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Socialization of housing companies – Legal analysis of the current debate

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Hardly any other constitutional issue is currently as polarising as the question of whether housing corporations in Berlin can be socialized on the basis of Article 15 of the Basic Law (GG) – and whether this will actually happen. Although this legal provision has never been applied before, it is now at the centre of the debate following the successful referendum by the 'Expropriate Deutsche Wohnen & Co.' initiative and current political developments.

In the public debate, there is a widespread but mistaken focus on the 'expropriation' of Berlin's housing corporations. Legally, however, the issue concerns socialization under Article 15 of the Basic Law, which only permits the structural transfer of entire sectors of the economy into public ownership or the public sector if strict requirements are met.

For housing companies, investors and financiers, the proposal nevertheless raises fundamental questions: Which companies would be affected? How would compensation be calculated? And what options would the federal government have to restrict such a state-level initiative? This Legal Update provides a concise overview of the background, the current status and the key legal developments.

Key points at a glance

The starting point for the debate is the 2021 Berlin referendum, which calls on the Senate to draft a law on socialization but does not legally oblige it to enact one. In March 2026, the House of Representatives merely passed a framework law, which, however, does not yet contain any provisions for socialization. The drafting of the specific bill therefore remains a matter for a future state government.

According to the key points currently under discussion, private-sector companies each owning more than 3,000 flats in the State of Berlin would be affected.

There are significant constitutional hurdles to the implementation of such a law – ranging from the proportionality of the law and the assessment of compensation to a possible blocking effect caused by a federal law. Affected companies and banks would also have various options for legal redress at their disposal, including a constitutional complaint, abstract review of legal provisions and interim legal protection. The numerous unresolved legal issues are likely to be finally clarified only by the Federal Constitutional Court.

Introduction and background

Referendum in 2021

In September 2021, a majority of Berlin voters who took part in the referendum organised by the 'Expropriate Deutsche Wohnen & Co.' initiative voted in favour of the Senate drafting a law on the socialization of large private housing companies in accordance with Article 15 of the Basic Law.

The subject of the referendum was not a finished draft bill, but a draft resolution calling on the Senate to draw up such a draft bill. The key points of this resolution were:

> *'[…] to take all measures necessary to transfer properties and land into public ownership for the purpose of* socialization *in accordance with Article 15 of the Basic Law. This shall apply to* ***residential properties in Berlin*** *and the plots of land on which they are situated […].'*
>
> *[…] We propose a threshold of* ***3,000 flats per company*** *as the criterion for readiness for socialization. […]*
>
> *In accordance with the spirit and purpose of Article 15 of the Basic Law, the level of compensation must be set significantly below the market value."*[1]

From the referendum to the framework law

The referendum at that time concerned a draft resolution that had been submitted, not a draft bill. However, Article 62(5) of the Berlin Constitution provides for the immediate enactment and promulgation only of laws adopted by referendum. As a draft resolution had been submitted, the Berlin Senate did not draw up a draft bill.[2] Instead, on 18 March 2026, the House of Representatives passed a so-called framework law to regulate fundamental issues relating to the exercise of the legislative powers of the State of Berlin under Article 15 of the Basic Law, which is due to come into force in 2028.[3] This framework law does not itself mandate any socialization. Rather, it makes it clear that a separate law would be required for this purpose, which would have to be proportionate (Section 4), provide for appropriate compensation (Section 5) and set out why provisions on content and limitations under Article 14(1), second sentence, of the Basic Law are insufficient (Section 3(3)). A specific law on socialization has not yet been enacted; however, the legislative framework for such a proposal has already been established by the referendum.

