic origin' in Articles 1 and 2 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin must be interpreted as covering a group of persons defined as 'immigrants and their descendants from non-Western countries'.

(2) The scheme that uses concepts such as 'immigrants and their descendants from non-Western countries' for the categorisation of a neighbourhood in which a number of public housing units is to be reduced must be interpreted as direct discrimination within the meaning of Article 2(2)(a) of Directive 2000/43.

EU REGULATION AND CASE LAW

European Commission, Brussels

#12

CCJEU Case C-242/23 – Judgment of 4 October 2024 – Tecno*37

National legislation prohibiting joint exercise of property brokerage and property management

Raccolta della giurisprudenza

SENTENZA DELLA CORTE (Prima Sezione)

4 ottobre 2024*

«Rinvio pregiudiziale – Libera prestazione di servizi – Direttiva 2006/123/CE – Articolo 25, paragrafo 1 – Restrizioni alle attività multidisciplinari – Professione regolamentata – Legislazione nazionale che prevede, in via generale, un'incompatibilità tra l'esercizio congiunto dell'attività di mediatore immobiliare e quella di amministratore di condomini – Requisiti di indipendenza e di imparzialità – Proporzionalità della restrizione – Conseguenze dell'archiviazione di una procedura di infrazione della Commissione europea contro uno Stato membro»

Nella causa C-242/23,

avente ad oggetto la domanda di pronuncia pregiudiziale proposta alla Corte, ai sensi dell'articolo 267 TFUE, dal Consiglio di Stato (Italia), con ordinanza dell'11 aprile 2023, pervenuta in cancelleria il 18 aprile 2023, nel procedimento

Tecno*37

contro

Ministero dello Sviluppo economico,

Camera di Commercio Industria Artigianato e Agricoltura di Bologna,

con l'intervento di:

FIMAA – Federazione Italiana Mediatori Agenti d'Affari

LA CORTE (Prima Sezione),

composta da A. Arabadjiev, presidente di sezione, L. Bay Larsen (relatore), vicepresidente della Corte, T. von Danwitz, A. Kumin e I. Ziemele, giudici,

avvocato generale: M. Campos Sánchez-Bordona

cancelliere: C. Di Bella, amministratore vista la fase scritta del procedimento e in seguito all'udienza del 9 aprile 2024,

* Lingua processuale: l'italiano.

IT

ECLI:EU:C:2024:831 1

Tecno*37 v Ministero dello Sviluppo Economico and Camera di Commercio Industria Artigianato e Agricoltura di Bologna

This case settled the question of whether a national law regulating property brokerage and prohibiting its joint exercise with property management is compatible with EU law (the Services Directive).

Ndlr: *It seems very likely that this case law will be entirely relevant in the event of any attempt by an authority to prohibit multi-disciplinary activity involving valuation and brokerage or valuation and property management, or all three.*

Italian law regulates property brokerage and prohibits the joint exercise of the activities of property brokerage and property management *whether or not they are carried out in relation to the same property*. On the basis of this, the Bologna Chamber of Commerce decided to register Tecno*37 – a company that pursues both activities – in the economic and administrative register of property managing agents and prohibited it from pursuing property brokerage.

The action brought against that decision by Tecno*37 was dismissed by the regional administrative tribunal on the ground that the buildings managed in the context of the activity of property manager may be unduly put at an advantage compared with those available on the market, with consequences as regards the impartiality which a property broker should display.

Tecno*37 appealed to the Consiglio di Stato and the case was referred to the Court of

Justice of the European Union.

The Court's reasoning was founded on its analysis of the Services Directive:

Article 25 of the Services Directive, entitled 'Multidisciplinary activities', provides, in paragraph 1:

'Member States shall ensure that providers are not made subject to requirements which oblige them to exercise a given specific activity exclusively or which restrict the exercise jointly or in partnership of different activities.

However, the following providers may be made subject to such requirements:

(a) the regulated professions, ***in so far as is justified in order to guarantee compliance with the rules governing professional ethics and conduct****, which vary according to the specific nature of each profession, and is necessary in order to ensure their inde-*

pendence and impartiality;

(b) providers of certification, accreditation, technical monitoring, test or trial services, in so far as is justified in order to ensure their independence and impartiality.'

