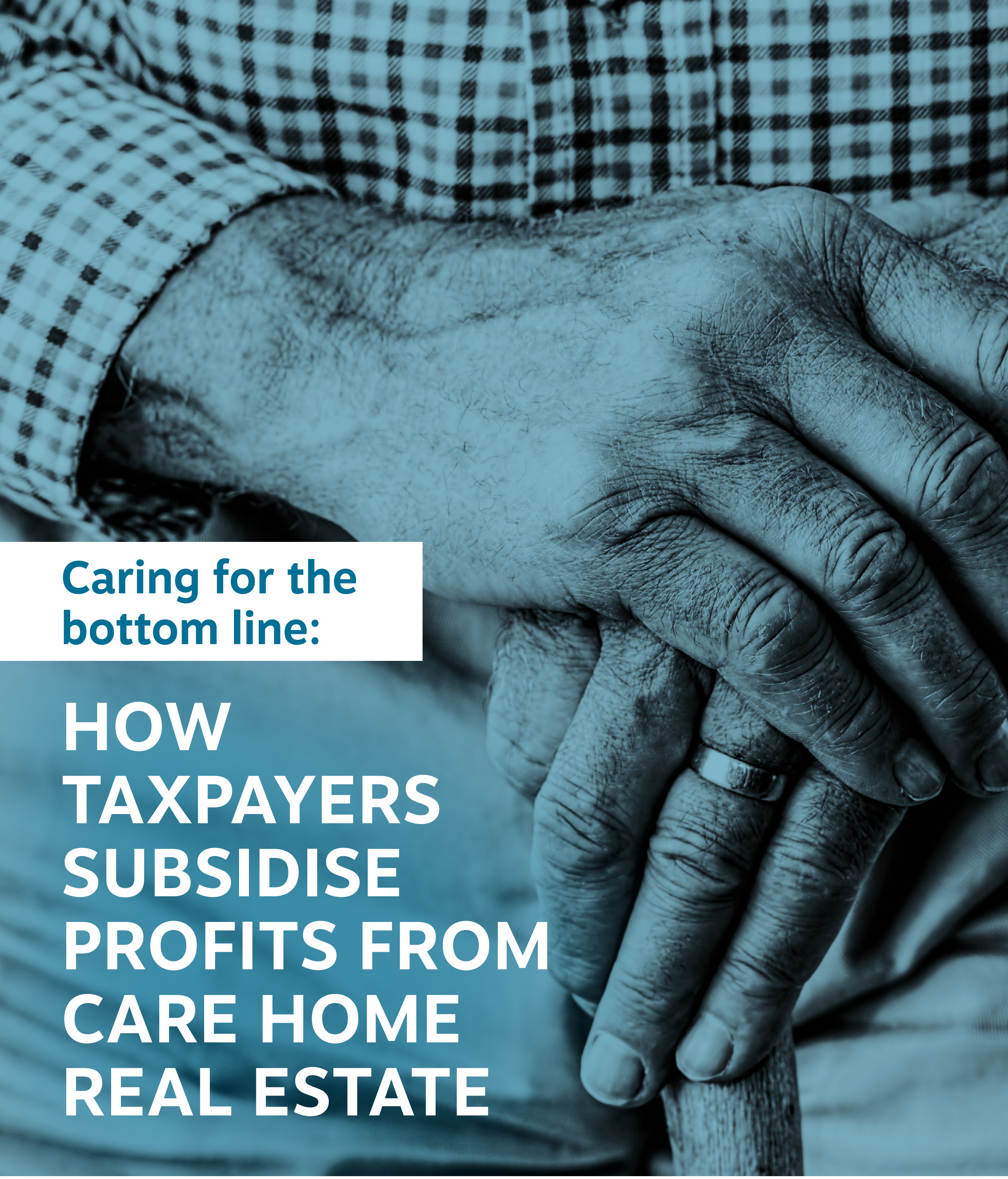


Caring for the bottom line:

HOW TAXPAYERS SUBSIDISE PROFITS FROM CARE HOME REAL ESTATE

June 2023

Centre for International Corporate Tax Accountability and Research

Caring for the bottom line:

HOW TAXPAYERS SUBSIDISE PROFITS FROM CARE HOME REAL ESTATE

A Centre for International Corporate Tax Accountability and Research (CICTAR) Report

www.cictar.org

With the support of EPSU

www.epsu.org

CONTENTS

EXECUTIVE SUMMARY

This report focusses on a large and growing investor in care homes across Europe and examines the impact of its business model on the care sector.

Cofinimmo is a Belgian corporate group, listed in the Euronext Brussels stock market. While the company owns various types of properties, in recent years, Cofinimmo has increasingly specialised in care home ownership. Large companies which run private care homes are the most important tenants of Cofinimmo, often having sold properties to raise capital and then renting back on long-term leases.

At the end of 2021 Cofinimmo owned some 25,600 care beds across Europe and six major care home operators accounted for about 40 per cent of its contractual rents from all types of property. Belgium accounted for 42 per cent of Cofinimmo's total healthcare assets in 2021 and the group also has significant investments in Germany, France and the Netherlands and is expanding into Italy, Spain, Finland, Ireland and the United Kingdom.

As demonstrated through analysis of Cofinimmo's own accounts and reports, Healthcare property ownership is extremely profitable. Over the five-year period to 2021, Cofinimmo's operating profit margin on healthcare properties, primarily care homes, was over 80%.

These large profits depend to a large extent on public funding. In Belgium, around half the income of care-home operators (Cofinimmo's rent-paying clients) comes from social security and in France, about 30 per cent of the income of private care homes comes from the state. In other words, Cofinimmo's profits partly depend on European states continuing to subsidise much of the cost of private, for-profit, care.

Cofinimmo's profits are boosted still further by the fact that the group's effective corporate income tax rate for the period from 2017 to 2021 averaged only 3.35 per cent compared to Belgium's headline rate of corporate income tax in 2021 of 25 per cent.

The primary reason for this low effective tax rate is that Cofinimmo benefits from tax regimes for Real Estate Investment Trusts (REIT), a form of property company. In Belgium, where Cofinimmo owns most of its assets and earns much of its rental income, Cofinimmo has access to Belgium's low-tax regime for property investors. Tax will still be paid on profits distributed to shareholders, though there are various ways in which some shareholders can legally reduce the tax on their profits. Cofinimmo's very low corporate tax rate is primarily the result of government policy, supplemented by a favourable regime for property investors. Successive Belgian governments have made a political choice to decline some tax income for the state which it would otherwise have collected.

In effect, Cofinimmo and its investors benefit from two forms of public subsidy, the public finance provided to its care home tenants and a reduction of tax payments which is not fully recouped from shareholders. These 'subsidies' represent substantial costs to the state. The primary responsibility for these costs lies with the choices made by governments as they turn to private sector investment to build, own and renovate care homes.

In addition to the problem of the additional costs inherent in using private finance, the approach simply cannot meet the level of need. Demand for care beds has been growing substantially across Europe. Cofinimmo itself estimates that more than a million new care beds will be needed by 2030-35 in the countries where it operates. It is evident that Cofinimmo itself is not going to meet more than a tiny fraction of this need. And new beds are likely to be added in areas where there are the highest profits to be made, rather than where needs are greatest.

This report concludes that huge profit extraction from care home real estate, as demonstrated by the example of Cofinimmo, is not helping to address more than a small part of the underlying crisis in care and may in fact be contributing to even greater inequality in access to much needed services for elder care. The lessons drawn from the analysis provide a cautionary tale for any government considering following the path of countries such as the UK and the US, where care is overwhelmingly dominated by the private sector.

We approached Cofinimmo with a series of questions about our findings four weeks ahead of publication of this report. Despite extending the deadline for their response, on the company's request, we did not receive answers by this deadline. Cofinimmo eventually provided their response to our questions the day before publication. Despite the very late notice, we have endeavoured to incorporate any relevant information into the report. We also have published their response in full on our website alongside this report.

RÉSUMÉ ANALYTIQUE

Ce rapport porte sur un grand investisseur en croissance dans les foyers de soins à travers l'Europe et examine l'impact de son modèle économique sur le secteur des soins.

Cofinimmo est un groupe belge coté à la bourse Euronext de Bruxelles. Bien que la société possède différents types de biens immobiliers, Cofinimmo accroît de plus en plus le poids des foyers de soins dans sa palette de propriétés ces dernières années. Les principaux locataires de Cofinimmo sont de grandes entreprises gérant des foyers de soins privés, qui vendent souvent des biens immobiliers pour réunir des capitaux et les louent ensuite par le biais de baux à long terme.

À la fin de l'année 2021, Cofinimmo possédait quelque 25 600 lits de soins à travers l'Europe et six grands exploitants de foyers de soins représentaient environ 40 % de ses loyers, tous types de biens confondus. La Belgique représentait 42 % du total des actifs de Cofinimmo dans le secteur de la santé en 2021. Le groupe a également des investissements importants en Allemagne, en France et aux Pays-Bas et se développe en Italie, en Espagne, en Finlande, en Irlande et au Royaume-Uni.

Comme le démontre l'analyse des comptes et rapports de Cofinimmo, l'immobilier de santé est extrêmement rentable : sur la période de cinq ans jusqu'en 2021, sa marge bénéficiaire d'exploitation sur les immobiliers de santé, principalement les foyers de soins, s'élève à près de 96 %.

Ces profits importants dépendent dans une large mesure du financement public. En Belgique, environ la moitié des revenus des exploitants de foyers de soins (locataires de Cofinimmo) provient de la sécurité sociale et en France, environ 30 % des revenus des foyers de soins privés proviennent de l'État. En d'autres termes, les bénéfices de Cofinimmo dépendent en partie du fait que les États européens continuent à subventionner une grande partie du coût des soins privés à but lucratif.

Les bénéfices de Cofinimmo sont d'autant plus importants que le taux effectif d'imposition sur les revenus des entreprises du groupe pour la période 2017-2021 n'est en moyenne que de 3,35 %, alors que le taux global d'imposition sur les revenus des entreprises en Belgique en 2021 est de 25 %.

La raison principale du faible taux effectif d'imposition est que Cofinimmo bénéficie des régimes fiscaux des sociétés immobilières réglementées (SIR), une forme de société immobilière.

En Belgique, où elle possède la plupart de ses actifs et perçoit une grande partie de ses revenus locatifs, Cofinimmo a accès au régime fiscal belge avantageux pour les investisseurs immobiliers. En théorie, l'impôt sera toujours payé sur les bénéfices distribués aux actionnaires, mais il existe pour ces derniers plusieurs façons d'éviter légalement une partie de l'impôt sur leurs bénéfices. Cela signifie que la Belgique choisit de ne pas taxer les bénéfices de Cofinimmo et, dans le même temps, de ne probablement pas récupérer ces recettes fiscales auprès des investisseurs. Le très faible taux d'imposition de Cofinimmo est avant tout le résultat d'une politique gouvernementale, complétée par un régime favorable aux investisseurs immobiliers, là encore un choix politique.

De fait, Cofinimmo bénéficie de deux formes de subvention publique, le financement public accordé aux locataires de ses foyers de soins et la réduction des paiements d'impôts. Ces « subventions » représentent des coûts substantiels pour l'État. La responsabilité première de ces coûts incombe aux choix faits par les gouvernements lorsqu'ils se tournent vers les investissements du secteur privé pour construire, posséder et rénover les foyers de soins.

Outre le problème des coûts supplémentaires inhérents au recours au financement privé, l'approche ne peut tout simplement pas répondre aux besoins. La demande de lits de soins a connu une forte croissance dans toute l'Europe et Cofinimmo estime que plus d'un million de nouveaux lits de soins seront nécessaires d'ici 2030-35 dans les pays où le groupe opère. Il est évident que Cofinimmo ne pourra répondre qu'à une infime partie de ces besoins. De plus, il est probable que les nouveaux lits s'ajouteront dans les régions où les profits sont les plus élevés, plutôt que dans celles où les besoins sont les plus importants.

Ce rapport conclut que l'énorme extraction de profits de l'immobilier des foyers de soins, comme le montre l'exemple de Cofinimmo, ne contribue pas à résoudre plus qu'une petite partie de la crise sous-jacente dans le secteur des soins et peut même contribuer à une inégalité encore plus grande dans l'accès à des services indispensables pour les soins pour personnes âgées. Les enseignements tirés de l'analyse constituent une mise en garde pour tout gouvernement qui envisagerait de suivre la voie de pays comme le Royaume-Uni et les États-Unis, où les soins sont dominés largement par le secteur privé.

Quatre semaines avant la publication de ce rapport, nous avons posé à Cofinimmo une série de questions sur nos constatations. Malgré la prolongation du délai de réponse, à la demande de la société, nous n'avons pas reçu de réponses dans ce délai. Cofinimmo a finalement répondu à nos questions la veille de la publication. Malgré ce délai très court, nous nous sommes efforcés d'intégrer toutes les informations pertinentes dans le rapport. Nous avons également publié l'intégralité de leur réponse sur notre site web, à côté du présent rapport.

SAMENVATTING

Dit rapport richt zich op een grote en groeiende investeerder in rusthuizen over heel Europa en onderzoekt de impact van zijn bedrijfsmodel op de zorgsector.

Cofinimmo is een Belgische ondernemingsgroep die genoteerd staat op de Euronext Brussel aandelenmarkt. Hoewel de onderneming verschillende soorten vastgoed bezit, heeft Cofinimmo zich de laatste jaren steeds meer gespecialiseerd in het bezit van rusthuizen. Grote ondernemingen die privérusthuizen uitbaten zijn de belangrijkste huurders van Cofinimmo, die vaak vastgoed hebben verkocht om kapitaal aan te trekken en die het dan terug huren op lange termijn.