Possible key points of a law on socialization

There is as yet no specific draft bill from a state government, as its composition depends on the governing coalition yet to be formed. The currently available indications as to the possible content of a socialization law stem from three sources: the referendum held in 2021, the draft bill (VerGE) drawn up by the 'Deutsche Wohnen und Co. Enteignen' initiative, and Resolution 10-04/2026 of the Berlin regional association of Die Linke on socialization.[4] Two key points in particular can be derived from these sources:

- the socialization of the housing stocks of all private housing companies with more than **3,000 flats** each in the State of Berlin,
- public-service, non-profit management of the housing stock by a public-law institution (AöR),
- compensation for the affected companies at a level significantly below market value.

[1] Official announcement regarding the referendum on a resolution for the Senate to draw up a draft bill on the socialization of the housing stock of large housing companies, held on 26 September 2021, p. 5.

[2] Ibid., p. 15.
[3] GVBl. 2026, 138.
[4] Resolution 10-04/2026 of the Berlin Regional Association of Die Linke.

As things stand at present, this would therefore affect only private-sector companies with a housing portfolio in Berlin comprising more than 3,000 flats each. According to the draft, 3,000 flats are to be exempt from the transfer and remain within the group's portfolio. Furthermore, state-owned, non-profit and church-run organisations, as well as co-operatives, are to be exempt from socialization. Article 15 of the Basic Law (GG) mandatorily provides for compensation, although the proposals put forward so far by supporters of socialization envisage compensation significantly below market value. Under Section 8 of the VerGE, the public-law body yet to be established would become the holder of the public property.

At the same time, existing mortgages are to be extinguished by operation of law, with financing banks being entitled to compensation in return. The implications would need to be examined in detail once concrete legislative proposals are available.

As none of this constitutes provisions from a government bill, but rather positions arising from a referendum, a draft initiative and a party resolution, it remains to be seen which of these key points will be incorporated into a future draft bill.

Constitutional framework for socialization

As the Berlin Constitution – unlike those of other federal states – contains no article on socialization, legal scholarship already argues at this level that socialization by the State of Berlin is ruled out from the outset. If one does not subscribe to this view, the only possible legal basis would be Article 15 of the Basic Law. This allows for the transfer of private property into public ownership beyond the scope of classic expropriation under Article 14(3) of the Basic Law. Since the Basic Law came into force, this provision has never once been applied, meaning that there is neither established case law nor well-established administrative practice.

Substantive requirements for socialization

Article 15 of the Basic Law permits the transfer of land, natural resources and means of production into public ownership or into other forms of the public economy. The material scope of application is thus limited from the outset to the items specified therein.

Furthermore, the transfer must take place 'for the purpose of socialization' into the public sector. This refers to an economic model that is not geared towards individual profit-making but towards meeting a social need, and which provides lasting legal safeguards for its use in the public sector. Socialization for purely fiscal reasons – such as an acquisition by the state without any change in the method of management – does not satisfy these requirements any more than a mere redistribution of ownership amongst private individuals. A formal transfer of ownership is not mandatory in this context. Forms of social control in which private ownership formally remains in place are also conceivable.

Reservation to legislation, compensation and proportionality

Any socialization requires a formal Act of Parliament governing the 'nature and extent of compensation'; recourse to administrative action or delegation to the regulatory authority is ruled out. The principles governing compensation for expropriation apply mutatis mutandis to the assessment of compensation, meaning that it must be adequate.

Any socialization must comply with the principle of proportionality. The transfer to public ownership would have to be a **suitable, necessary and proportionate** means of achieving the

intended public interest objective – for example, the creation and safeguarding of affordable housing. The issue of necessity, in particular, is at the heart of the debate. Necessity must be ruled out if there is a less intrusive means of interfering with fundamental rights that is at least as effective as socialization in achieving the objective pursued by it. An objection raised against the requirement of necessity is that, for example, publicly subsidised new housing construction, stricter rent controls or social welfare-based ownership restrictions could achieve the objective with a lesser degree of interference, whereas socialization does not in itself result in the creation of new homes.

The possibility and permissibility of preventing this through a federal law

In parallel with the debate in Berlin, the current Federal Government announced in its 'Programme for Economic Recovery and Employment' in July 2026 that it would examine a federal law designed to prevent, or at least restrict, socialization under state law pursuant to Article 15 of the Basic Law.[5] Under constitutional law, such a course of action is subject to strict conditions.