The case made by the Italian Government in favour of the prohibition

The Italian government justified the restriction on grounds of consumer protection and prevention of conflicts of interest (which fits well with Art. 25(1)(a)'s "professional ethics and conduct"). It considered that, without a prohibition on combining activities, there would be a risk that property owners for whom a single person exercises the role of managing agent and property broker will be unduly favoured. Such a property broker not subject to the prohibition at issue could steer potential buyers towards the properties which he or she manages personally.

Furthermore, the Italian Government submitted that it is not possible to place on chambers of commerce, industry, crafts and agriculture the task of ascertaining that there is no conflict of interest in each transaction.

The Court considered that:

75 In the present case, since a property broker must be a third party in relation to the parties to a property transaction, it is apparent that **the prohibition** on the joint exercise of the activities of property brokerage and property management, in that it seeks to avert the risk of a conflict of interest, **may, in principle, be regarded as appropriate for the purpose of ensuring the independence and impartiality of the regulated profession at issue**, which it is for the referring court to ascertain.

76 ***That being so***, **a <u>general</u> prohibition** on the joint exercise of the activity of property brokerage and that of property manage-

ment, such as that at issue in the main proceedings, **must not go beyond what is necessary to attain that objective. In that regard, it should be explored whether other less restrictive measures could achieve the same result.**

77 In the present case, as the Commission pointed out in its written observations, although it cannot be ruled out that a conflict of interest may arise, in particular where the activities of property brokerage and property management are pursued in respect of the same or comparable properties, such a risk will not necessarily materialise in all circumstances, with the result that the existence of such a conflict of interest cannot be presumed.

78 Moreover, **the prohibition at issue does not appear to be the only measure making it possible to ensure the independence and impartiality of the regulated profession in question.** As the Advocate General observed in point 66 of his Opinion,

and as the Commission and Tecno*37 submitted in their written observations, **measures less restrictive** of the freedom to provide services than a general prohibition on the joint exercise of the two activities, **such as a prohibition on the joint exercise of activities restricted to the situation in which the same property is concerned**, and/or specific obligations of transparency and information concerning that joint exercise, accompanied by an ex post review by the competent professional **chambers, may make it possible to ensure that independence and impartiality.**

79 Last, it must be held that **the practical difficulties raised by the Italian Government** with regard to the implementation of measures alternative to the general prohibition on the joint exercise of the activity of property brokerage and that of property management, and, in particular, the impossibility of verifying that there is no conflict of interest in each transac-

tion when those activities are performed in respect of the same property, **are not insurmountable**. As the Advocate General noted in point 65 of his Opinion, deeds of sale may, for example, include express declarations that the estate agent, acting as property broker, does not at the same time perform the role of manager of the shared ownership property of which the building acquired forms part.

The Court ruled:

Article 25(1) of Directive 2006/123/EC ... on services in the internal market must be interpreted as precluding national legislation which provides, as a general rule, that the combined pursuit of the activity of property brokerage and that of property management are incompatible.

EU REGULATION AND CASE LAW

European Commission, Brussels

#13

CJEU Case C-674/23 Judgment of 27 February 2025 – AEON NEPREMIČNINE

National legislation laying down caps on property brokerage fees

SODBA SODIŠČA (tretji senat)

z dne 27. februarja 2025(*)

„ Predhodno odločanje – Svoboda ustanavljanja – Storitve na notranjem trgu – Direktiva 2006/123/ES – Člen 15(2) in (3) – Najvišje obvezne tarife – Ponudnik storitev nepremičninskega posredovanja – Nacionalna ureditev, ki določa omejitev višine provizije, ki se lahko zaračuna za storitve posredovanja pri prodaji ali najemu nepremičnine s strani fizične osebe – Sorazmernost – Člena 16 in 38 Listine Evropske unije o temeljnih pravicah – Svoboda gospodarske pobude – Varstvo potrošnikov "

V zadevi C-674/23,

katere predmet je predlog za sprejetje predhodne odločbe na podlagi člena 267 PDEU, ki ga je vložilo Ustavno sodišče (Slovenija) s sklepom z dne 26. oktobra 2023, ki je na Sodišče prispel 13. novembra 2023, v postopkih

AEON NEPREMIČNINE, d. o. o., in drugi,

STAN nepremičnine, d. o. o.,

Državni svet Republike Slovenije,

ob udeležbi

Državnega zbora Republike Slovenije,

SODIŠČE (tretji senat),

v sestavi C. Lycourgos (poročevalec), predsednik senata, S. Rodin, N. Piçarra, sodnika, O. Spineanu-Matei, sodnica, in N. Fenger, sodnik,

generalni pravobranilec: A. Rantos,

sodni tajnik: A. Calot Escobar,

na podlagi pisnega postopka,

ob upoštevanju stališč, ki so jih predložili:

- za AEON NEPREMIČNINE, d. o. o., in druge B. Sedmak, odvetnik,
- za STAN nepremičnine, d. o. o., B. Mrva, odvetnik,
- za nizozemsko vlado M. K. Bulterman in J. M. Hoogveld, agenta,
- za Evropsko komisijo M. Mataija, G. Meessen in B. Rous Demiri, agenti,

na podlagi sklepa, sprejetega po opredelitvi generalnega pravobranilca, da bo v zadevi razsojeno brez sklepnih predlogov,

izreka naslednjo

Slovenian legislation provides for a cap on the commission charged for property intermediation services concerning the sale/purchase or rental by a natural person of a single-family dwelling, a flat or a residential unit. The cap is:

- for sale/purchase, 4% of the contract price;
- for rental, 4% of the product of multiplying the monthly rent by the number of months for which the property is let, it being understood that that commission cannot exceed one month's rent.

The referring court (the Slovenian Constitutional Court) asked the Court to decide on the possible conflict with EU law, in particular the Services Directive.

The Court recalled that the Directive lays down that Member States are to examine whether their legal system makes access to or exercise of a service activity subject to compliance with, inter alia, fixed minimum and/or maximum tariffs. However, **the Services Directive does not prohibit minimum or maximum fees out of hand**; it allows them if they meet the conditions of non-discrimination, necessity and proportionality:

- **non-discrimination** (especially according to nationality);
- **necessity**: requirements must be justified by an overriding reason relating to the public interest;
- **proportionality**: requirements must not go beyond what is necessary to attain the objective and it must not be possible to replace those requirements with other, less restrictive measures which attain the same result.

In the present case there was no discrimination.

Concerning necessity, the referring court explained that the law's necessity and overriding public interest reason was to address the lack of accessible housing, in particular for vulnerable persons, namely young people, students and the elderly, and to protect consumers having regard to price transparency.

The referring court explained that the fee cap does not directly affect prices on the property market but that, because of tensions on the property markets, where market power is concentrated on the supply side, it may reasonably be considered that the fee will be passed on to the persons who are seeking housing. The referring court considered that capping the fee therefore contributes to making housing more accessible even if not neces-sarily very significantly. It further considered that a cap can contribute to price transparency since it allows consumers to predict the amount of the commission that will be charged, in particular the proportion of the sale price or of the rent amount that it represents.

Concerning proportionality, the measure applied to all purchasers, even to holiday home purchasers, not just the most vulnerable, but the Court stated that under its case law the principle of proportionality does not necessarily prevent that measure from benefiting all consumers.

The referring court stated that some estate agencies have gotten out of short-term rental because the capped commissions make it too unprofitable, but the Court referred to its case law by which the freedom to conduct a business is not absolute, but must rather be viewed in relation to its social function. That freedom may thus be subject to a broad range of interventions on the part of public authorities which may limit the exercise of economic activity in the public interest.

For the key proportionality question of whether there might be less restrictive measures than fee caps, the applicants in the main proceedings referred to less restrictive measures that they consider possible in the context of rentals, namely the increase in the number of social housing units intended for renting, subsidies for market rents as well as tax, zoning and other regulatory measures intended to encourage the construction of social housing. The European Commission referred to providing purchasers and tenants with useful information on the intermediation tariffs.

But the referring court stated that the matter of the range of possible measures that the Slovenian legislature may adopt and their effectiveness as part of housing policy is extremely complex, since there are certain material restrictions, in the area of land-use planning, urban planning and public finances, which do not allow the State to intervene as it wishes in the supply of housing.

The Court decided "... it will be for the referring court to ascertain, in particular, whether the adoption of measures aimed at making useful information on the tariffs for intermediation services available to consumers, as purchasers and tenants, would make it possible to attain the same result as that pursued by the cap on the commissions in question. It might, in that regard, be sufficient to require property companies providing intermediation services to indicate to those purchasers and tenants, in a clear manner and sufficiently in advance, the commission amount that they will charge and whether that amount will be included in the final price stipulated in the contract concerned."

But the operative words here are "it will be for the referring court to ascertain" and given the positions taken by the Slovenian Constitutional Court, the brokerage fee caps will likely stay in place.

TEGOVA

To contribute an article or to send a letter to the editor commenting on one, contact info@tegova.org

Editor: Michael MacBrien

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