Eind 2021 bezat Cofinimmo ongeveer 25.600 zorgbedden over heel Europa en waren zes grote uitbaters van rusthuizen goed voor ongeveer 40% van zijn contractuele huurprijzen van alle soorten vastgoed. België vertegenwoordigde 42% van het totale zorgpatrimonium van Cofinimmo in 2021, maar de groep heeft ook belangrijke investeringen in Duitsland, Frankrijk en Nederland en breidt uit naar Italië, Spanje, Finland, Ierland en het Verenigd Koninkrijk.

Zoals blijkt uit de analyse van de eigen rekeningen en verslagen van Cofinimmo, is het bezit van vastgoed in de gezondheidszorg uiterst winstgevend. Over de periode van vijf jaar tot 2021 bedroeg de operationele winstmarge van Cofinimmo op zorgvastgoed, voornamelijk rusthuizen, bijna 96%.

Deze grote winsten zijn in grote mate afhankelijk van overheidsfinanciering. In België is ongeveer de helft van de inkomsten van de uitbaters van rusthuizen (de huurbetalende klanten van Cofinimmo) afkomstig van de sociale zekerheid en in Frankrijk is ongeveer 30% van de inkomsten van privérusthuizen afkomstig van de staat. Met andere woorden, de winsten van Cofinimmo zijn deels afhankelijk van Europese staten die een groot deel van de kosten van de privézorg, met winstoogmerk, blijven subsidiëren.

De winst van Cofinimmo wordt nog versterkt door het feit dat het effectieve tarief van de vennootschapsbelasting van de groep voor de periode van 2017 tot 2021 gemiddeld slechts 3,35 procent bedraagt, terwijl het algemene tarief van de vennootschapsbelasting in België in 2021 25 procent bedroeg.

De belangrijkste reden voor het lage effectieve belastingtarief is dat Cofinimmo profiteert van belastingregimes voor Real Estate Investment Trusts (REIT), een vorm van vastgoedvennootschap. In

België, waar Cofinimmo de meeste van zijn activa bezit en een groot deel van zijn huurinkomsten genereert, heeft Cofinimmo toegang tot het Belgische lage belastingregime voor vastgoedinvesteerders. Theoretisch wordt er nog steeds belasting betaald over de winst die wordt uitgekeerd aan aandeelhouders, maar er zijn verschillende manieren waarop aandeelhouders wettelijk een deel van de belasting op hun winst kunnen vermijden. Dit betekent dat België ervoor kiest om de winsten van Cofinimmo niet te belasten en tegelijkertijd de belastinginkomsten waarschijnlijk niet terugkrijgt van de investeerders. Het zeer lage tarief van de vennootschapsbelasting van Cofinimmo is voornamelijk het resultaat van het overheidsbeleid, aangevuld met een gunstig regime voor vastgoedinvesteerders, wat opnieuw een politieke keuze is.

In feite profiteert Cofinimmo van twee vormen van overheidssubsidie, namelijk de overheidsfinanciering voor haar huurders van rusthuizen en de belastingvermindering. Deze 'subsidies' vertegenwoordigen aanzienlijke kosten voor de staat. De hoofdverantwoordelijkheid voor deze kosten ligt bij de keuzes die regeringen maken als ze een beroep doen op investeringen uit de privésector om rusthuizen te bouwen, te bezitten en te renoveren.

Naast het probleem van de extra kosten die inherent zijn aan het gebruik van privéfinanciering, kan de aanpak eenvoudigweg niet voldoen aan het niveau van de behoeften. De vraag naar zorgbedden is in heel Europa aanzienlijk gestegen. Cofinimmo schat zelf dat er tegen 2030-35 meer dan een miljoen nieuwe zorgbedden nodig zullen zijn in de landen waar het actief is. Het is duidelijk dat Cofinimmo zelf slechts in een fractie van deze behoefte zal kunnen voorzien. En nieuwe bedden zullen waarschijnlijk worden toegevoegd in gebieden waar de meeste winst te behalen valt, in plaats van daar waar de behoeften het grootst zijn. Cofinimmo kreeg verschillende gelegenheden om te reageren op de bevindingen van het rapport en om bepaalde punten te verduidelijken, maar deed dat niet.

In dit rapport wordt geconcludeerd dat het enorme winstbejag uit vastgoed van rusthuizen, zoals aangetoond door het voorbeeld van Cofinimmo, slechts een klein deel van de onderliggende crisis in de zorg helpt aanpakken en mogelijk zelfs bijdraagt aan een nog grotere ongelijkheid in de toegang tot de broodnodige diensten voor ouderenzorg. De lessen die uit de analyse worden getrokken, zijn een waarschuwing voor elke regering die overweegt het pad te volgen van landen zoals het VK en de VS, waar de zorgsector op overweldigende wijze gedomineerd wordt door de privésector.

Vier weken voor de publicatie van dit verslag hebben we Cofinimmo benaderd met een reeks vragen over onze bevindingen. Ondanks het verlengen van de deadline voor hun antwoord, op verzoek van het bedrijf, ontvingen we geen antwoorden binnen deze deadline. Uiteindelijk heeft Cofinimmo de dag voor publicatie een antwoord gegeven op onze vragen. Ondanks de zeer late kennisgeving hebben we ons best gedaan om alle relevante informatie in het verslag op te nemen. Naast dit verslag hebben we ook het volledige antwoord op onze website gepubliceerd.

INTRODUCTION

Across Europe, and OECD countries more broadly, residential care for the elderly is in crisis. In many countries, the underlying problems of the care sector were brutally exposed by the covid-19 pandemic. In the longer term, ageing populations will require increasing numbers of care beds, meaning more public funding and/or greater out of-pocket-costs for the elderly and their families.

Governments are increasingly turning to private sector investment to build, own and renovate care homes. In some countries private for-profit providers are already dominant and growing fast, while in others the shift is just beginning.

Alongside this shift to private provision of care, there is an increasing trend across Europe towards large real estate investors owning care homes and renting them to operators. Belgium-based Cofinimmo, operating across Europe, is part of the broader trend in the commercialisation and financialisation of care homes.

This report is based mainly on analysis of the financial statements of the Cofinimmo group and some of its subsidiaries in Belgium, France, Germany and the Netherlands as well as study of the group's annual reports and investor presentations, concentrating on the five years to 2021 which was the most recent year when this research began.

Cofinimmo is quite open about its business model and provides its own detailed analysis of its property portfolio in these reports and presentations. Cofinimmo was offered several opportunities to respond to the findings of the report, and to clarify certain points. As detailed in th executive summary, their response was only received the night before publication. Nonetheless, we have integrated their responses as far as possible given the time constraints. Their full response will also be published on CICATR's website.

At the end of 2021, Cofinimmo owned some 25,600 care beds across Europe and over the five years to 2021 its operating profit margin was over 82% of revenue, rising to over 92% in 2022. For its healthcare properties, these profits are heavily reliant on various forms of public subsidies, including corporate structures that limit tax payments. The profits extracted via real estate investment – in the form of rent payments from care home operators – represents money, either from the state or elderly people themselves, that has gone to shareholders and not to improve front-line care for Europe's ageing population.

Improving care requires increasing staffing levels and pay to retain and attract a largely female workforce. Different public policy solutions are needed to grow the workforce, improve working conditions and end decades of gender-based discrimination for care workers. Every cent taken from care systems and put into the pockets of investors is money not being used to that end.

Cofinimmo itself is not the real problem. Like its peers in the growing care home real estate business, it is allowed and even encouraged by European governments to do what it does.

The problem is an over-reliance on private investment in the care sector. Without significant changes to public policy and without addressing the problem of increasingly large-scale profit extraction from care home real estate, the crisis in care is likely to get worse.

How and where Cofinimmo makes money

Cofinimmo is a corporate group listed on the Euronext Brussels stock market, where it has posted exceptionally high profits from a relatively simple business model: raising money cheaply, buying property across Western Europe (particularly private care homes) and renting that property to others.

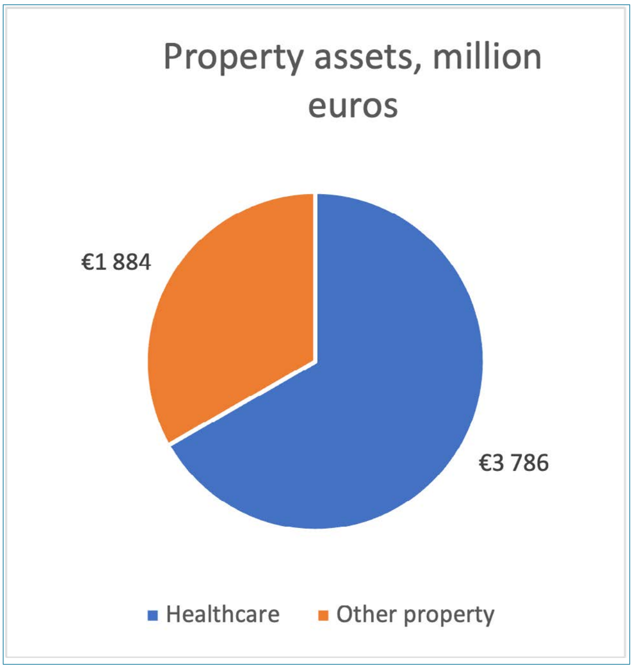
Large companies which run private care homes are Cofinimmo's biggest tenants. In 2021 six such operators accounted for about 40 per cent of its contractual rents from all types of property: Korian (14.7 per cent), Colisée (8.7 per cent), Orpea (6 per cent), DomusVi (3.8 per cent), Care-Ion (3.5 per cent) and Stella Vitalis (3.1 per cent).[1] Cofinimmo has business relationships with many other care-home operators.

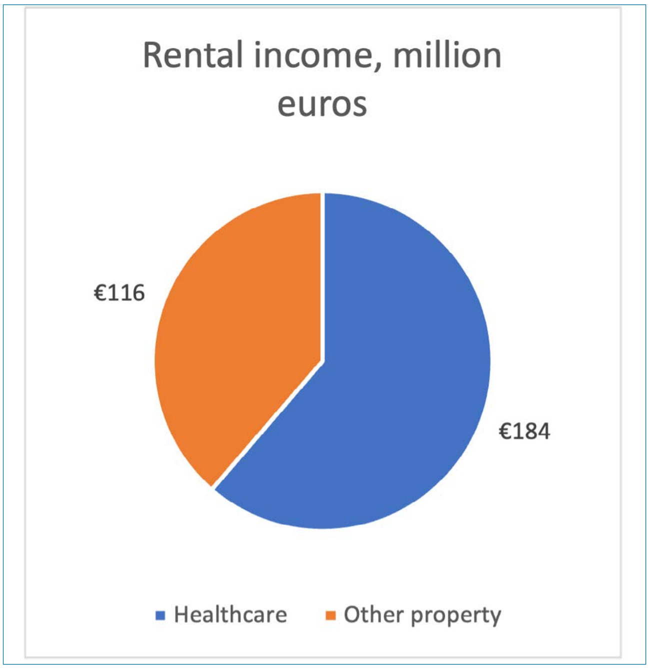
The group's rental income comes increasingly from private care homes, although it invests in various other kinds of property. As this report will show, this rental income derives from the fees of care home residents which are heavily subsidised by the public sector, via the social welfare system of Belgium and other countries.

Cofinimmo's profits also benefit from provisions in the tax systems of European countries which reduce Cofinimmo's own tax rate, as a matter of policy, and may enable some of its investors to pay lower rates of tax than they otherwise would.

[1] Cofinimmo SA. Universal Registration Document for 2021. Page 76. Top Tenants (table)

Graph 1 & 2: The value of healthcare property to Cofinimmo, 2021



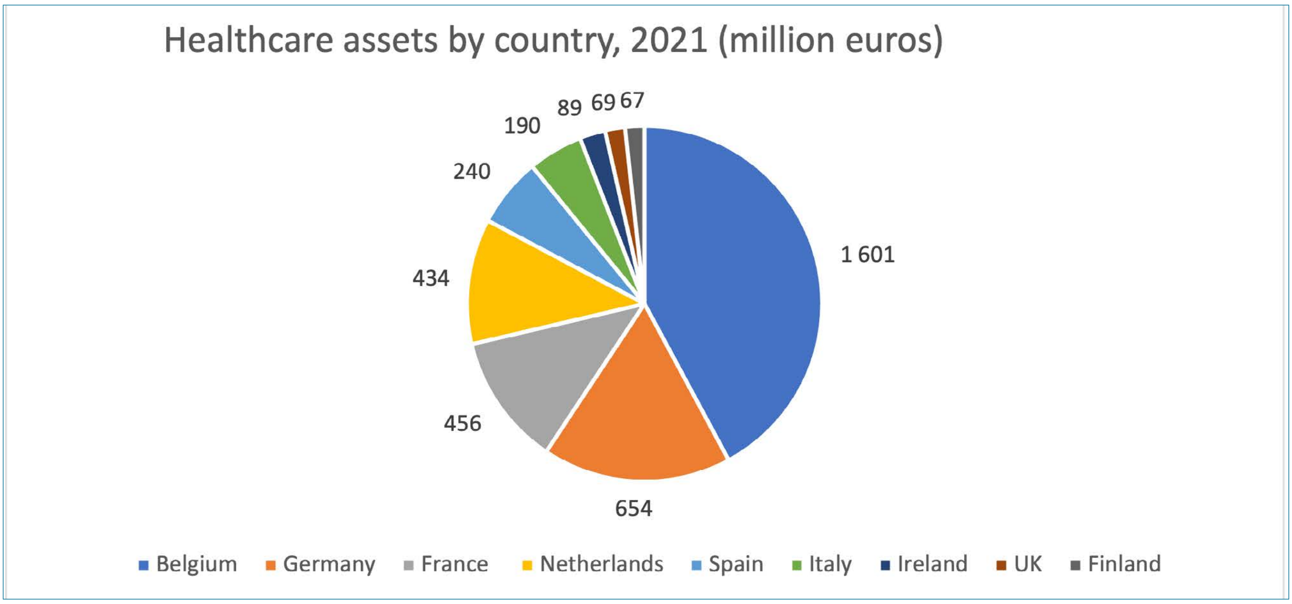


Source: Cofinimmo's 2021 Universal Registration Document), Note 5

Cofinimmo's investments are increasingly in healthcare property. Its home country of Belgium accounted for 42 per cent of its total healthcare assets in 2021.[2] The group also has large investments in Germany, France and the Netherlands and is expanding fast into other European countries, including Italy, Spain, Finland, Ireland and the United Kingdom.

