



APPLICATION OF ARTICLE 55 OF THE SOLIDARITY AND URBAN RENEWAL (SRU) LAW

Report requested by the Senate Finance Committee

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Abstract

A policy of quotas implemented over more than twenty years and involving 2,000 municipalities

The law of 13 December 2000 on solidarity and urban renewal (SRU law) aimed in particular to develop social and urban diversity in housing. As such, Article 55 of this law, codified in Articles L. 302-5 et seq. of the Construction and Housing Code (CCH), obliges certain municipalities to have a minimum proportion of social housing, according to criteria set out in this Code. This proportion is currently set at 25% or 20% of the number of main residences in the municipality, depending on the situation. The list of these municipalities is determined according to their population and their inclusion in an agglomeration or an inter-municipal authority for cooperation between local authorities (EPCI).

The municipalities concerned by this law but which fail to meet the criteria, known as 'non-compliant municipalities', must pay a levy on their revenue. This levy is both a sanction and an incentive to comply insofar as amounts invested in developing social housing can be deducted from the levy paid. These municipalities must also meet a three-year catch-up target, and the law specifies that by 2025 all the municipalities concerned must have reached the 25% or 20% provided for by law.

As at 1 January 2019, 2,091 municipalities representing nearly 58% of the French population were included in the scope of application of this law and were therefore required to meet this obligation. The 1,100 municipalities that did not meet the required percentage of social housing were deemed 'liable for the SRU levy' and are required to make up for their lag.

An effective mechanism to boost the production of social housing, but unequally applied across the country

In terms of its effectiveness, the quota mechanism provided for by Article 55 has undoubtedly had a positive effect on the overall construction of social rental housing in the municipalities concerned. According to the latest review carried out for the 2017-2019 period, 210,737 social housing units, i.e. more than half of the housing units built nationally, were built in municipalities subject to the SRU law. At a national level, the three-year objective set for this period was exceeded, with an overall achievement rate of 107%. The vast majority of people interviewed by the Court, including elected officials, representatives of administrations, non-profit organisations and landlords, welcome this positive effect on the construction of social housing. While they sometimes call for adjustments to the provisions of Article 55, they do not intend to question the principle behind it, which is widely accepted.

However, the overall construction of social housing in all the municipalities concerned shows considerable disparities between regions and between municipalities within each region. For example, in Provence-Alpes-Côte d'Azur, 79 out of a total of 158 municipalities concerned did not reach the target set for the period. Of the 1,035 municipalities covered by this three-year review for the whole of France¹ for 2017-2019, only 485, or 47% of the total,

¹ The figure of 1,035 corresponds to the number of municipalities subject to the SRU law as of 2017 and which were therefore covered by the 2017-2019 review. This review does not take into account municipalities that became subject to the SRU law between 2017 and 2019. At 1 January 2019, 1,100 municipalities were subject to the SRU law as indicated above.



had reached their target. These results reflect the difficulties and problems encountered in applying Article 55.

A complex system subject to different interpretations

Since the law was adopted in 2000, the conditions for building social housing have changed significantly. The development of off-plan sales has lengthened the time taken to complete transactions and made it more difficult for local government authorities to control construction projects. In addition, the promotion of inter-municipal authorities and their jurisdiction in terms of housing may contradict the responsibility for the construction of social housing and the application of Article 55, which lies with municipalities and their mayors.

Tensions are noted between this quota system, which is defined at national level and applied uniformly across the country, and the need to take into account local constraints and specificities. To strike a better balance, lawmakers have introduced a number of adjustments in successive amendments to the initial law. The inventory of housing types used for the comparison with the total number of main residences has been significantly extended, well beyond the traditional definition of social rental housing. As a result, for example, accommodation structures, hostels and even rental land made available under departmental plans for Travellers are included in the calculation.

