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1. France

Sonia Guelton and Roelof Verhage

3.1. Local authorities and planning system

France is known as a highly centralized country. In fact, the centralist approach applied to the field of urban planning after the Second World War until the end of the twentieth century. However, in 1982 and 1983, a set of decentralization laws changed the situation. With these laws, numerous prerogatives were transferred from the State level to the local and supra local level, including controls and responsibilities in urban planning. As a result, local and supra local authorities became the main actors in planning. In particular, they became responsible for the elaboration of the legally binding local land use plan. Still, these local land use plans must be consistent with national laws and obligations dealing with risk and environmental issues or social housing provision.

Since the sixties, intermunicipal bodies were created to rationalise the delivery and management of public services at a larger territorial scale and coordinate all municipal planning activities. Known as *Communauté Urbaine*, the State created the first four of these intermunicipal bodies in 1969. The decentralisation laws transferred urban planning empowerment to the intermunicipal level. Since then, diverse intermunicipal bodies have been created with diverse powers: *Communauté de communes* in 1992, *Communauté d'agglomération* in 1999, and *Métropole* since 2014. In 2021, there are 1253 intermunicipal bodies in France and every municipality is a member of at least one intermunicipal authority. Strategic structure plans (*SCOT: Schémas de Cohérence Territoriale*) are elaborated at the intermunicipal level. They aim at assuring territorial coherence on a supra local scale in a country where 85% of the municipalities have less than 2000 inhabitants¹. Local land use plans (*PLU: Plan Local d'Urbanisme*) have to be compatible with the strategic structure plans.

In order to better adjust local land use plans to territorial dynamics, the State has gradually reinforced the role of the intermunicipal level, resulting in 2014 in the Law n°2014-366. This is known as the ALUR law (*Accès au Logement et Urbanisme Rénové* – Access to housing and remodelled urban planning policy). The ALUR law transferred the elaboration of the local land use plans to the intermunicipal level at the horizon of 2021.

Despite taking a significant step towards decentralization, it has to be noted that the State nevertheless retains a certain level control. In particular, only the State can determine the application, directives and objectives of French planning law (*code de l'urbanisme*). This includes instruments of value capture that are defined and framed at the central level. However, the municipalities or intermunicipal cooperation structures, in charge of the local land use plans, have a certain amount of freedom in their concrete application.

3.2. Recurring forms of public value capture

In France, recurring forms of public value capture can take the form of annual property taxes, real estate transfer taxes and capital gain taxes.

3.2.1 Recurring forms (annual payments)

3.2.1.1 The property taxes

France has implemented property taxes long ago (before the 1789 revolution), which leads to call them “*les 4 vieilles*” (“the four old women”): a property tax on unbuilt land, a property tax on built land, a housing tax and a corporate tax. Only three of them survive: the property taxes on built and unbuilt lands and the corporate tax. Since 2010 the corporate tax includes two parts: a part based on business property (the

¹DGCL - *Direction Générale des Collectivités locales*, 2021

corporate property tax – CFE: *cotisation foncière des entreprises*) and another part (the corporate value added tax - CVAE: *cotisation sur la valeur ajoutée des entreprises*) calculated according to the added value created by companies. This last part of the tax is no longer related to land or property values.

These taxes are “local taxes” as they are raised by local authorities and benefit to them: property tax on built land is fixed by municipalities, intermunicipalities and *départements* (an intermediate level of government between the regional and the local level) in an independent but additional process. Property tax on unbuilt land and corporate property tax are fixed by municipalities only.

These taxes (CFE included) are due by the land or property owner every year, considering the situation on January 1st. The tax revenues supply the local budgets and can be spent for any operating expenditures. In 2020, the annual revenues collected were 68.4 billion euros, 33.2% of the total receipts of the local authorities (source *Direction Générale des Collectivités locales*, 2021).

Each Property tax liability is calculated by multiplying the rental value of the property by the property tax rate. Following the French tradition of local taxes on land and property, the tax rate is fixed by local institutions (municipality, intermunicipal level or *départements*, depending on the tax). According to the law (code général des impôts – Art. 1379 to 1518 F), the assessment of the rental value of the properties – which serves as the tax base – is carried out by national budget services. This assessment is supposed to reflect the annual market rental value of the property considering the quality, use, and localisation. In reality, the assessments done in 1975 have not been re-evaluated locally since then. As a consequence, several distortions appear with the present market property value².