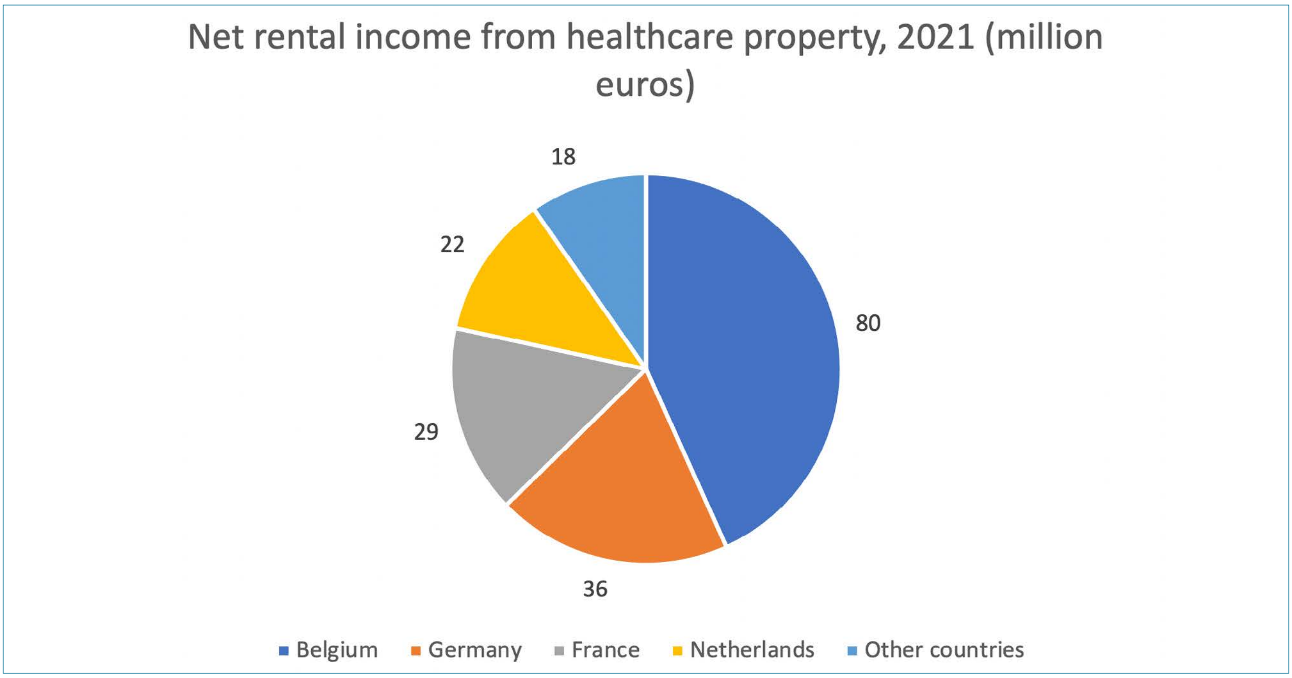
[2] Cofinimmo. Universal Registration Document for 2021. Page 17.

Graph 3: Where Cofinimmo owns care homes



Source: Cofinimmo 2021 Universal Registration Document, page 78. Assets at fair value. Totals may be affected by rounding.

Graph 4: Where Cofinimmo earns healthcare rents



Source: Cofinimmo's 2021 Universal Registration Document, Page 242. Totals may be affected by rounding. Cofinimmo does not report per-country rental income for Spain, Italy, Ireland, the UK or Finland.

Although Cofinimmo also owns offices and distribution networks and constructs public buildings in partnership with state agencies, its business increasingly lies in acquiring and renting out private healthcare properties.

These healthcare properties are mostly care homes and assisted living facilities, which account for 82 per cent of Cofinimmo's total healthcare property assets, with the rest being clinics and medical office buildings and, in Germany, two sports and wellness centres.[3]

Cofinimmo's healthcare property business has grown enormously in recent years. As of mid-2022, healthcare properties accounted for 62 per cent of the group's total assets of €6.57 billion.[4] The comparable figure reported at the end of 2017 was only 42 per cent.[5]

This fast-growing portfolio of properties has been amassed quite recently. Although Cofinimmo was created in 1983, it invested in healthcare real estate in Belgium for the first time in 2005, in France in 2008, in the Netherlands in 2012 and Germany in 2014.[6]

Since 2019 Cofinimmo has also invested in care homes or other healthcare properties in Spain, Italy, Finland, Ireland and the United Kingdom, with the latter being its only national market outside the European Union.

Cofinimmo's rapid expansion comes as a result of being able to raise money very cheaply, as this report will show, combined with the highly profitable private market in healthcare which has emerged as European populations live longer and governments fail to provide for sufficient care on a non-profit basis.

The size of Cofinimmo's portfolio of care homes, clinics and other private healthcare properties is likely to grow further in future given that its strategy "consists in consolidating its leadership in the European healthcare real estate segment" – in other words, trying to remain bigger than its competitors.[7]

Belgium and France are "more mature markets" for the group, meaning that it plans to concentrate mainly on improving or redeveloping its existing properties there, and selling some properties in order to buy others.[8] In other countries, Cofinimmo's priority is to buy more properties or develop them for private operators, while diversifying its holdings beyond care homes to other types of healthcare property.[9]

How public spending supports Cofinimmo's private profits

Cofinimmo is explicit that the care needs of ageing populations in European countries are creating a lucrative market for private investors because governments are unwilling to take the full cost of care onto public budgets. The group also notes that demand for health care is "driven by need more than desire" – in other words, people need care.[10]

Cofinimmo puts it as follows:

> " … In a context of budget restrictions, the organisation of care is subject to further rationalisation and private players are increasingly taking over from the public sector in this segment. New and more

[3] Ibid. Page 37.

[4] Cofinimmo. Half-year financial report for 2022. Pages 41 and 55.

[5] Cofinimmo. Annual report 2017. Pages 154 and 170. Healthcare property assets are calculated as the sum of healthcare real estate investment properties in Belgium France, the Netherlands and Germany.

[6] Cofinimmo. Universal Registration Document 2021. Pages 3-4.

[7] Ibid. Page 27. Strategy.

[8] Ibid. Page 39.

[9] Ibid. Page 33.

[10] Cofinimmo. Roadshow presentation. 30th September 2022. Page 63.

> modern structures, more suitable for the needs of the patient and less expensive, are created to respond to this trend and generate a demand increase for healthcare real estate financing."[11]

This private market is created to a large extent by public spending. Cofinimmo itself notes that: "In healthcare real estate … the income of tenants/operators [that is, the companies which rent properties from Cofinimmo] is often derived, at least partially, directly or indirectly, from subsidies provided by the local social security scheme … which depend[s] on national, regional or local authorities."[12]

In other words, public money flows to the private companies which operate care homes and these operators, in turn, pay rent to Cofinimmo for the buildings. This report contends that no public debate has been had about whether this is the best way of providing care to our elderly. By setting out the business model in clear terms here, we seek to ask: is lining the pockets of multi-national investors really the most effective use of the money which society pays for looking after vulnerable people?

Cofinimmo does not report how much of its healthcare rental income originates from the public sector and did not clarify this point to when asked by CICTAR. The group has said that "Health expenditures [are] mostly government-funded across Europe, with low cash-out from [the] patient."[13]

It is clear that the role of public funds in the sector is very large. Cofinimmo has said that in Belgium, for example, around half the income of care-home operators (who are Cofinimmo's rent-paying clients) comes from social security and the other half from residents themselves. In France, about 30 per cent of the income of private care homes comes from the state.[14]

In other words, Cofinimmo's profits partly depend on European states continuing to subsidise much of the cost of private for-profit care. Indeed, one of the risks identified by Cofinimmo to its own business is that reforms of social security schemes could affect the ability of care home operators to continue paying rent.[15]

Revenue is all the money that a company receives in the course of doing business. Costs are deducted from revenues to arrive at **profits.** This briefing has followed Cofinimmo's use of "net rental income" as a key measure of its revenues.[1]

[1] "Net rental income" is defined by Cofinimmo as revenue from its property leases minus "Write-back of lease payments sold and discounted', a technical adjustment relating to situations where the group has sold the rights to receive this revenue to someone else.

Low costs and sky-high profits

Cofinimmo does not run care homes or deal directly with patients and its operations are not readily apparent to the public. What it does is to buy private care homes and other properties, sometimes refurbishing them or building them from scratch, then it leases out these properties to private operators which pay rent to Cofinimmo to use the buildings.

The sellers of the care homes which

[11] Cofinimmo. 2021 Universal Registration Document. Page 35.

[12] Ibid. Page 6.

[13] Cofinimmo. Roadshow presentation. 30th September 2022. Page 64.

[14] https://www.cofinimmo.com/investors/faq/. How are the healthcare sectors organised in Belgium, France and the Netherlands?

[15] Cofinimmo. URD 2021. Page 6. F.3.2. Changes to social security schemes

COFINIMMO AND ORPEA

EXTRACTING PROFIT TWICE FROM ELDERLY CARE

Cofinimmo's fifth-largest tenant is Orpea, until recently Europe's largest for-profit care home operator. Orpea provided Cofinimmo with €18.8m of contractual rents in 2021.[1] As of December 2022, Cofinimmo owned ten Orpea care homes and clinics in Belgium, eight in France, six in Germany, and two in Spain.[2]

Orpea has itself historically been a very profitable company, until its recent crisis, booking operating profits of some €447m a year from 2015 - 2020 – an operating profit margin of around 13 percent.[3] In addition to Orpea's very high profits, from Brussels to Marseille, Baden-Baden to Castellón, fees paid by Orpea's residents and patients also flow to Cofinimmo and its shareholders, and contribute to its extraordinary profits.

During 2022, Orpea's own finances came under unprecedented scrutiny in France, Belgium, Germany and elsewhere, precipitated by an exposé from French journalist Victor Castanet. Castanet and other journalists revealed systematic austerity and neglect across Orpea's French residential care homes; the diversion of public funds intended for the care of vulnerable residents; and a range of mismanagement which fuelled returns to shareholders, and personally enriched Orpea executives.[4] These findings, confirmed by a French parliamentary inquiry, have not only precipitated several criminal investigations and a partial buy-out of Orpea by France's sovereign wealth fund, but have also fuelled a national and then pan-European debate about how our societies care for the elderly, how we pay for it, and who benefits. Cofinimmo cannot be held directly responsible for failures in care. However, a system that charges high rental payments to care companies will inevitably put increasing pressure on services.

CICTAR's own parallel research uncovered one of the underlying financial mechanisms driving the penny-pinching at Orpea's care homes: a ballooning property portfolio which tripled from 2013 to 2021, valued at €8.1bn at its 2021 peak.[5] Orpea acquired this portfolio through borrowing: external debt and finance leases whose cost to the company increased by 140% from 2015 to 2020, over twice as fast as its revenue grew. This debt burden places serious

---

[1] Cofinimmo, Universal Registration Document 2021, p. 76, https://reports.cofinimmo.com/reports/9/en/report.pdf

[2] Cofinimmo, Universal Registration Document 2022, pp. 156-63.

[3] Calculations from Orpea Universal Registration Documents, 2015-20.

[4] Victor Castanet, *Les fossoyeurs : Révélations sur le système qui maltraite nos aînés* (Paris: Fayard), February 2022; Leïla Miñano and Maxence Peigné, 'The Lavish Secret Commissions of Orpea's Intermedairies', *Investigate Europe*, 1 June 2022, https://www.investigate-europe.eu/en/2022/secret-commissions-orpeas-intermediaries/ ; Victor Castanet, 'Pour Orpea, après le scandale des EHPAD, l'heure des comptes', *Le Monde*, 30 May 2022, https://www.lemonde.fr/scandale-orpea/article/2022/05/30/pour-orpea-apres-le-scandale-des-ehpad-l-heure-des-comptes_6128243_6113065.html ; Assesmblée Nationale, Commission des Affaires Sociales, *Situation dans certains établissements du groupe Orpea – Rapport d'information*, 9 March 2022, https://www.assemblee-nationale.fr/dyn/15/rapports/cion-soc/l15b5152_rapport-information# ; Inspection Générale des Affaires Sociales/Inspection Générale des Finances, *La gestion des établissements d'hébergement de personnes âgées dépendantes (Ehpad) du groupe ORPÉA* (5 April 2022), https://www.igas.gouv.fr/La-gestion-des-etablissements-d-hebergement-de-personnes-agees-dependantes.html; 'Scandale Orpea : plusieurs dizaines de perquisitions dans des Ehpad du groupe', *Le Monde*, 15 November 2022, https://www.lemonde.fr/societe/article/2022/11/15/perquisitions-dans-des-ehpad-d-orpea-pour-des-soupcons-de-maltraitance-institutionnelle_6149953_3224.html

[5] Orpea Group investor presentation, 15 November 2022, https://www.orpea-group.com/wp-content/uploads/2023/01/Orpea_Presentation_P2_15-11-2022_FR_26fa0.pdf

downward pressure on spending on care workers and care materials.[6] In one example that CICTAR investigated in Germany, a group of 36 care homes which Orpea purchased in 2015 was loaded with over €40m of external debt. Yet the number of fulltime-equivalent staff in the group's care homes, including nursing and support staff, fell 10% between 2015 and 2019: despite Orpea spreading this diminished staff across not only the existing 36 care homes but two new ones during this period.