The ratio between the number of requests for social housing and the number of moves within social housing units each year, known as the 'social housing pressure index', is used to set the percentages imposed on municipalities (25% or 20%) and is also one of the criteria that can be used to exempt municipalities from applying Article 55. As well as this social housing pressure index, the exemption criteria include poor access to public transport or the fact that the majority of the urbanised portion of the municipality is not eligible for construction, meaning they can be applied creatively and interpreted differently.

In addition, the search for a balance is often hard to achieve and even contradictory. Other adjustments have been made to strengthen the application of the national law and improve effectiveness. For example, the increase in the required percentage of social housing in 2013 and the strengthening of the means of enforcement available to the central government representative when a three-year review shows that a municipality concerned by the law has not met its objectives and is subject to a prefectural ruling for its failure to act. In the last review in 2017-2019, 280 municipalities were deemed 'non-compliant'.

While these adjustments are necessary and their intention is commendable, they have made the application of Article 55 of the SRU law particularly complex.

This complexity, the technical nature of the applicable rules, and the political sensitivity linked to the subject of social housing, require that government departments both centrally and locally must have the necessary resources and means. This includes human resources but also the means required to establish housing inventories, to measure social housing pressure and to audit the use made of the levy on non-compliant municipalities, which must primarily be devoted to the promotion of social housing.

It is also necessary to make the means of enforcement made available to prefects regarding municipalities that fail to act more effective. For example, by taking over the management of the municipality's rights of reservation of social housing; increasing the non-compliance levy; taking over pre-emptive rights to purchase housing or the granting of building permits. Experience shows that these coercive instruments are both difficult to apply and vary too much between departments.



This raises another issue which also relates to the difficulty in striking a balance between a national law and a good understanding of local situations. The application of Article 55 is both centralised and decentralised, being shared between the guidelines and directives set by central government and the significant powers of application entrusted to local offices of central government. It is centralised insofar as the procedures, the terms of dialogue with local government and the social housing construction objectives are determined at the national level for the entire country, with limited possibilities of adaptation or adjustment. It is also decentralised, because once these procedures have been established and the objectives set, the *département préfet* must apply them in practical terms.

A fair balance must therefore be reached between, on the one hand, the overall consistency of the system, with the law being interpreted and practices harmonised at the national level and, on the other hand, the need for local representatives of central government to have some leeway in their action. It would therefore be appropriate for central government to specify certain policy details, for example regarding the exemption mechanism or how government resources should be used in the event of failure to act, or to ensure the follow-up of disputes and draw the necessary conclusions at the national level. In the same vein and in view of the complexity and technicality of the applicable rules and the workload they imply for decentralised local government offices, the role of regional government in providing expertise, technical support and harmonisation could be reinforced for their benefit.

Finally, while Article 55 appears to have had an undeniable effect on the construction of social housing, it is less clear whether it has significantly contributed to developing urban and social diversity, which was the primary objective of the SRU law. The 'SRU rate', the ratio between the number of social housing units and the total number of main residences, implicitly defined as the social diversity ratio by the legislator, has increased only slightly - by around five points between 2002 and 2016.

As some researchers point out, social diversity remains difficult to define and it depends on multiple factors, with housing being just one example. It is also true in practice that there may be a contradiction between two of the law's objectives, namely the production of housing and the achievement of social diversity, in cases where the goal of quickly reaching a quantitative social housing objective leads to the concentration of social housing in certain neighbourhoods or areas in which land remains cheaper and more easily available, thus reinforcing segregation and "ghettoisation".

The need to prepare for the 2025 deadline by correcting weaknesses in the system

In light of the small increase in the percentage of social housing, it is now accepted by all stakeholders that a significant number of municipalities will not have reached the objective of 20% or 25% of social rental housing required by the law by 2025.

In its latest report drawn up in December 2020, the Ministry of Housing estimates that more than half of the 1,100 municipalities subject to the SRU law have no chance of meeting the requirement by this deadline. In a very recent report submitted to the Minister of Housing in January 2021, the chairman of the SRU Committee shared this observation, considering that less than one third of the municipalities concerned will reach the legal objective in 2025.