The government regularly tries to re-evaluate the assessments to follow the current market price index. Up to now, a national index price is applied but it does not consider the evolutions in local markets. To be able to capture the current property value increase at a local level, a re-evaluation has been done in 2017, for the first time since 1975, but only for commercial and business properties. The revaluation is supposed to be effective for residential properties in 2026. In parallel, several tax exemptions are proposed to support social amenities and social housing situations. For example, a 15 years’ property tax exemption is allowed for dwellings being built by social housing companies³.

An additional taxation on unbuilt properties is expressly supposed to capture the potential land value due to increased building rights in the local land use plan. The tax has been introduced by national law in 2000 as an option. Municipalities can decide whether or not they want to levy this tax. When they do, it becomes part of their income (Art. 1396 Code general des impôts). The tax concerns properties which are designated as “buildable” in the local land use plan, but which remain unbuilt-upon. The landowner has to pay an additional charge fixed by municipalities as a maximum of 0.75€/m² additional value to the assessment of the rental value of these unbuilt properties. In 2014, an attempt to add a mandatory 5€/m² to the rental value assessment of identified unbuilt properties has been experimented⁴. However, in 2017, due to landowner’s recrimination, the government had to come back to an optional increase freely fixed by municipalities, from 0 € to 3€/m². About 400 municipalities out of 35,360 French municipalities have adopted the additional charge in 2018⁵.

² Brémond, 2012

³ French Social housing companies benefit from a special status when they sign a contractual agreement with the State. The agreement includes maximal rental prices for low income households, between others.

⁴ Guelton et Leroux, 2016

⁵ Pouillaude, 2019, p39

3.2.2 In case of sales/purchase

3.2.2.1 Real estate transfer taxes

The real estate transfer tax is a legal transaction tax raised by *départements* and municipalities on all property purchases. It is not levied on a legal property transfer by heritage or donation. The tax rate is determined nationally by the law at 1.20% of the purchase price for the municipal part, and from 1.2% to 4.5% for the departmental part. In addition, the State levies a maximum of 2,37 % of the departmental part to compensate for the costs of collection of the tax. New buildings are exempted from this tax, regardless whether they are subject to VAT. In 2020, the annual revenues collected were 16.4 billion euros (source DGCL - *Direction Générale des Collectivités locales*, 2021).

3.2.2.2 Capital gain taxes

A national tax aims at transferring part of the capital gain of any purchase of real property to the State. The capital gain is reduced according to the length of possession⁶ and the tax rate is fixed by the State. In 2020, the rate is 36.2% of the capital gain calculated on the basis of a book value. This tax is considered as unstable as the taxation rate can vary in time, depending on the policy issues. In the past, some governments have decided to reduce it in order to boost real estate markets while others have decided to increase it in order to generate incomes for the public budgets.

In addition, a national tax concerns the sale of land of which the designation as agricultural land has been changed into a designation as “buildable” land in the latest revision of the local land use plan. Only the first transaction of the land after the change of designation is concerned by this tax. As such, the tax aims at capturing part of the value increase of the land due to its new status in the local land use plan (planning gain). The taxation is progressive with the level of capital gain: tax rate of 0% if the gain counts for less than 10 times the purchase price, tax rate of 5% if the gain is between 10 to 30 times the purchase price, and tax rate of 10% if the gain is over 30 times of purchase value. These tax revenues are allocated to a national agency which funds supports farmers by enabling their access to land and by supporting innovation.

Both national taxes aim at capturing the land value increase to the benefit of the State (i.e. the national budget).

In addition, municipalities can also tax capital gains generated from a planning decision (planning gain). The planning gain tax is levied on the first sale of unbuilt land after its designation as “buildable” in the local land use plan. The tax base is calculated as the difference between the current selling price, and the declared purchase cost at the time of the prior acquisition of the land (or declared value in case of heritage for instance), actualized by an official real estate index. If the historical purchase cost is unknown, the assessed capital gain is 1/3 of the current selling price. The tax rate is 10%. The tax contributes to the financing of the municipal development strategy, but the annual revenues remain low. In 2020, only 6,500 municipalities of the 35,360 municipalities have decided to implement the planning gain tax (fiscal statistics from ministry of Finance⁷).

⁶In 2020, the tax is not due after 22 years of possession

⁷ <https://www.data.gouv.fr/fr/datasets/impots-locaux/>

3.3. Non recurring forms of public value capture

3.3.1 Non-recurring forms (focussing on one factor of value increase)

Since 1965, the law enables two types of instruments to capture land value increases induced by new public infrastructures. Local authorities can either use a development tax (*taxe d'aménagement*) or two forms of contractual participations (or developer obligations)⁸.