If growing this property portfolio places downward pressure on funds available for care itself, who benefits? While Orpea argued that owning its own care homes would ultimately decrease rental costs, leaving more money for care costs and labour, Orpea's management in fact announced to shareholders that it planned to sell off a quarter of this property portfolio between 2020 and 2024 and lease it back from the buyers: raising some €1.5bn in cash for shareholders, while saddling care homes with rental costs paid to commercial landlords for the foreseeable future.[7] Orpea stated in 2020 that it even aimed to sell off half of the new care homes that it was building across Europe, showing how speculating on the rising prices of properties was at the heart of Orpea's care home expansion. Orpea would realise an immediate capital gain and continue to extract profit from running these care homes, while introducing a second stream of profit extraction through rents paid to commercial real estate investors.

One of Orpea's early partners in this property speculation has been Cofinimmo. During 2020, Cofinimmo purchased the buildings of four of Orpea's care homes in Belgium and one in Spain, renting them back to Orpea.[8] In 2021 it purchased the buildings of another Orpea care home in Revin, France; others in Bruchmühlbach-Miesau, Germany, and Bilbao, Spain; and an Orpea rehabilitation clinic in Bad Langensalza, Germany.[9]

Orpea's debt-fuelled property speculation – which its new management now call "excessive and uncontrolled international property development" ["Un développement immobilier international excessif et non maîtrisé"][10] – came to an abrupt end in mid-2022, when the revelations about

[6] CICTAR, Fédération Santé Action Sociale CGT, Fédération CFDT Santé-Sociaux, Caring for People or Profit? The Financial Engineering and Real Estate Investment of Groupe Orpea (February 2022).

[7] Yves le Masne quoted in Adrian Bishop, 'Nursing home portfolio bought for €145m', Consorto, 28 July 2020, https://www.consorto.com/blog/nursing-home-portfolio-bought-for-e145m/; Groupe ORPEA, FY 2020 Full-year results investor presentation, Slide 43, https://www.orpeacorp.com/images/orpeafinance/pdf/Documentation/EN/2021/Pres_ORPEA_2020_Results_ENG_13d77.pdf

[8] Cofinimmo, 'Cofinimmo will acquire four Belgian nursing and care homes and a Brussels-based office building', press release, 30 October 2020, https://www.cofinimmo.com/media/4610/press-release.pdf; Cofinimmo, 'Cofinimmo acquires a new nursing and care home in Spain', press release, 15 December 2020, https://www.cofinimmo.com/media/4730/press-release.pdf

[9] Cofinimmo, Universal Registration Document 2021, pp. 45-51

[10] Orpea Group investor presentation, 15 November 2022, https://www.orpea-group.com/wp-content/

Cofinimmo buys are very often the private care-home operators themselves. It is attractive for such companies to sell their own properties to a property company like Cofinimmo and lease them back again because they can pass on the immediate short-term profits from capital gains of these sales to their shareholders, use the money to expand their businesses, or pay down debt.[16] Having Cofinimmo as a co-investor may also reduce the amount of money that care home operators themselves have to borrow in order to invest in new care homes.

This business model has been extremely

[16] See CICTAR. Extracting Profits Through Care Home Real Estate: The Billion-Pound Property Speculation Fuelling Britain's Care Crisis. 31st January 2023. Accessible here.

its inadequate care and financial misappropriation sent profits into a nosedive, depressing the valuation of some recent care home acquisitions, leaving it unable to service its debts. A deal with creditors and shareholders in February 2023 saw a coalition of investors led by the Caisse des Depots and Consignations (CDC), a French government investment fund, become Orpea's majority shareholder, promising to reduce returns to shareholders and focus on its core care business.[11] (Ironically, a subsidiary fund of the CDC, ICADE Santé, had previously been one of Orpea's other major partners in its ultimately ruinous property speculation, buying up 10 of Orpea's French care home properties in 2020, and one in Germany).[12]

Will this change of ownership and strategy end the burden of private landlords' profit extraction on Orpea's fee-paying residents and its (partly public) funders? The opposite seems likely: in order to reduce its now unmanageable debt burden, Orpea has announced that it will sell off over a billion Euros of its property portfolio, not in the hunt for capital gains, as previously, but in a fire-sale.[13] Healthcare property investment funds are already salivating: ICADE's half-year financial report in June 2022 report noted that the proposed Orpea sell-off looked set to "stimulate the investment market" in the second half of 2022.[14]

CICTAR asked Cofinimmo about the Orpea case. Cofinimmo responded that:

"The case of Orpea mainly focuses on France, where it is dealt with by the local authorities. As a reminder, as a regulated real estate company, Cofinimmo is in no way involved in the operation of the sites leased to healthcare operators. The occupancy rate is managed by the operator of the sites, and the rents are independent of the local occupancy rate or the financial performance, within the framework of long-term contracts."

uploads/2023/01/Orpea_Presentation_P2_15-11-2022_FR_26fa0.pdf

[11] 'Agreement in Principle on the Financial Restructuring Plan Between the Company, a Group of French Investors Led by the Caisse des Depots et Consignations and a Representative Group of Unsecured Financial Creditors of ORPEA SA', Orpea press release, 1 February 2023, https://www.businesswire.com/news/home/20230131006228/en/ORPEA-Agreement-in-Principle-on-the-Financial-Restructuring-Plan-Between-the-Company-a-Group-of-French-Investors-Led-by-the-Caisse-des-Depots-et-Consignations-and-a-Representative-Group-of-Unsecured-Financial-Creditors-of-ORPEA-SA

[12] ICADE, 'Icade Santé Continues to Expand into Germany with ORPEA', press release, 20 December 2021, https://www.businesswire.com/news/home/20211219005022/en/Icade-Sant%C3%A9-Continues-to-Expand-Into-Germany-With-ORPEA; Groupe ORPEA, 'ICADE acquires 9 healthcare facilities in Germany and France from ORPEA for €145 million', press release, 21 July 2020, https://www.orpea-corp.com/images/orpeafinance/pdf/Communiques/ENG/2020/ORPEA_ICADE_EN_1ccfc.pdf

[13] Orpea Investor Presentation, 15 November 2022, p. 52, https://www.orpea-group.com/wp-content/uploads/2023/01/Orpea_Presentation_P2_15-11-2022_FR_26fa0.pdf

[14] ICADE, *Half year financial report as of 30 June 2022*, p. 37, https://www.icade.fr/en/finance/regulated-information/half-year-financial-report-as-of-june-30-2022.pdf

profitable for Cofinimmo, which has been able to raise money very cheaply to buy care homes and other facilities, rent out these properties at market rates and collect the resulting revenue which, because the group's costs are low, is mostly profit.

The average interest rate on its debts was only 1.9 per cent in 2017 and by 2021 this had fallen to a very low 1.1 per cent.[17] In early 2023, the group reported that its average cost of debt was still only 1.2 per cent.[18]

Interest rates have risen around the world since mid-2022, which will affect Cofinimmo's

[17] Cofinimmo. Annual report for 2017. Page 22. URD for 2021. Page 22.

[18] Cofinimmo SA. FQ4 2022 Earnings Call. 17th February 2023 (transcript).

cost of borrowing.[19] However, the group has also been able to raise money by selling its shares to Belgian and foreign investors.

Under Belgian rules for real-estate firms, Cofinimmo is allowed to borrow up to 65 per cent of the value of its assets. In 2021 this ratio was only 44 per cent, which is a sign that Cofinimmo has had no problem raising money by selling its shares rather than borrowing.[20]

Cofinimmo spells out the reasons why its shares are attractive for investors. One is that its healthcare properties tend to be leased for very long periods, starting at 27 years in Belgium, 25 years in Germany, 15 years in the Netherlands and 12 years in France.[21]

Because more and more people in Europe are living longer lives and needing residential care, demand for these properties is likely to keep growing. And even if a care home operator does not renew its lease when it expires, Cofinimmo still has the option of making money by redeveloping that property as housing.[22] This means that investors in its shares have a good prospect of making big returns on their investment in the long term.

Another factor is that for the “large majority” of healthcare property leases, it is the tenant and not Cofinimmo which has to pay for maintenance, including structural maintenance.[23] This also helps to lower the group’s costs and, therefore, to increase its profits.

The **yield** on an investment is the return it pays to the investor each year, expressed as a percentage of the value of that investment.

Yield is a commonly used measure in the real-estate industry which shows how many years it would take an investor to recoup the cost of an investment. For example, an investment with a 5 per cent yield would recoup its cost in twenty years.

Yield is not the same as **profit,** which is determined by various other costs and gains.

Borrowed money, which has cost Cofinimmo little more than one per cent a year in recent years, has been invested for yields of around 5-6 per cent, according to Cofinimmo’s accounts. The accounts show that yields reported by Cofinimmo from its healthcare property have actually been slightly lower than for other businesses. The “gross yield” from all its properties averaged 6.18 per cent over the years from 2017 to 2021, according to calculations based on its accounts, whereas the gross yield from its healthcare properties was only 5.72 per cent.[24]

These are averages: Cofinimmo’s annual reports show that yields on healthcare properties can vary widely between countries, and between different regions within the same country.

In Belgium, for example, Cofinimmo reports that in 2021 the “prime yield” for nursing and care homes (the yield from the most desirable properties in an area) was 4 per cent in Flanders, 4.3 per cent in Brussels and 4.5 per cent in Wallonia, compared to yields on office properties of 3.6 per cent.[25]

19 For US interest rates since mid-2022, see https://tradingeconomics.com/united-states/interest-rate..

20 Cofinimmo. URD 2021. Page 30.

21 See https://www.cofinimmo.com/about-us/our-properties/healthcare-real-estate/

22 Ibid.

23 Ibid. “The large majority of the leases stating that maintenance costs, including structural maintenance, are the responsibility of the tenant.” Cofinimmo reports that the majority of its leases in France and Belgium are “triple-net”, meaning that the tenant pays for maintenance, insurance and property taxes, while in Germany and the Netherlands most leases are “double-net”. The latter imply that maintenance cost are borne by Cofinimmo as the lessor, but Cofinimmo says that some or all of these costs can be charged to the lessee.

24 Cofinimmo. URDs for the years from 2018 to 2021. Management Report. Key Figures. Cofinimmo’s calculations of yield assume 100 per cent occupancy.

25 Cofinimmo. URD 2021. Page 158.

Profit – the amount of money that a company can keep from its business – is its revenues minus its costs. Companies normally report several different measures of profit in their accounts, each of which reflects the effect on revenues of different kinds of costs.

Operating profit is usually the profits of the underlying business, before considering the cost of borrowing money or any profits from financial investments by the company.

Pre-tax profit is the profit that is left after all costs have been subtracted except corporate income tax. **Net profit** is the amount of profit left after taxation, which the company can distribute to its shareholders as **dividends** or retain to be used by the business.

Profit is not always in cash. For example, rising property values can increase Cofinimmo's operating profits and make its shares more valuable, but these profits don't turn into cash which can be paid to investors unless the properties are sold.

It is, therefore, also useful to also consider how much profit actually flows to shareholders in the form of dividends or share buybacks.

Cofinimmo's gross yield from healthcare properties in the year 2021 was 5.3 per cent. High yields in the healthcare property investors are not unique to Cofinimmo: for example, Aedifica, another Belgian real-estate firm specialising in healthcare in European countries, reported a comparable 5.5 percent yield in 2021.[26]

Yields from healthcare property translate into very high profits because the costs of Cofinimmo and other care home real-estate investors are very low, with little expense for staff or maintenance relative to the size of its investments.

As a property investment firm, Cofinimmo's profits are generated by raising capital and using it to buy, refurbish, build and rent properties, with no direct role in providing care. Cofinimmo only needed to employ 145 people across Europe in 2021 to manage assets of more than €6 billion.[27] That works out to an average of over €41 million of value per employee.

By comparison, the care home operator Orpea – one of Cofinimmo's tenants – had assets of just under €19 billion at the end of 2021, which is only about three times larger, but employed nearly 72,000 people at that time.[28] This disparity points to Cofinimmo's business model as one that requires little added value in terms of human capital or ingenuity but one that nonetheless yields very high returns.