For the time being and in view of this deadline, the local offices of central government have adopted a pragmatic approach. Above all, they are ensuring that the overall production of social housing is maintained. Strict compliance with the percentage required in relation to all main residences is no longer their main concern. As a result, they are sometimes obliged



to approve local housing programmes or to sign contractual documents with local government authorities setting objectives below the legal objective.

There is therefore a shift from the letter of the law, which raises the question of whether the law itself will have to be adjusted, if it is confirmed that not all the objectives can be achieved. To prepare for this 2025 deadline, central government must establish as of now a detailed projection to identify and characterise the municipalities likely to be unable to fulfil their obligations. Along the same lines, it is important to precisely measure the effect of legal provisions on the promotion of social diversity linked to housing to better inform lawmakers' choices. The sensitivity of this subject at the local and national level justifies postponing the decision on whether or not to adjust Article 55 until after this review has been performed.

Possible adjustments include replacing the measurement in terms of social housing stock - i.e. as a percentage - with a measurement of flows - i.e. the number of social housing units created. However, this would amount to renouncing the very purpose of the SRU law, by abandoning the objective of developing social diversity.

Another possibility would be to apply the law in such a way as to take better account of the specificities of each municipality. This may involve admitting new categories of housing to the social housing inventory or even extending cases not eligible for construction in order to establish an exemption, at the risk of making the system more complex.

But beyond these provisions of a general nature, the application of the law could be adjusted according to each municipality in a bid to strike a balance between national consistency and the local context.

This would involve adjusting the consultation procedures with the government so that local constraints and specificities can be better taken into account. In this sense, the 'social diversity contracts' created in 2015, which are signed between the prefect and the local authority in order to "initiate a voluntary process to achieve (... /...) its legal obligations" with regard to social housing, could be an appropriate tool, provided that the contracts are sufficiently precise in defining the objectives set for the municipalities and in mobilising all available solutions. A reflection on the right level of consultation would also be appropriate. While the municipality remains the reference level for assessing the social housing ratio, very little use has been made of provisions aimed at pooling housing production objectives at the inter-municipal level. Greater involvement by inter-municipal authorities and use of the contractual method would make it possible to differentiate the application of the law. Such application could, at a minimum, adjust the time horizon for achieving a given social housing ratio, which would remain uniform at the national level.



Recommendations

1. Specify details of the exemption mechanism and the management of carryovers from one three-year commitment period to another in order to facilitate the assessment of the criteria by the prefects (Directorate for Housing, Urban Development and Landscapes - DHUP).
2. Ensure, at the national level, a better follow-up of disputes relating to the application of Article 55 of the SRU law (DHUP).
3. Develop the regional government's role in providing expertise, technical support and harmonisation in the application of Article 55, for the benefit of decentralised local central government offices (DHUP).
4. Improve the tools for identifying and monitoring local situations with the aim of simplifying them and making them more reliable (DHUP).
5. Include an obligation to report on the use of sums raised from non-compliance levies for inter-municipal authorities for cooperation between local authorities (EPCI) and public land establishments (EPF), and give central government the possibility of taking action in the event of improper use of these sums (DHUP).
6. Specify at the national level the conditions for the use of central government resources in the event of a failure to act by ensuring the publication of policy details and information on positive feedback and initiatives carried out in the various *départements* (DHUP).
7. Establish a detailed projection of the identity and characteristics of the municipalities likely to not meet their objectives in 2025 (DHUP).
8. Include indicators in the annual survey monitoring the implementation of Article 55 of the SRU law to better assess changes in social diversity in the municipalities concerned (DHUP).
9. Provide a different timetable for reaching the social housing ratio objective for certain municipalities, within a balanced inter-municipal framework and based on the signing of social diversity contracts with specific objectives and commitments and making use of all the instruments available to the signatories (DHUP).