Concurrent legislation

Article 15 of the Basic Law falls within the scope of concurrent legislation, as set out in Article 74(1)(15) of the Basic Law. In the case of Article 15 of the Basic Law, this means that the Federal Government has the power to legislate only '*if and insofar as the establishment of equivalent living conditions within the federal territory or the preservation of legal or economic unity in the national interest necessitates a provision under federal* law', Article 72(2) of the Basic Law.

If the Federal Government enacts a definitive provision, this has a preclusive effect on provisions under Land law.

In principle, within the framework of concurrent legislation, the Federal Government may also adopt a so-called negative substantive decision, thereby excluding certain instruments or forms of regulation – such as socialization under state law.

It is, however, disputed whether a purely prohibitive law without its own substantive regulatory content would be constitutionally valid. Case law has held in the past that a federal law in the area of concurrent legislation must, in any event, have its own substantive regulatory content.[6] It follows from this that a federal law must not serve the sole purpose of preventing the Länder from enacting their own legislation.

Whether the Federal Government can prevent the socialization of Berlin by means of federal legislation therefore depends on whether it enacts a regulation that is substantively independent and exhaustive.

The necessity of a federal statutory provision

There is a further hurdle: under Article 72(2) of the Basic Law, the Federal Government may only act in areas of concurrent legislation if the establishment of equivalent living conditions or the preservation of legal or economic unity in the national interest necessitates a provision under federal law.

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[5] A programme for economic recovery and employment, available at https://www.bundesregierung.de/resource/blob/2196306/2445592/bc8e5e160d87f0bdd593121a96a45d2/2026-07-02-koaausschuss-data.pdf

[6] See, for example, Federal Administrative Court (BVerwG), judgement of 25 August 1999 – 8 C 12/98, juris, para. 28.

Whether this threshold can be met remains an open question. One argument in favour of the necessity of a federal regulation could be, for example, that socialization under state law could influence investment conditions in the housing market nationwide. If a state transfers property holdings above a certain threshold into public ownership, this may alter the distribution of capital and financing conditions in other states as well, thereby affecting economic unity in the national interest, particularly as potential foreign investors are often unlikely to be familiar with the details of the German federal system.

Options for judicial review

Should a socialization act be enacted, the housing companies affected, as well as the financing banks, would have several avenues of legal redress at their disposal. One option is a constitutional complaint before the Federal Constitutional Court or the Constitutional Court of the State of Berlin. In addition, the Federal Government, a state government or one quarter of the members of the Bundestag may initiate an abstract review of the law before the Federal Constitutional Court, in accordance with Article 94(1)(2) of the Basic Law and Section 76(1) of the Federal Constitutional Court Act. Finally, in cases of urgency and where irreversible harm is imminent, an application for interim relief may be made.

Outlook

The further development of the concept of socialization depends largely on the political direction set at state and federal level. In Berlin, it remains to be seen how the coalition will be formed. Only once the future state government has agreed on a specific socialization bill will it become clear whether, and in what form, the referendum will be implemented.

At the same time, the question remains open as to whether the federal government will actually proceed with its announced review of a federal law designed to restrict socialization under state law.

Should a state law on socialization be enacted, a review by the Federal Constitutional Court is to be expected; the same applies should a federal law be enacted to prevent socialization. The numerous unresolved legal issues surrounding Article 15 of the Basic Law – ranging from proportionality and the level of compensation to the division of powers between the federal government and the Länder – are likely to be conclusively resolved only by the Federal Constitutional Court.

We are always available to provide further information – we are happy to support and advise you!

Note
This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Dr Eva Katharina Dauke, on +49 30 884503 198 or at edauke@goerg.de or Dr. Marc Schüffner on +49 30 884503-183 or at MSchueffner@goerg.de. For further information about the author visit our website www.goerg.com.

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