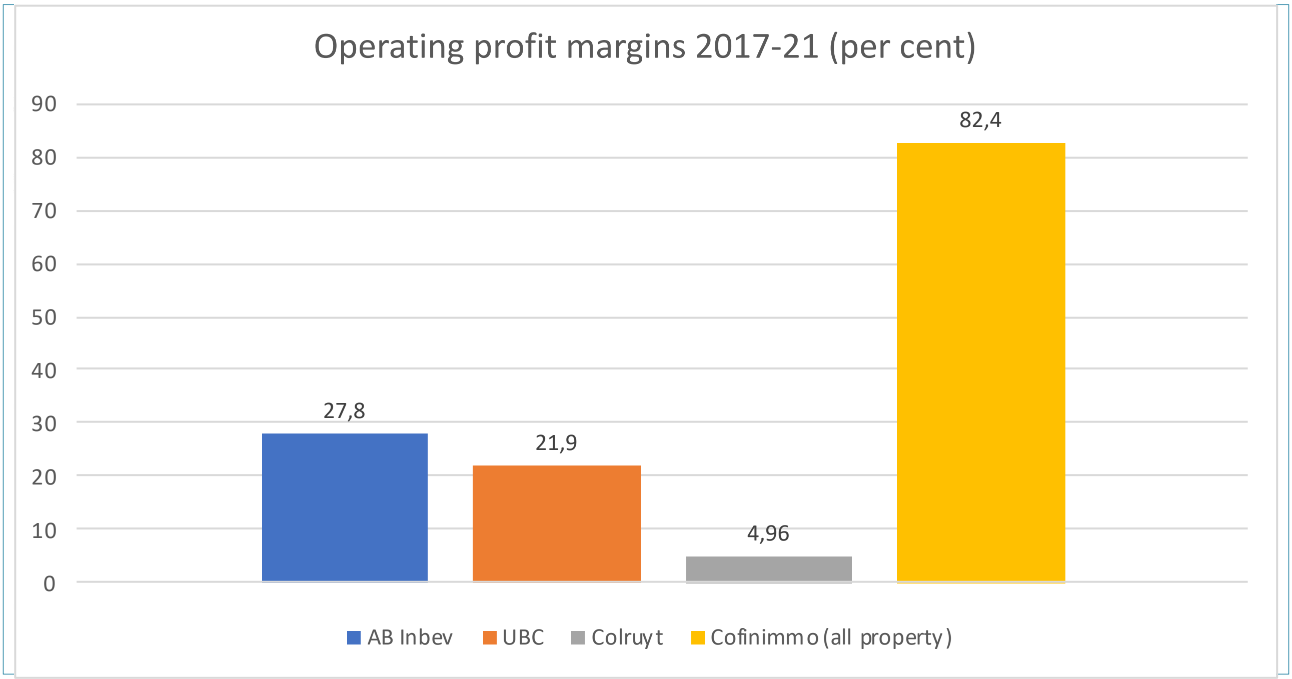
Cofinimmo commented to CICTAR that: "we operate with a limited number of staff (currently approx. 160 employees), because Cofinimmo's management responsibilities are limited by law on the one hand, and by the lease contracts on the other."

The operating profit margin across all the types of Cofinimmo's properties has averaged an enormous 82.4 per cent if the years from 2017 to 2021 are taken as a whole. It is difficult to calculate the operating profit margin on healthcare properties alone, since we do not know how Cofinimmo's overheads are allocated between different segments of its activities. However, Cofinimmo has told CICTAR that its operating profit margin has

[26] Aedifica. Annual financial report 2021. Page 60. Gross yield by country (table).

[27] Cofinimmo. URD 2021. Pages 23 and 88.

[28] Orpea. Universal Registration Document for 2021. Assets are on Page 248 and the total number of employees is on Page 281.



Source: figures averaged from the annual reports of these companies from 2017-2021 and response from Cofinimmo[1]

[1] These operating profit margins have been derived from the figures given for operating profits and revenues by these three companies in their annual reports covering the years from 2017 to 2021

been between 82 and 85 per cent between 2017 and 2021 This margin is "customary for a typical Belgian RREC [real-estate firm]," according to Cofinimmo.[29]

Cofinimmo also told CICTAR that "high operating margin[s] … are common for property investors" especially where the nature of the lease means that tenants manage their own properties and bear most of the costs."

The huge size of these profit margins can be seen from a comparison with three other large Belgian-based public companies, the giant brewing firm AB Inbev (which leases some pubs from Cofinimmo), the pharmaceuticals company UCB and the Colruyt supermarket chain. These companies' average operating profit margins over the same five-year period were between roughly 4 per cent (Colruyt) and 28 per cent (AB Inbev).

It should be noted that companies in different industries may define revenues and profits in slightly different ways, which means that comparisons can be inexact.[30] Even so, these companies' profit margins are much lower than Cofinimmo's, which reflects the fact that they are all involved in businesses with higher costs, such as purchasing inputs.

[29] CICTAR made estimates based on Cofinimmo's financial statements for the years from 2017 to 2021, which were well above 90 per cent on average, and put these to Cofinimmo. Shortly before publication, the group responded with its own figures which are lower because they account for group-wide overhead costs which are allocated to the healthcare business. We have used Cofinimmo's figures in this report.

[30] For example, "revenue" for AB Inbev is a net figure: turnover after payment of excise taxes on alcohol, while "net rental income" for Cofinimmo is net of certain technical adjustments. But for Colruyt, revenue appears to be a gross figure – i.e. no costs at all have been deducted in order to calculate it. See AB Inbev, annual report for 2021, page 57, footnote. Cofinimmo URD for 2021. Page 224. Colruyt. Annual report for 2021. Page 221.

Very low taxation

Cofinimmo's profits are boosted still further by the fact that the group pays almost no corporate income tax. The group's effective tax rate for the period from 2017 to 2021 averaged only 3.35 per cent.[31] This is a very low tax rate: Belgium's headline rate of corporate income tax in 2021 was 25 per cent, which is close to the average across all OECD countries.[32]

The primary reason why Cofinimmo pays so little corporate income tax is that in Belgium, where it owns most of its assets and earns much of its rental income, Cofinimmo has access to Belgium's "public RREC" low-tax regime for property investors. The intention of this and similar tax regimes in other countries, which are known as Real Estate Investment Trusts (REITs), is that the tax on a real-estate firm's profits should mostly be paid by its investors when they receive dividends, rather than by the company itself. So Cofinimmo's very low corporate tax rate is primarily the result of government policy.

This Belgian tax regime is known as *Société Immobilière Réglementée (SIR)* in French or *Gereglementeerde Vastgoedvennootschap (GVV)* in Flemish. Its effect is that Cofinimmo's ordinary profits, and any capital gains from selling assets, are not subject to tax. Tax is only paid on certain unusual items of profit.

The **headline rate** of corporate income tax is the rate set out in law. The **effective tax rate (ETR)** is the rate at which a company actually incurs tax on its profits in a given year. This is not necessarily the rate of tax actually paid by the company that year, because under certain conditions some tax can be **deferred** (paid in future).

The effective rate can be lower than the headline rate for a variety of reasons, some of which are generally uncontroversial, such as the effect of past losses on this year's profits, and others which may be more problematic, such as tax breaks.

So, a low ETR in a single year is not necessarily a warning sign. But a low ETR over several years can be a sign of something unusual and potentially problematic.

In this case, the very low ETR reflects the policy choice of governments in Belgium and some other countries to tax real-estate profits when they are paid to shareholders, rather than when companies make these profits. This is problematic for reasons explained below.

The difference between paying corporate income tax at 3.3 per cent and at the Belgian headline tax rate of 25 per cent would be equivalent, in Cofinimmo's case, to about €40 million a year over the five-year period mentioned above.[33] This is not an entirely reliable comparison because the rate of tax

[31] Estimate based on Cofinimmo's financial statements from 2017 to 2021. This estimate treats these five years as one single period in order to derive an average. The purpose of this approach is to show the picture over time by smoothing out rises and falls of profit and taxation from one year to the next.

[32] See https://taxsummaries.pwc.com/belgium/corporate/taxes-on-corporate-income. Cofinimmo notes that when property assets are brought within the public RREC regime, it is charged tax on any unrealised capital gains at a (still reduced) corporate income tax rate of 15 per cent (Cofinimmo communication with CICTAR, 28 June 2023). Despite this provision, Cofinnimo's group accounts show that its average effective tax rate was 3.35 per cent between 2017 and 2021.

[33] This estimate has been calculated by adding up Cofinimmo's pre-tax profits from 2017 to 2021 and comparing the difference between the amount of corporate income tax which the group actually incurred on these profits and the amount it would have incurred at a tax rate of 25 per cent, then dividing this result by five to get a nominal annual figure. It is unlikely that Cofinimmo would have paid tax at exactly 25 per cent, even if the low-tax REIT regime did not exist, so this estimate is presented only as a loosely indicative figure. It does not include exit tax, a smaller

that a company incurs is often lower than the headline rate (see text box).

However, 3.35 per cent is a very low rate by any standard. The equivalent effective tax rate for the same period was 27.5 per cent for AB Inbev (globally, not just in Belgium), for Colruyt 24.4 per cent and for UCB 16.8 per cent.[34]

Cofinimmo also has access to a similar low-tax regime in France, called the *société d'investissement immobilier cotée* (SSIC) regime, and formerly had access to a broader low-tax status in the Netherlands called the "*fiscale beleggingsinstelling*" (FBI) (see France and The Netherlands, below). These and other provisions of European countries' tax laws have enabled Cofinimmo to reduce its tax bills in those countries by amounts which are not individually huge in relation to profits but which, taken together, give these profits a significant boost.

For example, loss of access to the Dutch FBI regime in 2021 appears to have increased the corporate income tax bill of Cofinimmo's biggest Dutch subsidiary by €1.43 million that year (see Netherlands, below). This illustrates the value of its previous access to that regime.

At the same time, access to a Spanish tax regime called "*sub-socimi*" could save Cofinimmo nearly €2 million a year in Spanish taxes, according to the group itself.[35]

There is also evidence of what may be profit-shifting from Germany into Belgium and Luxembourg (see "Germany", below).

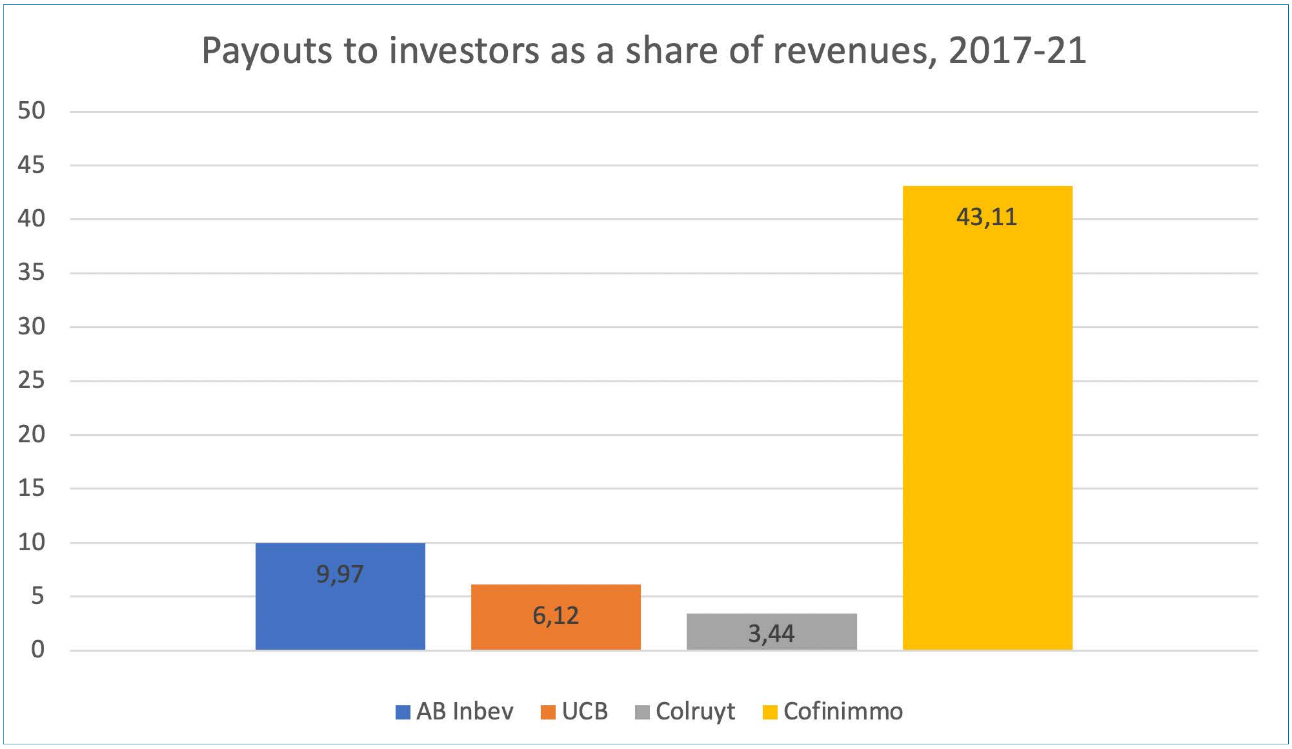
When tax rules change, Cofinimmo's taxes can go up. A change to French tax rules means that it will have to pay €4 million more a year from 2024 onwards (see France, below).

These figures make the point that tax rules

tax which is due when assets are moved into the low-tax regime.

[34] Estimates based on figures from the income statements in the annual reports of these companies from 2017 to 2021. Figures have been added over the five years and averaged. Colruyt's figures have been rounded up.

[35] Cofinimmo SA. Universal Registration Document for 2022. Page 9. F3.3 Sub-socimi regime.



Source: annual reports of these companies for 2017 to 2021. Figures for UCB and Colruyt include purchase of treasury shares as well as payment of dividends.

in different European countries can have a significant combined effect on Cofinimmo's tax rate, usually by reducing it.

In theory, it should not matter that the public RREC tax regime and its equivalents enable Cofinimmo to avoid most of the tax on its profits, because those profits which are paid out to its shareholders should be taxed in the hands of these investors instead.

But as will be explained below, there are ways in which some shareholders can legally reduce the amount of tax they would otherwise pay on their share of Cofinimmo's profits. In other words, the public RREC regime may act as a public subsidy to some investors' private profits, derived to a significant extent from public spending on care. Cofinimmo says that this is not the case (see below).

Huge flows of cash to shareholders

Cofinimmo's profits before tax are affected by the rise and fall on paper in the market values of its properties, which means that its reported profits are not always a good guide to how much cash actually flows out of the company and into the pockets of its shareholders.