3.3.1.1 Development tax (*Taxe d'aménagement*)

The development tax is levied by local authorities and assigned to the local budget to finance public infrastructure. It is paid on the entire municipal perimeter by the recipient of a building permit (for new constructions as well as for parking spaces). The tax is levied on the number of newly produced square meters of floor space, stated by local authorities in the building permit. The tax base is fixed at the national level, currently it is 870 €/m² of newly produced floor space in the Paris region, and 767 €/m² in other regions (as mentioned by the law in 2020). The tax rate is fixed by municipalities, between 1% and 5%. An additional 2.5% tax rate is levied by the *départements*. Municipalities have the possibility to increase the tax rate to 20% on an identified area when the infrastructure cost is massive. The revenues can be spent on infrastructure of all kinds.

The tax is commonly used in France, as 80% of local authorities collect the development tax⁹. In 2020, the annual revenues accounted for 1.1 billion euros (DGCL - *Direction Générale des Collectivités locales*, 2021).

3.3.1.2 Contractual participation (developer obligation)

Two instruments for contractual participation of developers to public infrastructure exist : the ZAC: *Zone d'Aménagement Concerté* (Comprehensive Development Zone), and the PUP: *Projet Urbain Partenarial* (Partnership Urban Project). Both these instruments are quite common to support local authorities investments in identified areas. They are designed as financial partnerships and very often include additional negotiations on the urban quality of the development and the building program¹⁰.

Comprehensive Development Zone - Zone d'Aménagement Concerté

The Comprehensive Development Zone (*Zone d'Aménagement Concerté* - ZAC) has been initiated in 1967. It applies to development projects initiated by the public sector, and gives a lot of power to the land developer (expropriation rights), under strict public conditions, requirements, and controls. The land developer is required to finance part of the public investment in the area via "developer contributions". The range of developer contributions is wide but it has to comply with two requirements: (1) Causality: a direct link should be made between facilities imposed to the developers and the real needs related to the new buildings; (2) Proportionality: fees charged to the developers should be proportional to the use made of them by (occupiers of) the new buildings. The ZAC process is transparent (that is, publicly advised) and strictly controlled by the law. The counterpart of the developers contributions is a solid guarantee of the achievement of the project.

Traditionnally, all the land included in the perimeter of a ZAC is temporarily owned by the land developer, who services the land and then sells the remaining area as serviced building plots. Recently, new ZAC contracts can include private landowners in the area, who wish to keep the land for their proper use. They still have to pay the same contributions as those required in the developed area proportionally to their land surface.

⁸ See Booth, 2012

⁹ For a full description see Guelton et al, 2021

¹⁰ See Guelton, 2018

The Partnership Urban Project (*Projet Urbain Partenarial* - PUP) is a contract introduced after 2014 which enables local authorities to charge private landowners for participation to public infrastructure in a private project, initiated and developed by the private developer. The contribution scheme is the same as in a ZAC, but results from a negotiated process. Even though negotiations depend on the local context, they have to comply with the same requirements of “causality” and “proportionality” as in a ZAC.

3.3.2 Non-recurring forms (focussing on more than one factor of value increase)

France experiments tools to transfer land value increase to social achievement without a direct contribution to public budget. During the previous decades, a focus was made on the provision of social housing. Public authorities use two kinds of instruments to include social housing in construction programs: firstly, a legislative obligation provided by the State and, secondly, an instrument allowing long-term land leases.

Social mix obligations - Servitudes de mixité sociale

Since 2000, the law « *Solidarité et Renouvellement Urbain* » - Art. 55 makes it compulsory for large cities to reach 20% of social housing of the total housing stock. In 2014, the rate was increased to 25% when a tense market pressure occurred. Every year, a statement is made to identify the municipalities where the ratio is not met. In 2019, 1,100 municipalities did not reach the requirement. If they remain in default after three years, the State can impose penalties and decide to replace the municipal authority in the control of urbanization processes. This might imply various interventions without the approval of the local authority: through the use of preemption rights, through the delivery of building permits, and through the development of new social housing projects. In 2020, 36 municipalities were in this situation, while the others succeeded in convincing developers to build enough social housing. In addition to large publicly led projects, municipalities use regulations in the local land use plans and negotiations to require a mix of private and social housing in new programs of housing development by private developers. This is called “servitudes de mixité sociale” or social mix obligations in English.

