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Answer given by Ms Albuquerque
on behalf of the European Commission
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Member States have the right to regulate real estate markets. In doing so, however, they must respect the basic principles of the EU Treaties, first and foremost the fundamental freedoms. The right to acquire, use or dispose of real estate falls under the free movement of capital principle set out in Articles 63 et seq. of the TFEU, or, depending on the purpose, under freedom of establishment pursuant to Article 49 TFEU. As a rule, these freedoms prohibit any restrictions on the acquisition of real estate as well as direct or indirect discrimination on grounds of nationality, unless they are justified by legitimate reasons of public interest as recognized in the Treaties or in the jurisprudence of the Court of Justice of the European Union (CJEU). Where a measure pursues such a legitimate objective, restrictions to property transactions can be justified only insofar as they are suitable for securing, in a consistent and systematic manner, the attainment of the objective which they pursue and do not go beyond what is necessary in order to attain that objective¹.

The free movement of capital also extends to investments from third countries. However, special considerations apply to justifications for restrictions on the movement of capital to and from third countries. The CJEU stressed that the relations with third countries can be said to ‘take place in a different legal context’ from that which occurs within the EU, when EU legislation is not applicable to third countries. Consequently, under the Treaty additional justifications may be acceptable in the case of Member States’ restrictions as regards third countries.² To be noted that the freedom of establishment extends to nationals of Member States as well as legal entities established in the EU.

¹ Case C-670/21, *BA (Inheritance – Public housing policy in the European Union)*, EU:C:2023:763, p. 67 and the case-law cited.

² CJEU, cases C-101/05, *Skatteverket*, p. 36; C-446/04, *Test Claimants in the FII Group Litigation*, p. 171.