The accounts do show, however, that a very high proportion of what Cofinimmo earns does flow straight to its investors. In the years between 2017 and 2021, Cofinimmo distributed 60.4 per cent of the group's total net profits to shareholders as dividends. This figure is not surprising because the Belgian public RREC tax regime requires it to distribute most of its profits in this way.[36] What is absolutely staggering, however, is how much of Cofinimmo's *revenues* flow straight to its investors.

Between 2017 and 2021, the company's own figures show that on average, 43 per cent of its net rental income – that is, nearly half of all the rents that the group receives from care homes, clinics, and other properties, before taking costs into account – was paid out in dividends.[37] In effect, money goes from taxpayer subsidies, and the savings and pensions of the elderly, through care home providers in the form of property rents, and into the pockets of multinational investors.

Over these five years, dividends paid to investors totaled a massive €533 million. Once again, a comparison with AB Inbev, UCB and Colruyt shows how enormous this flow of dividends is, relative to the group's revenues: the other three companies paid out the equivalent of between 3 and 10 per cent of their revenues in dividends and share buybacks.

In other words, the proportion of money flowing into Cofinimmo's business which flows straight out again into the pockets of investors are many times larger than for these other listed companies. Cofinimmo's business is essentially a machine which prints money for its owners, based largely on rental earnings from private care homes.

A significant amount of this revenue – and, by extension, the profits of Cofinimmo's private investors - originates from the public sector in Belgium and other European countries which heavily subsidise the cost of private care.

[36] Net rental income is taken from Cofinimmo SA's consolidated financial statements for each of the years 2017 to 2021, while dividend payments are from the cashflow statement for each year. The latter is used because it measures how much money is actually paid to shareholders, not how much the group intends to pay to them. For the requirement to distribute profits, see Cofinimmo URD for 2021. Page 100Note that the requirement in Belgian law is for the distribution of at least 80 per cent of "Cofinimmo SA/NV's (non-consolidated) realised net profit" which is a narrower measure of net profit than the one given in this report, which has been used to produce the average of 60 per cent. The report does not suggest, or seek to imply, that Cofinimmo is distributing less profit to shareholders than it should under Belgian law.

[37] Estimates based on Cofinimmo's URDs for the years 2017 to 2021, comparing dividend payments (as recorded in the cashflow statement) to net rental income as recorded on the profit and loss statement.

There is nothing hidden or unusually complicated about this very profitable business. It exists because governments are not providing sufficient care for the growing needs of their citizens and are relying on profit-seeking private investors to meet some of this need instead.

But the reality of this approach in the long term is an additional cost to taxpayers and to those who fund their own care from pensions and savings. The cost of care provision is inflated by the profits made by investors in private care homes, including property investors like Cofinimmo, and this additional cost has to come from somewhere.

Who owns Cofinimmo?

So, who owns Cofinimmo and receives this flow of dividends? Cofinimmo says it has "a broad base of institutional investors located primarily in Belgium, Germany, France, Luxembourg, the Netherlands, the United Kingdom, Switzerland, and North America, and on the other hand, retail investors, mainly located in Belgium."[38]

It is difficult to get a complete picture of who these investors are, because Cofinimmo is only required to disclose the names of investors who own more than 5 per cent of its shares. [39]

A list of Cofinimmo's institutional investors, compiled from other sources in early 2023, shows that more than 140 entities owned the group's shares. The biggest shareholders

[38] Cofinimmo. URD for 2021. Page 172

[39] Ibid.

A **Real Estate Investment Trust (REIT)** is a type of property company which enjoys special tax treatment in return for certain conditions, for example that it can only invest in real estate, must not borrow more than a certain amount in proportion to its assets and must pay out most of its profits to investors each year.

According to the industry, fourteen European countries had introduced REIT legislation by the end of 2021 and there were 199 REITs in Europe with total assets of US$238.8 billion.[1]

In theory, the REIT does not pay tax on most of its profits, but that part of the profit which is paid out to investors is taxed in the hands of the investors instead. But in practice, some investors can pay less tax than the company would have done, if there had been no REIT regime meaning that there may be a net loss of public revenues.

It is important to recognise that if some investors in a REIT are able to avoid some tax on their profits – for example by holding their shares in another country with a lower tax rate – then this is not only legal within certain constraints but permitted by governments. If public revenue is lost to a REIT, then this will often reflect a policy choice by a government not to collect that revenue in the hope of attracting more private investment. It begs the question: why are governments allowing so little tax to be paid on profits generated from caring for the elderly, whilst prices become inflated in order to pass returns onto private shareholders?

[1] Ibid. Pages 29 and 30.

were investments from funds controlled by the giant US investment firms BlackRock (5.2 per cent) and Vanguard Group (3.98 per cent) and subsidiaries of the Belgian care home operator Care-Ion (3.86 per cent).[40]

Funds managed by BlackRock, which is one of the world's largest asset managers, have also owned shares in Orpea, the care-home operator, which is Cofinimmo's tenant. As of February 2022, BlackRock funds owned 5.27 per cent of Orpea's shares and 4.39 per cent of its voting rights.[41]

These shareholdings in Cofinimmo and Orpea are far too small to give BlackRock control over either of these companies. However, they illustrate the penetration of the care-home sector by giant investment firms and their clients, who stand to profit both from the running of the homes by operators like Orpea, and from rental payments to the owners of these properties.

Care-Ion is a visible example of a care-home operator which rents properties from Cofinimmo and has also owned some of its shares. In 2022 Cofinimmo bought just under €58 million worth of care homes in Belgium using its own shares rather than money. These care homes were bought from Care-Ion and another private provider, Orelia.[42]

It is likely that other care-home operators own shares in Cofinimmo and also rent its properties. If so, these shareholdings must be lower than 5 per cent which is too small to give their owners any control over what Cofinimmo does.

Nonetheless, these cross-cutting investments underline that the business interests of Cofinimmo and the care-home operators are closely tied together and, in some cases, are benefiting the same investors.

How much tax do Cofinimmo's investors pay on their profits?

Even if Cofinimmo itself does not pay much tax on its profits because of the public RREC tax regime, Belgium should still be able to collect this tax revenue from its investors instead. At least this is the explanation of REITs which is offered by an April 2022 briefing by the real-estate industry itself, in the form of the European Public Real Estate Association and the giant accounting firm PwC.

This briefing says that REITs are designed to prevent real-estate investors from being taxed twice – once at the level of the investment company and again at the personal level - and "generally avail of a tax-neutral treatment."[43] In other words, REITs are meant to shift the tax charge from real-estate companies to investors, not to reduce the overall tax paid.

However, there is reason to believe that some of the public revenue which is given up through these special tax regimes in Belgium and France (and until recently in the Netherlands) is not being fully taxed in the hands of Cofinimmo's shareholders either.

When a company pays dividends to its shareholders, there is often a "dividend withholding tax" – that is, a percentage of the dividend which the company has to hold back in tax and pay to the state. This tax is a straightforward means for governments to collect tax revenues on investors' profits from shares.

The domestic rate of withholding tax on

[40] S&P Capital IQ. Cofinimmo SA. Public Ownership. Detailed.

[41] https://www.reuters.com/business/blackrock-buys-527-scandal-hit-french-care-group-orpeas-capital-2022-02-09/

[42] Cofinimmo press releases from 9th May, 15th December and 22nd December 2022.

[43] PwC/European Real Estate Association. Structural Overview of the Real Estate Investment Industry. April 2022. Page 27. Accessible here.

dividends in Belgium was 15 per cent until 2016 when it was raised to 27 per cent and then 30 per cent, in order to close the gap between tax rates on earnings from investments and on earned income.[44]

Industry publications note, however, several ways in which certain investors can pay less than this rate:

- Dividends paid to investors who are not resident in Belgium, out of foreign real-estate income owned by a REIT, are exempt from this withholding tax in Belgium.[45] This could be significant for Cofinimmo's investors outside Belgium, noting that in 2021 the group reported that nearly 60 per cent of its rental revenues and operating profits came from other countries than Belgium.
- Under certain conditions, non-resident pension funds are also exempt from Belgian withholding tax on their dividends.[46] It is not possible to assess how significant this tax break might be. Cofinimmo, as with most companies whose shares are traded on a stock exchange, does not publish a full list of its investors which might show how many are non-resident pension funds.
- Certain other countries, including Luxembourg, the Netherlands and the UK, have bilateral tax treaties with Belgium which limit the rate of withholding tax on dividends to 15 per cent (only for real-estate profits in the case of the UK). So, investors who hold their Cofinimmo shares via these countries may incur withholding tax at 15 rather than 30 per cent.[47]

CICTAR asked Cofinimmo about this point. The group said that the average tax withheld on its gross dividends is 29.34 per cent, indicating that most investors are paying the full 30 per cent rate. However, it added in response to further questions that: "The Luxembourg shareholders benefit indeed from reduction of the withholding tax foreseen by this treaty between Belgium and Luxemburg and do not bear the 30%."

There is a global network of tax havens and numerous national tax exemptions and tax treaties between countries which investment managers can use to legally reduce the amount of tax paid on the profits of investments like Cofinimmo. The impact on public revenues is hard to determine, because most such firms are not required to publish revenues, profits, losses, tax payments and other basic financial information on a country-by-country basis. But such tax reductions could be material for some investors outside Belgium.

Curiously, Belgium has lowered its rate of dividend withholding tax for real-estate profits to 15 per cent, but with attached conditions which mean that not all real-estate firms actually qualify for this lower rate.[48] Cofinimmo does not qualify, for example, and has consistently reported that its shareholders in Belgium are subject to the 30 per cent rate. [49] This is in contrast to Aedificia, another listed Belgian real-estate firm specialising in healthcare, which reports that its dividends are subject to the 15 per cent rate.[50]

It is not clear why the Belgian government

[44] https://www.degroofpetercam.com/en-be/blog/dividends-belgian-reits-under-fire

[45] PwC. Worldwide REIT regimes. October 2019. Belgium. See also EPRA. Global REIT Survey 2021. Belgium.

[46] PwC. Worldwide REIT regimes. Belgium.

[47] See. https://taxsummaries.pwc.com/belgium/corporate/withholding-taxes. See also:2012 protocol amending the 1987 UK-Belgium double taxation treaty. Accessible here. EY. Belgium. See also: double tax treaty with Netherlands now subject to MLI. 10th December 2021.

[48] https://www.degroofpetercam.com/en-be/blog/dividends-belgian-reits-under-fire

[49] Cofinimmo. Universal Registration Document 2020. Page 91.See also https://www.degroofpetercam.com/en-be/blog/dividends-belgian-reits-under-fire

[50] Aedifica. Annual report 2021. Page 57.

has set the threshold for this lower tax rate at a level which includes some healthcare real-estate firms but excludes others, including Cofinimmo.

The Luxembourg route to lower taxes

Once an investor has received their dividends from a company like Cofinimmo, and the withholding tax has been paid, they may be liable for income taxes in their own country. However, there are ways to avoid this, most obviously by holding the shares in Luxembourg.

Luxembourg is well-known as one of the world's most important corporate tax havens. A favourable tax treaty, like the one with neighbouring Belgium, would normally reduce the amount of withholding tax which is paid on a dividend as it flows into Luxembourg.

Cofinimmo has confirmed to CICTAR that this is the case and that its shareholders in Luxembourg do not bear the 30 per cent tax in dividends in Belgium.

A dividend paid to a corporation in Luxembourg can be taxable by the Duchy when it gets there. However, it may be eligible for a 50 per cent tax exemption if the company paying the dividend is taxable in another EU member state or a country which has a tax treaty with Luxembourg.[51] Cofinimmo, as a Belgian company, would fit these criteria. There have been countless cases of investors – including real-estate investors – being able to move profit through Luxembourg to another tax haven such as Jersey or the Cayman Islands without incurring further taxes along the way. This has been done, for example, by using so-called "profit-participating loans" which play on the differing legal treatment of debt and shares in different countries. (Cofinimmo itself uses these in one instance – see Germany, below).

There are various other tax rules in Luxembourg which large financial firms with multiple sources of income can use to reduce taxes there, for example by offsetting taxable profits against large paper losses on the value of assets.[52]

These kinds of arrangements can be hard to identify from the outside, because company accounts do not provide sufficient detail to do so, but they are increasingly recognised as a problem for governments because of the impact of tax avoidance on public revenues.

Recent changes to the law, driven by the European Union, are supposed to have limited the scope for tax avoidance, including through 'hybrid financial instruments' such as profit-participating loans.[53] How effective these changes have been, however, is hard to assess because international taxation is hugely complex and very opaque.

Indeed, it is argued in some quarters that the EU rules will have little effect on investments made via Luxembourg. One global firm which provides tax advice to corporations has suggested that the new EU rules will "virtually not impact" Luxembourg funds which invest primarily in debt (such as bonds).[54] There may also be limited impact on private equity structures which use hybrid financial instruments if the recipients of income through these instruments (such as REITs) are

[51] https://guichet.public.lu/en/citoyens/impots-taxes/patrimoine-financier/banque-dividende-interets/identifier-declarer-dividendes.html. See also Deloitte. Luxembourg international tax highlights 20222. Accessible here.

[52] See, for example, Guardian. Revealed: Barclays avoids almost £2 billion in tax via Luxembourg scheme. 9th May 2022. Accessible here.

[53] Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mis-matches with third countries.

