

# **CONSTRUCTION AND RIGHT TO REMEDY: FOR A BETTER BALANCE**

**Report of the working group  
created by letter of February 11, 2013  
by Madame Cécile DUFLLOT, Minister of  
Territorial Equality and Housing**

*Submitted on April 25, 2013  
Hôtel de Castries 72,  
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## INTRODUCTION

It is through an appeal to the lucidity of all, public authorities and economic actors, that the working group set up, at the request of the Minister of Territorial Equality and Housing, to study the means of making the litigation of planning authorizations less penalizing for the realization of projects, wished to open the report which, in response to the mission letter of February 11, 2013 attached in the appendix, reproduces its reflections.

That the exhaustion of avenues of appeal against a planning authorization may only occur after several years and that this situation currently has the effect of delaying the start of construction even further, is what everyone actors live and observe day after day, project after project.

That, moreover, the litigation instruments guaranteed to third parties for the defense of their legitimate interests, and for the greater benefit of respecting town planning rules, are sometimes subverted for purposes that are foreign to them and which can even go, in some cases, to the point of being a form of blackmail, this is a reality that the hearings conducted by the group have attested to.

That finally, there are solutions likely to be found, without infringing on the right to judge or weakening the effectiveness of town planning rules, this is what he is convinced of and that he will endeavor to demonstrate in the developments which follow.

The fact remains that we would be wrong to designate the intervention of the judge, his methods and his delays, as the main obstacle to the rapid completion of construction projects. The group, which was already keenly aware of this when undertaking the mission entrusted to it, was made aware of it on several occasions during its work: it is, first and foremost, the substance of the law of town planning and the environment which is in question.

Firstly because the multiplication of reference standards, both national and local (territorial planning directives, various regional plans, territorial coherence plans, urban travel plans, local town planning plans), aggravated by the incessant changes in which they are the subject of, as well as the legislative and regulatory provisions which support them, weaken the projects by making them vulnerable to contentious actions initiated by informed applicants.

Secondly because, through the combined effect of national and European law, the procedures prior to the issuance of planning permission are increasingly cumbersome, increasingly long and increasingly difficult to master. for project leaders; which is illustrated, paroxysmically, by the introduction to article L. 122-1 of the environmental code, by article 230 of law no. 2010-788 of July 12, 2010 establishing a national commitment for environment, a regime for examining on a case-by-case basis the need for projects to be preceded by an impact study on the environment or human health, in accordance with the objectives pursued by a European directive.

- give administrative courts of appeal first and last jurisdiction  
spring for certain housing construction projects.

Without claiming to establish any hierarchy or priority between them, it will present the first six, which are of general scope, essentially following the order resulting from the progress of the proceedings; the last concerns specifically certain types of projects.

In each case, the working group wanted to clarify the scope of its proposals by formalizing the corresponding legislative or regulatory provisions, but not having always been able to devote the necessary time to this drafting, it does not see the texts as such. prepared as unsusceptible to improvement.

Before entering into the description of each of the measures, he finally intends to draw the Government's attention to the disadvantages which result from the virtual disappearance of the statistical apparatus which existed in the past and which, offering reliable data on the administrative decisions taken in application of the town planning code and the appeals to which they gave rise, made it possible to establish better-supported diagnoses.

## CONCLUSION

Seven measures, then. Seven measures which, ultimately, are not limited to, nor even focus on, the contentious procedure for examining appeals against planning authorizations, for which much has already been done, but affect, more broadly, the powers of the judge and the behavior of the actors.

For each of these seven measures, five of which are at the legislative level and two at the regulatory level, the working group verified that they did not come up against higher legal obstacles and that they were useful in the search for a better reconciliation between the right to recourse of third parties and the rapid satisfaction of the needs of general interest to which construction activities respond, particularly in the area of housing.

For some, he hesitated, either because their effectiveness seemed more limited to him, or because objections were conceivable; others, on the contrary, which have a truly structuring character, carried his conviction from beginning to end. It is not up to him, however, to establish a hierarchy or an order of priority, and it is now up to the Government and Parliament to make their arbitrations between the different considerations to be taken into account, which this report has addressed. endeavored to shed light on the issues.

The group would still like to emphasize, at the time of concluding its work, that the procedure for issuing planning authorizations would undoubtedly benefit, for large projects, from involving upstream, informally and at the initiative of the future petitioner, residents, local associations or other people concerned. Not that there is reason to harbor too many illusions about the probability that such *ex ante* participation will significantly reduce the number of *ex post* disputes; but such steps, which may immediately be of some use, both for interested third parties and in the well-understood interest of promoters, could in the longer term encourage a change in behavior. There is a field of reflection here which went beyond the scope of the group's mission, but to which it wished to draw the attention of the public authorities.

But the working group can only end where it started: if the substance of town planning law was simpler, clearer and more stable, if town planning documents were better designed and better written, they would not offer much leverage to litigants.

Improving the processing of contentious appeals will never, on its own, be able to remedy the flaws which relate, first and foremost, to the rule of law itself.

## **APPENDICES**





MINISTÈRE DE L'ÉGALITÉ DES TERRITOIRES ET DU LOGEMENT

*La ministre*

Paris, le 11 février 2013

N/Réf. : D13009886

Monsieur le Président,

Le contentieux de l'urbanisme demeure, depuis de longues années, un sujet récurrent, objet de toutes les attentions, tant des professionnels de la construction que des représentants de la société civile.