Interim landownership

In 2014 and 2015, the French government introduced a new instrument of value capture based on long-term land leases, with the objective to secure social home ownership. The system mixes two instruments¹¹. A non-profit organisation (*organisme de foncier solidaire* (OFS), ALUR law, 2014) has been designed to buy land plots, build dwellings and sell them without the land to low or middle-income households. The land remains property of the OFS, who leases it to the home owners. A new long-term land lease called *bail réel solidaire* (BRS) (the Macron Law of 2015) was created to enable a kind of tenure in which homeownership remains affordable. Under this system, the future homeowner can buy the house from the OFS at a lower cost without paying the land price. The land lease that the homeowners have to pay to the OFS is set at such a rate that access to housing under these conditions is much cheaper as in the free market. A specificity of the type of land lease that is used (the BRS) is that when the dwelling is sold, anti-speculations clauses apply, and the land lease is renewed. This system enables the OFS to capture and freeze the land value in the long term for homeownership benefits. Since 2014, 9,400 housings have been launched through 71 OFS, most of them being supported by local authorities (source Foncier Solidaire France association, nov. 2021). A public report suggested opening of the system to a profitable organisation, but the proposal has been rejected by the Parliament.

3.4. Interim conclusion for France

¹¹ See Guelton and Le Rouzic, 2008

Public Value Capture by Non-recurring forms in France (without interim acquisition)

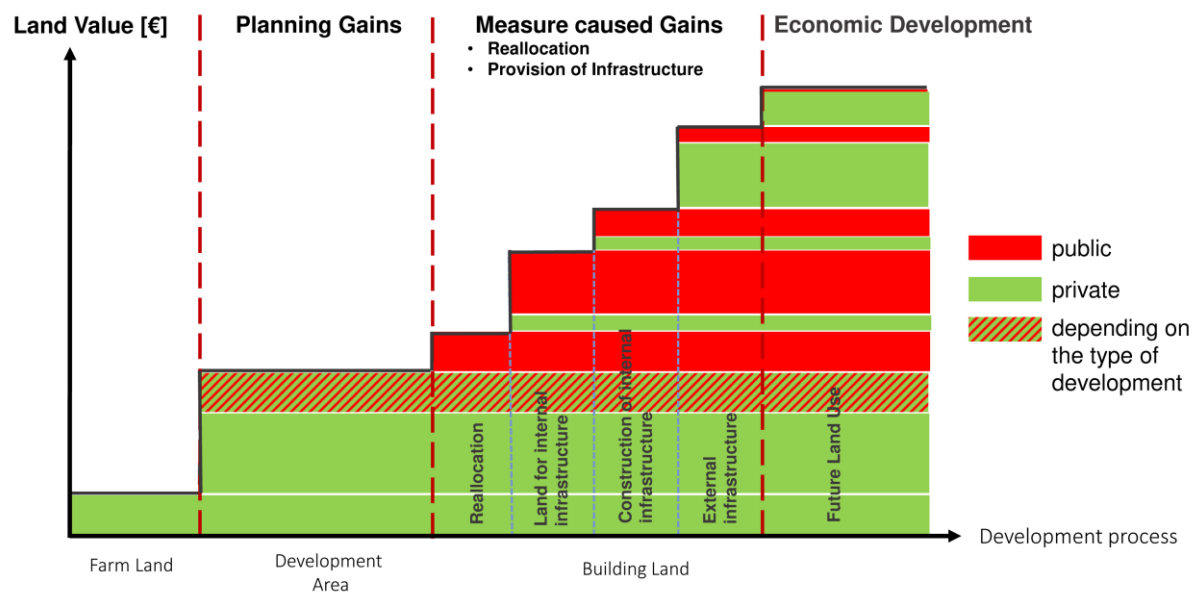


Figure 1: Value capture in France

While there is a political involvement in France to implement recurrent tools of value capture, the attempts remain weak. Property taxes are not based on the market value of the property and capital value taxes do not apply to owner-occupiers. This situation reflects a political reluctance to tax property, which can be related to the importance that is assigned to property rights in France (considered, following art. 17 of the declaration of human rights of 1789 as “*inviolable et sacré*”, inviolable and sacred). State interference in property rights is considered justified only if there is a demonstrated public necessity, and a just compensation for the property owner.

Nevertheless, a number of indirect instruments succeed in reallocating part of the value increase induced by urban planning. Contractual « tailor-made solutions » via PUP and ZAC are efficient in buoyant markets. Other instruments, like development tax or municipal capital gain tax, have a reduced impact as they concern very few cities and limited places. They are using the local land-use plan to impose some reallocation of land value increase for collective use, like the realisation of social housing (through « *servitudes de mixité sociale* ») or environmental preservation.

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