[54] Vincent Remy, 'Beware of the reverse entity hybrid rules…or not?', EY Luxembourg, 23 November 2021, https://www.ey.com/en_lu/wealth-asset-management/beware-of-the-reverse-entity-hybrid-rules-or-not-

themselves tax-exempt.[55]

These reduced impacts are due to Luxembourg's decision to implement only the lowest "minimum standards" permitted by new EU anti-tax avoidance measures, and taking advantage of all opt-outs available under the EU laws.[56]

So all other things being equal, it looks as if an investor in Cofinimmo can cut the tax rate on their dividends from 30 to 15 per cent simply by owning their shares via a holding company in Luxembourg. Once this 15 per cent withholding tax has been paid, there may be ways for investors to reduce any further taxes in Luxembourg.

This combination of REIT regimes, provisions of tax treaties and tax exemptions elsewhere implies that part of Cofinimmo's profit is effectively taxed at rates as low as 15 per cent, rather than the much higher headline rates of tax on corporate profits which are set out in countries' tax laws.

The next section will look at Cofinimmo's investments in private healthcare properties in different countries, show the scale of profits which the group has been making from these properties and illustrate how these profits can be increased by low taxation.

Cofinimmo by country:

Belgium

Belgium is the home country and core market of Cofinimmo. In 2021, healthcare properties in Belgium accounted for 26 per cent of Cofinimmo's total assets and about the same share of its rental income. As noted earlier, the group says that half the income of care home operators in Belgium (which rent its buildings) comes from the social security system.

The group was founded in Belgium in 1983 and now owns care homes which provide 11,000 care beds, as well as a portfolio of offices for rent which is concentrated on Brussels.[57] The Belgian parent company of the group, Cofinimmo SA/NV, also owns assets in other countries via Belgian subsidiaries.

The tax which is not paid on its Belgian profits by Cofinimmo should, in theory, be paid by its shareholders when they receive their dividends. However, as noted above, there are reasons to believe that not all this profit is taxed in the hands of the shareholders either. This is the result of policy decisions by governments.

Germany

Germany is Cofinimmo's second biggest market after Belgium and a major area of growth for its care home business. The group reports that in 2021 it owned healthcare assets in Germany worth €654 million at fair value, all acquired in less than a decade. Cofinimmo has announced investments of €485 million in German healthcare property since the start of 2020, mostly in care homes.[58]

Net rental revenues from German healthcare property shot up from €9 million in 2017 to €35.8 million in 2021.[59] The more recent figure is less than half what Cofinimmo earns from healthcare properties in Belgium, but

[55] Oliver R. Hoor (ATOS Tax Advisers), 'The Impact of ATAD 2 (Hybrid Mismatch Rules) on Private Equity Investments', 30 October 2019, https://www.lpea.lu/wp-content/uploads/2019/11/lpea-atad-2-and-pe-funds-30-october-2019.pdf

[56] Ernst & Young, 'Luxembourg implements EU ATAD 2 – A detailed review', 14 January 2020, https://www.ey.com/en_gl/tax-alerts/ey-luxembourg-implements-eu-atad-2-a-detailed-review

[57] Cofinimmo. URD 2021. Pages 3 and 42.

[58] Figure based on Cofinimmo press releases from 2020 onwards.

[59] Cofinimmo. URD 2021. Page 242. URD 2018. Page 172.

it will probably rise in future because not all its new German investments are generating rental income yet.

Some of this rental income comes from public spending. German nursing home fees include a real-estate component which covers the rent or the investment needed to build and maintain the building. Part of this component (which provides income to the owner of the building) is paid by local government.[60]

The German investments break down into three broad types whose ownership structure has implications for the amount of tax that Cofinimmo pays on its profits in Germany.

1. German care homes, owned from Belgium, which are already paying rent

This report has identified six Belgian holding companies which own healthcare properties in Germany, mostly care homes, and which had total assets of €260.4 million euros at the end of 2021.[61]

Between 2019 and 2021 these companies reported total profits before tax of €29.9 million, which includes gains on paper from rising property values as well as the profits from its €34 million in rental revenue[62]

Taken together, these subsidiaries incurred tax on this profit at an average of only 3.3 per cent, according to published accounts. The tax rate rises to just under 20 per cent when we also consider “deferred” tax, meaning tax which may have to be paid at some point in future. [63]

It is unclear why these subsidiaries have paid so little tax so far on the profits from German care homes, considering that these care homes are generating significant amounts of rental revenue which is mostly profit for Cofinimmo.

One factor which is visible in the accounts, however, is that these Belgian holding companies are mostly financed by borrowings from their parent company, Cofinimmo SA.

This has tax implications because the amount of profit that the Belgian holding companies have to pay tax on in Germany is reduced by the interest payments to the parent company, which is treated as a cost of business which can be deducted from German profits.

About a quarter of the rental revenues earned by these subsidiaries from 2019 to 2021 were earmarked for interest payments to the parent company. This is money flowing out of these Belgian subsidiaries, which are taxable in Germany, to Cofinimmo SA which is not taxable in Germany and pays very little tax in Belgium either.

It has been common for multinationals around the world to avoid tax by using internal loans to move income from a subsidiary in a higher-tax jurisdiction to another place which is either a tax haven or benefits from a special low-tax regime.

However, the profitable gap between the interest rates on these internal loans and the interest that Cofinimmo pays to borrow from third parties is narrow. This means that any impact of these loans on the group’s tax position is likely to be small compared to the effects of the public RREC tax regime in Belgium.

Cofinimmo has told CICTAR that these loans are “at arm’s length and in conformity with the law.”[64]

[60] Orpea. Universal Registration Document 2021. Page 38.

[61] Gestone SA 1, 2,4,5 and 6 and Gecare SA 1. Annual accounts available here for the Gestones and here for Gecare 1.

[62] Figures drawn from the accounts of the companies referred to in Footnote 79 for those years.

[63] The standard German corporate tax rate is between 30 and 33 per cent: the tax rate has a regional component which varies from one region of the country to another.

[64] Cofinimmo communication with CICTAR. 28th June 2023.

The use of **related-party loans** to shift profits from a higher-taxed company to a lower-taxed company within a corporate group is a well-known problem in international taxation. This practice is not illegal but it has been very expensive for countries around the world.

After years of campaigning by the tax justice movement, governments have belatedly responded by limiting the amount of loan interest which can be deducted from a company's taxable profits. In principle, this should limit the profit that can be shifted in this way.

In Germany the limit on interest deductions is currently 30 per cent of EBITDA (a measure of operating profit) but only where interest payments amount to more than €3 million a year.[65] Since 2019, these Cofinimmo subsidiaries have paid interest to the parent company which is equal to 29 per cent of operating income from these properties.

Since Cofinimmo's assets in Germany are owned by many different subsidiaries, each paying less than €1 million a year in interest, and the amount of interest paid is likely to be less than 30 per cent of EBITDA, this limit seems unlikely to apply.

2. German care homes, owned from Belgium but not yet paying rent

Some care homes and clinics in Germany have been acquired by Cofinimmo more recently and appear to be indirectly owned by Belgian subsidiaries via small German companies. These Belgian subsidiaries are not reporting profits yet.

There would be an incentive for Cofinimmo to move profits from Germany to Belgium in the form of interest payments from its subsidiaries because the double taxation treaty between the two countries imposes a withholding tax of 15 per cent on any dividend payments from Germany to Belgium, but there is no withholding tax on interest.[66]

Some of the German companies may already be subject to lower rates of German taxation by virtue of being incorporated in the district of Monheim-am-Rhein, which has set itself up as a tax haven within Germany in order to attract companies.

The corporate income tax in Germany consists of a federal tax at 15 per cent and a local business tax whose rate is set by districts and which varies between 7 per cent and 19.25 per cent. Monheim am Rhein has cut its local rate to 8.75 per cent, close to the minimum and significantly lower than many neighbouring regions.[67]

Cofinimmo told CICTAR that "even if paying tax could be lower in another district, it does not mean that we avoid tax." CICTAR does not dispute this point.

3. Other properties owned via Luxembourg

The third type of assets owned by Cofinimmo in Germany are clinics, sports and wellness centres which were worth €111.8 million in 2021 and are mostly owned from Belgium via companies in Luxembourg. None of these assets are care homes.

Cofinimmo has a Luxembourg company called WellnesStone SA which controls four other Luxembourg companies which, in turn, own the German properties.

Three of these companies reported a total of €7.4 million in rental revenue in 2021.[68] Some of this revenue was paid to WellnesStone

[65] See https://taxsummaries.pwc.com/germany/corporate/deductions

[66] https://www.lawyersgermany.com/germany-belgium-double-tax-treaty

[67] Harmful tax competition. How Bayer rigs corporate taxation in Europe (report). The Greens/EFA in the European Parliament. 26th February 2021.Page 17.

[68] Uhlenhorst Properties SARL. Machsee Properties SARL. KaiserStone SA. Annual accounts for 2021. The 2021 accounts of the fourth subsidiary, Great German Nursing Homes SCS, are not published on the website of the Luxem-

SA in the form of interest on internal loans, then tax was paid on declared profits at between 15 and 17 per cent, then profit was distributed to WellnesStone in the form of dividends.[69]

Two of these companies were moved to Luxembourg from the Netherlands in 2019.[70] They then paid WellnesStone dividends totalling €14.8 million in that year, which suggests that the German sports centres had been quite profitable.

There is a mechanism for WellnesStone to pass on these German earnings to the Cofinimmo group in Belgium in a way which seems designed to avoid withholding taxes in Luxembourg. This is the use of “profit-participating loans” (PPL).[71] These are so-called hybrid financial instruments, halfway between a loan and a share.

Profit participating loans, like other hybrids, have been used to avoid tax by engineering a flow of income which is treated as (tax-deductible) debt interest in one country and (tax-exempt) share dividends in another.[72] A 2021 briefing on Luxembourg by a law firm, which specialises in tax havens, notes that if these instruments are properly structured, then the result can be that the interest is treated as a tax-deductible cost in Luxembourg and does not face withholding tax on the way out of the country.[73]

Whether these PPLs are effective in avoiding tax or not is unclear. In 2019 Luxembourg adopted the European Union’s Anti Tax-Avoidance Directive (ATAD) which limits the amount of debt interest – including payments on PPLs – which can be deducted from a company’s taxable profits in Luxembourg.[74]

WellnesStone SA’s 2021 accounts do not make clear how the PPLs have affected its tax position or what the impact of this legislation may have been.

Cofinimmo told CICTAR, in response to questions, that: “The financings of the subsidiaries of Cofinimmo are at arm’s length and in conformity with the law.”[75]

France

Cofinimmo reports that it owns 53 healthcare properties in France, where it began investing in 2008.[76] It invested €74 million there in 2021 but describes France as a “more mature market”. For Cofinimmo, this term means that it develops its existing assets in France and conducts “asset arbitrage” – that is, selling some properties in order to buy others, rather than greatly expanding its portfolio as it has done in Germany recently.[77]

France may not be a market in which Cofinimmo expects to greatly expand but it is an important market for the private care home industry in general and the home country of the largest care-home operators in Europe, including Orpea, Korian, Colisee and Domus Vi.

bourg public registry.

69 Ibid. Also WellnesStone SA. Annual accounts for 2021.

70 Uhlenhorst Properties SARL. Machsee Properties SARL. Annual accounts for 2019.

71 See WellnesStone SA. Annual accounts for 2021. Note 10.

72 See KPMG. Taxation of Cross-border mergers and acquisitions. Luxembourg. 2014. Page 17. https://assets.kpmg.com/content/dam/kpmg/pdf/2014/05/luxembourg-2014.pdf “It is possible to use [certain kinds of] profit-participating financing instruments, such that the interest payments are not subject to Luxembourg WHT.”

73 Ogier. Structuring and financing private equity and venture capital transactions. Luxembourg. January 2021. Accessible here.

74 See EY. Luxembourg tax authorities issue guidance on interest limitation rules. 12th January 2021. Accessible here.

75 Cofinimmo. Communication with CICTAR. 28th June 2023.

76 Cofinimmo. URD 2021. History and Page 78.

77 Cofinimmo URD 2021. Pages 44 and 33.

Cofinimmo's rental income from care homes in France has increased relatively little since 2017, unlike its other main markets. As noted earlier, about 30 per cent of the income of care home operators – Cofinimmo's clients – comes from the French state. Much of the rest of the money comes from the pockets of French retirees.

The group operates in France via a branch of Cofinimmo SA and its main French subsidiary is Cofinimmo Investissements et Services SA which made net profits of €3.8 million in 2021 on revenues of €17 million.

This company owns ten smaller French companies which appear to own care homes around France and pay it small amounts of interest and dividend payments. The net profits of this company have actually fallen since 2017.

Cofinimmo doesn't have to pay French tax on these profits because it has access to France's zero-tax regime for real-estate investment, the *société d'investissement immobilier cotée*.[78]

However, Cofinimmo reported in 2023 that Belgium and France have signed a new double taxation treaty and, once this treaty is ratified, Cofinimmo's French branch will have to pay a "branch tax" at a rate of 25 per cent from 2024 onwards, rather than the current 5 per cent.

Cofinimmo estimates the cost to it of paying this increased "branch tax" at €4 million a year.

Dividends can be paid from France to Belgium without facing any withholding tax, in cases where the Belgian parent company owns at least 10 per cent of the French subsidiary (which is the case here),[79] and the profits are not taxed in Belgium either.

The group owns two other French companies. Cofinea I SAS is very small. Cofinimur I, which rents offices, had assets of €60.4 million in 2021 and made a net profit of €14.2 million, mostly from the sale of some of its distribution (not healthcare) assets.[80] The group also owns 39 per cent of another French company, SCI Fonciere CRF.