Dans la période la plus récente, tous les travaux législatifs relatifs aux questions d'aménagement et d'urbanisme ont donné lieu à de nombreux échanges et propositions d'amendements sur le sujet.

C'est pourquoi le Gouvernement souhaite présenter une ambitieuse réforme dans ce domaine.

L'objectif est de faciliter la réalisation de projets permettant la production de logements en sécurisant les opérations de construction et en luttant contre les recours regardés comme abusifs tout en préservant l'accès au juge et la participation du public à l'élaboration des décisions en matière d'urbanisme.

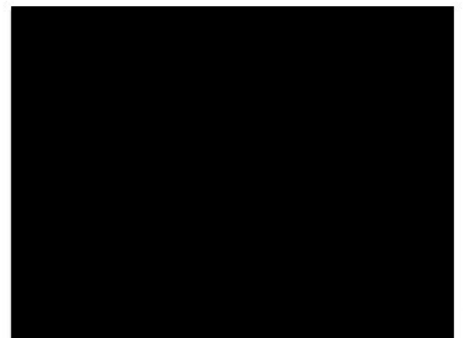
S'agissant d'un sujet aussi complexe avec des implications constitutionnelles aussi lourdes, j'ai souhaité que puisse être mis en place un groupe de travail composé de membres du Conseil d'Etat, du Ministère de l'égalité des territoires et du logement et du Ministère de la justice, qui auditionnera toutes les parties prenantes avec l'objectif de présenter des mesures concrètes à traduire dans la loi dans les délais les plus brefs.

Je me réjouis, dans cette perspective, que vous ayez accepté de présider ce groupe de travail, dont je lirai les conclusions avec la plus grande attention.

Veuillez croire, Monsieur le Président, à l'assurance de ma respectueuse considération.

Monsieur Daniel LABETOULLE

PARIS





## COMPOSITION OF THE WORKING GROUP

### President

Mr **Daniel LABETOULLE**, president (m) of the Litigation Section of the Council of State

### Rapporteur

Mr. **Edouard CRÉPEY**, master of requests at the Council of State

### Members

Mr. **Jean-Yves BÉRARD**, honorary prefect, State Councilor in extraordinary service

Mr. **Julien BOUCHER**, Director of Legal Affairs at the General Secretariat of the Ministry of Territorial Equality and Housing and the Ministry of Ecology, Sustainable Development and Energy

Mr. **Etienne CRÉPON**, Director of Housing, Urban Planning and Landscapes at the Ministry of Territorial Equality and Housing

Mr. **Yves JEGOUZO**, professor emeritus at the University of Paris I, former State Councilor in extraordinary service

Mr. **Alain LECOMTE**, president of the 3rd section of the General Council for the Environment and Sustainable Development

Mr. **Laurent VALLÉE**, Director of Civil Affairs and the Seal at the Ministry of Justice



## LIST OF PERSONS HEARED

Ms. **Francine ALBERT**, advisor for institutional relations and partnership at the Social Union for Housing

Ms. **Sabine BAIETTO**, general inspector at the General Council for the Environment and Sustainable Development

Mr. **Xavier BEZANÇON**, general delegate of Entreprises général de France/BTP

Madame **Martine de BOISDEFFRE**, president of the administrative court of appeal of Versailles

Mr. **Benoist BUSSON**, lawyer, member of the legal board of the France association Nature Environment

Mr. **Dominique DUPERRET**, Secretary General of the Union of French Houses

Mrs. **Eliane FREMEAUX**, notary, member of the Institute of Legal Studies of the Superior Council of Notaries

Mr. **Christian de GOURNAY**, member of the steering committee of the Federation of Real Estate Developers (FPI), chairman of the management board of Cogedim

Mr. **François JALINOT**, general director of the public development establishment Marseille

Ms. **Claire JEANGIRARD-DUFAL**, president of the administrative court of Orléans

Mr. **Jean Michel MALERBA**, general inspector at the General Council for the Environment and Sustainable Development

Mr. **Hervé MARSEILLE**, senator, mayor of Meudon (Hauts-de-Seine), member of the steering committee of the Association of Mayors of France

Mr **Philippe PELLETIER** and Mrs **Hélène CLOËZ**, lawyers

Mr. **Hugues PERINET-MARQUET**, professor at the University of Paris II Panthéon-Assas

Mr **Marc PIGEON**, former president of the Federation of Real Estate Developers

Mr. **Christian PISANI**, notary, member of the Institute of Legal Studies of the Superior Council of Notaries

Mr **Guillaume POITRINAL**, former Chairman and CEO of Unibail Rodamco

Mr. **Alain RICHARD**, senator, mayor of Saint-Ouen l'Aumône (Val-d'Oise)

Mr. **Jean-Michel SILBERSTEIN**, general delegate of the National Shopping Centers Committee

Mr. **Pierre-Eric SPITZ**, director of legal affairs for the City of Paris

Mr. **Jérôme TREMEAU**, professor at Aix-Marseille III University – Paul Cézanne

Mr **Thierry TUOT**, State Councilor



