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Housing Pact 2.0 in a glance & new rules applicable since 19 February 2022



On 22 October 2008, a Law promoting housing and creating a housing pact with municipalities, dubbed “Housing Pact 1.0”, was adopted. Its stated aim was to increase the supply of available homes and to reduce the cost of land and housing through various mechanisms such as, among others, the possibility to pre-empt sales for public persons or the obligation for new layout plans (*Plans d’aménagement particulier* or *PAPs*) to dedicate 10 % of the surface of the land or 10 % of the housing built there to the construction of low-cost housing.

However, the law has mostly failed in achieving its objectives: a monitoring of the “Housing Pact 1.0” has revealed that among the subsidies distributed to municipalities, only 2.2 % directly contributed to the creation of housing. In all cases, the Housing Pact 1.0 was due to expire in 2021.

Facing this reality and exacerbated by the pandemic, which has not stopped the increase in prices, the government has promoted a new approach and has pushed forward a new Law dubbed “Housing Pact 2.0”, which was adopted on 30 July 2021, in view of promoting “affordable and durable housing” (hereinafter “the Law”).

Creation of a new Housing Pact

Article 1 of the Law defines the Housing Pact 2.0 as a partnership between the State (namely the Ministry of Housing) and the municipalities, with the aim of assisting municipalities in the development of housing, including affordable housing and residential quality. The Housing Pact 2.0 will take place between 1 January 2021 and 31 December 2032.

The three objectives of the Pact are:

- increase the supply of affordable and sustainable housing;
- mobilise the existing land and residential potential;
- improve residential quality.

To achieve these objectives, the State and the municipalities will be able to conclude Agreements granting subsidies and defining a “Local Housing Action Program” to establish an inventory and define priorities and fields of action.

In addition to these new processes, the Law also provides definitions and implements new changes to existing mechanisms.

Definitions

The Law of 30 July 2021 does not create new definitions but refers to existing regulations, ie:

- The law of 25 February 1979 on Housing aid for definitions for “affordable housing” and “sustainable housing”;
- The law of 20 December 2019 for the definition of “residential quality”;
- Existing particular development plans (Projet d’aménagement particulier, or PAP) and general development plans (Projet d’aménagement général, or PAG) for definitions of Land potential and residential potential.

Increase of the share dedicated to affordable housing

The main novelty of the Law is to increase the share that has to be dedicated to affordable housing in a new construction project concerned by a “new neighborhood” development plan (*Projet d’aménagement particulier nouveau quartier, or PAP NQ*) – namely a plan that covers an area intended to be urbanised, proposes a concrete urbanisation project and defines the shape of the public space, the building plots, and the future constructions.

Article 10 of the Law provides that for each specific PAP NQ, the developer has to dedicate the following percentages of the maximum gross building area (GBA) to affordable housing:

- 10 % for projects including a number of housing units between 10 and 25 units;
- 15 % for projects including more than 25 housing units.

When the PAP NQ covers land reclassified from a zone other than a residential zone or mixed zone to a residential zone or a mixed zone by modifying the general development plan (*Projet d’aménagement général, or PAG*), the share of the GBA to be reserved for the construction of affordable housing is further increased:

- to 20 % if the project provides for a number of housing units greater than 25 units;
- to 15 % if the project provides for a number of housing units between 10 and 25 units;
- to 10 % if the project provides for a number of dwellings between five and nine units.

For PAP NQs providing for more than 25 housing units, within an area intended to be urbanised and assigned mainly or secondarily to housing, and implemented as part of an “overlapping area” (*zone superposée*), the directorial layout plan (*Plan directeur sectorial or PDS*) may provide for:

- an increase to 30 % of the GBA dedicated to “moderate cost housing” (*logements à coût modéré*) destined to people who are eligible to certain aides provided by the Law of 25 February 1979, or housing subsidised in part by the State and destined to modest families as defined by the Law of 25 February 1979;
- an increase to 30 % of the maximum GBA to be dedicated to “affordable housing” as defined by the Law.

Sale of land and affordable housing to public authorities

Since affordable housing can only be managed by public entities, the Law provides for a sale of land and affordable housing to public authorities. Article 10 of the Law adds a new article 29bis to the Law of 19 July 2004. This article, in its paragraphs 4 and following, provides that the parts of the land allocated to affordable housing or the housing units themselves shall be sold to the municipality, or to the State in case the municipality renounces the purchase. It is also possible to sell to a public promoter if the State itself renounces the acquisition.

The deliberation of the municipal council relating to the transfer is transmitted to the Minister within thirty days from the day of the deliberation, but only for information.

The terms and conditions of the transfer shall be laid down in an agreement to be established between the owner and the municipality – which can be, where applicable, the convention related to a PAP NQ signed between the initiator of the project and the municipality, as per article 36 of the law of 19 July 2004 as amended. No building authorisation shall be granted until the signature of such a convention.

Concerning housing units that have already been built, these agreements must contain the plans for the realisation of said units, as well as specifications defining their level of completion and their equipment.

The deliberation of the municipal council concerning the transfer is transmitted for approval to the Ministry, which has 30 days to take a decision. If no decision is taken within the deadline, the convention is deemed to have been implicitly approved.

The Law states that the price should take into account the price of the realisation of the project. It is not more explicit on the calculation, but the idea is that the owner should make nor loss nor benefit from the transfer.

In case there is a disagreement on the price of the housing units, each party will nominate an expert. In case experts disagree, the case will be submitted to an arbitrator – which may be nominated by the president of the District Tribunal in case parties disagree on who to choose.

If the municipality renounces its right to purchase, the Ministry of Housing shall be informed within 30 days. The Minister then has two months to inform the owner and the public promoters of his intention to purchase or to renounce his right – in which case he will be substituted by a public promoter.

The absence of an answer within two months means that the Minister implicitly agrees to the sale – renunciation must be explicitly stated.

In a mechanism similar than the one applying for a transfer to a municipality, the terms and conditions of the sale are determined by a convention between the Ministry and the

owner, which must also contain the plans for the realisation of units, as well as specifications defining their level of completion and their equipment.

Compensation by increasing the rest of the share that can be allocated to housing

As a “compensation” for the sale of the parts of the land allocated to affordable housing, the Law provides that the degree of use of the land in a PAP NQ which is intended exclusively for housing, as defined in the relevant PAG, is increased by 10 % for the part that will not be ceded to public authorities. The PAG does not need to be modified to take this increase into account.

Article 12 of the Law also provides for a possible “additional compensation” when the PDS mandates an increase to 30 % of the maximum GBA dedicated to affordable housing in a PAP NQ providing for at least 25 housing units, within an area intended to be urbanised and assigned mainly or secondarily to housing, and implemented as part of an “overlapping area” (*zone superposée*).

However, the Law is not specific regarding the nature of this “additional compensation”. According to the parliamentary works, this compensation could be financial, or could represent another increase of the surface allocated exclusively to housing within the project.

Entry into force

Article 16 of the Law provides that it “*produces its effects*” on 1 January 2021, however this only concerns relations between the State and municipalities.

Regarding new rules concerning PAPs and PAGs, article 14 of the Law states that its new provisions will apply to PAPs whose adoption procedure starts six months after the publication of the Law, and to PAGs whose modification starts six months after said publication.

The publication having happened on 18 August 2021, this means that the new rules applicable to PAPs and PAGs are applicable since 19 February 2022.

For more information and to stay up to date on this topic, please feel free to reach out to the contacts listed on this article or your usual Luther S.A. contact.

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