The Netherlands

Cofinimmo has been investing in Dutch healthcare properties since 2012. Its portfolio in the Netherlands was valued at €434 million in 2021 and the group invested €78 million there that year, including in more care homes.[81]

Care homes in the Netherlands are heavily supported by public funds. Sixty-five per cent of patients' daily rate is paid by the government, though medical care costs are covered by health insurance and residents pay for their own accommodation.[82]

Until recently Cofinimmo had access to the *fiscale beleggingsinstelling* (FBI), a special regime of tax exemptions for certain investors. The group reported that in 2020, the Dutch authorities decided that it would have to undergo a test to see whether it was still eligible for the FBI regime.[83]

Because Cofinimmo did not have access to the FBI tax regime in 2021, it is possible to measure the impact of this regime on its tax payments in the Netherlands. The group's largest Dutch subsidiary, with assets of €246 million and rental revenues of €18.5 million in 2021, is Superstone NV.

Superstone NV's accounts show that in 2021 it made profits before tax of €5.68 million

[78] Cofinimmo Investissements et Services SA. Financial statements for 2021. Note 4.

[79] See EY. Belgium and France sign new double tax treaty.29th November 2021. Accessible here.

[80] See https://www.marketscreener.com/quote/stock/COFINIMMO-5977/news/Cofinimmo-Partial-disposal-of-the-Cofinimur-I-portfolio-for-41-million-EUR-36493375/

[81] Cofinimmo. URD for 2021. History. Page 46.

[82] Orpea. Universal Registration Document. 2021. Page 38.

[83] Cofinimmo. URD 2021. Page 6.

Table: Cofinimmo expands into new countries

Country	Year of first healthcare investment	Total healthcare property assets at end-2021 (million euros)
Spain	2019	€240
Italy	2021	€190
Ireland	2021	€89
United Kingdom	2021	€69
Finland	2020	€67

Source: Cofinimmo, Universal Registration Document 2021. Assets at fair value.

and incurred tax of €1.43 million – that is, very close to the headline tax rate of 25.8 per cent which the Netherlands normally applies to corporate profits.[84]

In 2020, while it was still eligible for the FBI regime, Superstone NV made profits of €4.92 million and paid no tax on these profits at all. In 2019 the profits were €6.04 million and, once again, no tax was paid on them.

In other words, Superstone NV appears to have avoided €2.74 million in profit taxes in those two years alone, thanks to the FBI regime. This one subsidiary only accounts for just over half of Cofinimmo's Dutch assets, so the total amount of tax foregone by the Netherlands due to the FBI regime may have been higher, once these other subsidiaries are considered.

In September 2022 the Dutch government decided that real-estate investment firms should no longer be eligible for the FBI regime, reportedly for the precise reason that is outlined in this report - that real-estate profits which are exempted from tax by REIT regimes are not necessarily taxed in the hands of foreign investors either. This change is due to take place from the start of 2025.[85] The implication would be that Cofinimmo would have pay more tax on its profits in the Netherlands, unless the group can find another way to structure its investments so as to reduce its tax bill there.

It is worth noting that Cofinimmo has not engaged in any complicated financial engineering in order to avoid tax in the Netherlands. It has simply applied for a tax break offered by the Dutch government, which the government is now rethinking.

This raises an obvious point: if the Dutch government now considers that offering this tax break to real-estate firms is disadvantageous for the Netherlands and should be scrapped, then why is Belgium continuing to enable these large profits through its public RREC tax regime?

Other European countries

Cofinimmo has been expanding rapidly into new markets: Spain, Italy, Ireland, the UK and Finland. The group earned €17.9 million in net rental income from healthcare properties in these countries in 2021, compared to almost nothing in 2020.[86]

Cofinimmo says that its investments in Spain, Ireland, the United Kingdom and Finland are

[84] Superstone NV. Financial statements for 2020 and 2021. Obtained from the Netherlands Chamber of Commerce (paid access) at www.kvk.nl. For the corporate tax rate, see Government of the Netherlands. Corporate Income Tax. Accessible here.

[85] https://www.burenlegal.com/en/news/tax-alert-most-relevant-changes-dutch-tax-legislation. See also https://meijburg.com/news/real-estate-fiscal-investment-institution-be-abolished-and-changes-regimes-exempt-investment

[86] Cofinimmo URD for 2021. Page 242.

Cofinimmo by country in 2021* (million euros)

Country	Healthcare assets	Net rental income	Healthcare operating profit [1]	Tax treatment
Belgium	€1,601	€80	€73	Almost all profits taxed at zero due to public RREC tax regime
Germany	€654	€36	€58	Profits are taxable in Germany but taxes may be reduced by related-party transactions.
France	€456[2]	€29	€18	Profits of French subsidiaries taxed at zero due to SIIC regime
Netherlands	€434	€22	€28	Profits previously taxed at zero due to FBI regime
Other countries	€654	€18	€3	Various

Source: Cofinimmo Universal Registration Document, 2021. Figures have been rounded.

Note: Profits which are not taxed at the level of Cofinimmo itself would normally be taxed in the hands of its investors when they are paid out as dividends.

[1] Operating profit includes unrealised gains in property values as well as cash income from rents.

[2] Includes assets held for sale.

"partly taxable" while in Italy it benefits from a tax regime for investment funds.[87]

In Italy, Cofinimmo says it has invested in two funds which own six care homes in the north of the country that provide 1,100 care beds. Italy's "nursing home bed capacity is one of the lowest in Europe", while Italy also has one of the continent's longest-lived populations, so the group sees prospects for growth.[88]

In Spain, Cofinimmo owns €240 million worth of healthcare property, consisting of 28 care homes which are in operation or under construction and provide 2,700 care beds.[89]

In Ireland the group owns seven healthcare sites which provide 500 care beds and were valued at €89 million at the end of 2021. [90]

The group's investments in the UK and Finland are smaller. In the UK it owns three care homes in southern England, valued at €69 million and providing 200 care beds. In Finland the group has two sites in operation, with 70 beds, and is building six care homes.[91]

Ageing populations mean private profit

The proportion of care home beds which are provided by governments, non-profit providers and private, for-profit investors varies from country to country.

According to Cofinimmo, in the Netherlands almost all care beds are provided by non-profits, while in Spain and Belgium about a third of care beds are provided by each type of provider. In the UK, by contrast, private operators provide more than 80 per cent of care beds.[92]

[87] Cofinimmo. URD for 2021. Page 254.

[88] Ibid. Page 54.

[89] Ibid. Pages 50-51

[90] Ibid. Page 53.

[91] Ibid. Page 55 for the UK and page 52 for Finland.

[92] Ibid. Page 35.

The demand for more care beds will grow as populations age. In 1990, fewer than five per cent of the populations of France, Germany, Italy, Spain and the UK were aged over 80. By mid-century that figure is expected to be between 10 and 15 per cent.[93]

In all Western European countries, demand for care beds has been growing substantially. In France, for example, the number of long-term care beds rose by nearly eight per cent between 2011 and 2020 to just under 660,000 beds. In Belgium, the number of care beds rose by nearly 10 per cent over this period and in the Netherlands by 39 per cent, according to OECD statistics. [94]

Cofinimmo expects to expand further in the coming years to take advantage of a growing demand for care beds for Western Europe's ageing populations. The group estimates that by 2030-35 another 40,000 care beds will be needed in Belgium, 300,000 beds in Germany, 50,000 beds in France, 100,000 beds in Spain, 400,000 beds in Italy, 30,000 beds in Ireland and approximately 100,000 beds in the UK.[95]

This adds up to more than a million new care beds which Cofinimmo expects to be needed across these countries in little more than a decade. It is evident that Cofinimmo itself is not going to meet more than a tiny fraction of this need: even after years of growth, the group still only owned properties with 25,600 beds at the end of 2021.[96]

This is to be expected from private investors in general: they will favour investment in healthcare properties where they expect to make a high level of profits, which is likely to mean areas of countries with a more well-off population. States will be left to do the rest.

It is likely that more private investors will seek profitable opportunities in healthcare, given the prospect of lower returns from the world's capital markets. An arm of giant investment firm BlackRock, whose funds have owned 5 per cent of Cofinimmo, said in a January 2023 report that it expects company shares in rich countries to lose some of their value in a global recession and plans to focus on sectors where it can make more assured profits.

Or in investor-speak: "… We like healthcare given appealing valuations and likely cashflow resilience during downturns." And: "… Neither earnings expectations nor valuations fully reflect the coming recession. We prefer to take a sectoral approach –and prefer energy, financials and healthcare … "[97]

A survey by Knight Frank, a property firm, finds that more than a third of "ultra-high net worth investors (that is, extremely rich people) consider healthcare to be a "sector of focus" in 2023.[98]

In other words, the willingness of governments to support private provision of healthcare (including care homes and other property), and to subsidise it through the tax system, will encourage even more investors to cherry-pick the more lucrative parts of the healthcare system for private profit.

[93] United Nations. Department of Economic and Social Affairs. Population division (2017). Cited in Incisive Care (UK). An international comparison of long-term care funding and outcomes: insights for the social care green paper. Accessible at https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/care--support/rb_aug18_international_comparison_of_social_care_funding_and_outcomes.pdf

[94] OECDstat. Beds in long-term residential care facilities. https://stats.oecd.org/Index.aspx?QueryId=30142

[95] Cofinimmo. URD for 2021. . Pages 34 and 35. These estimates of needed care beds are per-country to 2030-35 except for the UK, for which the estimate given by Cofinimmo is "an additional 10,000 care beds … per year until 2050." So 10,000 beds a year, until the year 2033, would give 100,000 more beds needed in the UK.

[96] Cofinimmo. URD for 2021. Page 17.

[97] BlackRock Investment Institute. 2023 Global Outlook. Pages 10 and 17.

[98] Knight Frank. The Wealth Report 2023. Page 20.

Conclusion

Cofinimmo has made huge profit margins in recent years by raising money cheaply and using it to buy private care homes, then renting out these properties to care-home operators.

This profitable business is likely to grow in future, even if borrowing costs increase, because the ageing of Europe's people means ever-growing demand for more care homes.

Cofinimmo, which once invested in various types of real-estate, is becoming a specialist investor in healthcare properties in alliance with the giant care-home operators who are its clients and, in a few cases, also its shareholders.

These profits are supported by the public in two ways:

1. The social security systems of European countries pay a significant share of private care-home fees, out of which the care-home operators pay rents to Cofinimmo;
2. Cofinimmo is very lightly taxed on its profits, due to low-tax regimes for real-estate earnings in Belgium, France and the Netherlands. Some of Cofinimmo's investors can reduce their own tax bills by investing from a tax haven like Luxembourg.

Although Cofinimmo does not deal directly with residents or staff in the care homes, it is making its profits from the care-home operators who do deal directly with them.

Cofinimmo is able to extract these profits because European governments do not want to take on the full cost of building care homes and prefer to leave some of this cost to the private sector rather than, for example, raising taxes or borrowing more.

But from society's point of view, this is a false economy. The care homes must be built, because the growing number of elderly people in Europe need to be looked after. But the private sector will always insist on a profit margin, over and above the cost of building these homes. Furthermore, property investment firms will naturally prioritise quick and regular returns to their investors, to whom they are accountable, above the interests of residents, to whom they are not.

So, all other things being equal, private provision will always cost more. And this is before even considering the impact on inequality of allowing private healthcare investors to amass profit, which comes from a significant extent from public subsidies to the sector, and to legally reduce tax on some of this profit.

In addition to the costs, there may be other risks in a model of funding care which allows the type of care home property dealings described in this report. If, as described above, Orpea's model of property speculation was considered 'excessive and uncontrolled' and if other firms rely on similar models, it begs the question: is dangerous property speculation already widespread across the care home sector? And will the push by governments towards private investment to fund new homes open up the possibility of more behaviour of this kind? Given the disastrous consequences of the Orpea scandal for residents and workers, it is incumbent on the care companies to answer this question immediately.

Recommendations

Belgium and other European countries must examine the legal frameworks for real estate investment in the care sector to determine whether these are in the public interest, or not. A close examination of the reforms in the Netherlands and their impact would be worthwhile in other European countries.

The growth of REIT ownership of care homes has had the longest track record in the United States and has expanded significantly in the United Kingdom. European nations need to take a critical look at the impact of REIT ownership of care homes in these countries and determine whether it has improved the availability, affordability and quality of care. It is worth noting the Biden Administration earlier this year has proposed new rules to increase transparency in the nursing home sector, specifically aimed at profit extraction by REITs and private equity firms.[99] Belgium now risks finding itself out-of-step with its international partners if it does not follow the US and Dutch examples and tighten up its REIT regime.

Greater transparency is needed in the sector to improve policymaking and expose excessive profit extraction at the expense of residents and workers. Public funding must first and foremost be directed at care and offering the elderly the dignity and respect they are owed after a lifetime of contributions. There should be limitations on profit extraction and controls to ensure that private sector investments, subsidised by public funding, are not resulting in increased inequality in access to services.

Subsidising private investment in care appears to be an inefficient use of public resources, and ultimately unfair to state-supported pension systems, which find themselves under increasing strain. The greater the profits extracted, the less funding is available to improve the quality of care which is desperately needed across Europe. Governments should commit, with worker and local community oversight, to invest in the direct provision of care for Europe's growing elderly population. Public ownership of care homes, with strong and transparent oversight of management and reasonable caps on rental payments, could be an alternative.

Whether profit extraction through care home real estate is meeting public policy goals needs to be closely examined. Governments should reconsider direct investment in delivering high quality care to meet the needs of Europe's growing elderly population. Relying on private investment – without major increases in transparency and regulation – does not appear to be a workable solution.

[99] https://www.cms.gov/newsroom/press-releases/biden-harris-administration-continues-unprecedented-efforts-increase-transparency-nursing-home

A Centre for International Corporate Tax Accountability and Research (CICTAR) Report www.cictar.org

With the support of EPSU www.epsu.org