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TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

National Report for

FRANCE

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1. Housing situation

1.1 General features

1.2 The historic evolution of French housing policy

- *The evolution of the principal types of housing tenures from the 1990s on. Explain the growth and decline of the different tenures and the reasons why that happened (e.g. privatization or other policies).*
- *In particular: What is the role of migration within the country, immigration or emigration from/towards other countries inside and outside the EU (including war migration as in Ex-Yugoslavia)*

This paragraph describes the historic evolution of French housing policy. It distinguishes four different time periods:

- Before 1945
- 1945-1980
- 1980-2000
- After 2000

Housing Policy before 1945

Around 1900, the private rental sector was the dominant tenure in France. In those days, investing in the construction of property and letting rental dwellings was regarded as a financially secure investment, which also enhanced the investor's social status¹. This started to change in the First World War, when the French Government decided to introduce a strict rent regulation policy. As a result, private rental landlords suffered losses, and investment in maintenance and construction fell sharply. Between 1918 and 1939, a total of 'only' 1.6 million new dwellings was built, and relatively little money was invested in home improvement². The social rental sector still had a limited role in the interbellum period. Although this sector started to develop at the end of the nineteenth century, the housing production of social rental landlords initially remained rather limited. Most pre-war social rental housing was built by philanthropists and 'enlightened' entrepreneurs in order to accommodate salaried workers who were unable to find decent accommodation in the existing housing stock³. Added to the extensive war damage, the low housing investments in the interbellum period meant that by the end of the Second World War, the French housing stock was in a very bad state. The country was also faced with a severe housing shortage.

¹ C. Donner, *Housing Policies in the European Union* (Vienna: Christian Donner, 2000), 260

² P. Boelhouwer & H. Van der Heijden, *Housing systems in Europe: Part I. A comparative study of housing policy*. (Delft: Delft University Press, 1992), 188

³ C. Lévy-Vroelant, and C. Tutin, 'Social Housing in France', in *Social Housing in Europe*, ed. C. Whitehead and K. Scanlon (London: London School of Economics and Political Science, 2007), 70

Housing policy during the 1945-80 period

In order to deal with the housing shortage, housing was included in the post-war national plans. Central government provided substantial subsidies and low-interest loans to builders of new homes, resulting in a building boom. This large-scale state intervention produced the following two developments.

Firstly, a large social rental housing sector developed. The three decades following the Second World War are often considered to be the golden age of social housing: '*les trente glorieuses*'⁴. However, the emphasis was on quantity above quality. Social housing enabled the building industry to test new industrialised construction techniques. These new building processes rapidly proved unsatisfactory, leaving both tenants and social landlords with major problems to solve⁵. In some cases, underdeveloped and badly applied prefabricated technology resulted in poor-quality, unattractive high-rise developments of tiny flats, often in suburbs around the large cities⁶. Today many of the estates built in that period suffer from social and quality-of-life problems⁷.

The second thrust of French post-war government policy involved promoting home ownership through both production and personal subsidies. On the supply-side, builders of dwellings destined for owner-occupiers received state subsidies and could take up low-interest loans. On the demand side, people were encouraged to buy the new homes through low-interest mortgages and one-off premiums. Combined with increasing prosperity, this policy produced a sharp increase in the share of the owner-occupied sector.

In the mid-1960s, housing policy began to change gradually. The housing shortage had largely been dealt with, and housing quality was also improving slowly. Because of this, the French government gradually reduced its interventions in housing. Building subsidies were phased out, more scope was left for market forces, and state aid was targeted more precisely at low-income groups. The market sector therefore started to take on a greater role. To incentivise saving by households, special high-interest bank accounts were provided for households that were saving for a home of their own. In 1977, these changes cumulated in a new Housing Act. Financial support for rental landlords, for which both non-profit and profit providers could apply, was not abolished but the subsidy system was simplified. In addition, new personal subsidies were brought in (in both the owner-occupied and rented sectors), along with grants to encourage home improvement⁸. In short, one could say that the 1977 Housing Act has

⁴ C. Lévy-Vroelant, C. Reinprecht and F. Wassenberg 'Learning from history: changes and path dependency in the social housing sector in Austria, France and the Netherlands (1889-2009)', in *Social Housing in Europe II. A review of policies and outcomes*, ed. K. Scanlon and C. Whitehead (London: London School of Economics and Political Science, 2008).

⁵ M., Blanc, The changing role of the State in French housing policies: a roll-out without roll-back, *European Journal of Housing Policy* Vol. 4 (2004), 288

⁶ Boelhouwer & Van der Heijden, *Housing systems in Europe*, 189

⁷ C. Tutin, *Social Housing: another French Exception?* Paper for the Central and East European Workshop on Social Housing, organised by the Metropolitan Research Institute (Budapest, 2008).

⁸ Boelhouwer & Van der Heijden, *Housing systems in Europe*, 193

resulted in a shift from production subsidies to subject subsidies⁹ and a stronger focus on the low-income groups¹⁰. What is more, the subsidy system was embedded in agreement (convention) between the French state and the landlords. This agreement specified the financial aid that the French state would provide through both production subsidies and personal subsidies. Furthermore, it formulated quality requirements for subsidised dwellings and maximum income levels for the tenants of these dwellings¹¹. Nowadays, a large majority of the social rental dwellings are still subject to such a convention¹².

Housing policy in the 1980s and 1990s

The somewhat more liberal housing policy that resulted from the 1977 Housing Act remained intact following the inauguration of Mitterrand's Socialist Government in 1981¹³. Only the rent regulation system was made significantly stricter.

As a result of the economic crisis and high interest rates, the production of dwellings for the owner-occupied sector decreased substantially in the 1980s. At the same time, the tightening of rent controls in the 1980s made it less attractive to invest in the private rented sector. Consequently, there was a clear fall in the rate of house building, with the number of building permits issued dropping from 500,000 in 1980 to 356,000 in 1986. In reaction to this, the government introduced a series of tax benefits that aimed to improve investment conditions for private rental landlords. These tax benefits are still in place, although the specific conditions have been changed regularly over the past twenty years. The tax benefits have resulted in a renewed interest in investing in the market rental sector.

In the 1990s, French housing policy had a strong focus on urban renewal and restructuring. During this period, the basic characteristics of the housing finance system remained unchanged. There were subsidies and low-interest loans for social rental landlords who wanted to build social rental dwellings. Low-interest loans were also available to social rental landlords and private rental landlords who wanted to build in the more up-market sector, also known as the intermediate sector¹⁴. Lastly, grants were available for individual market rental landlords refurbishing their properties. These were paid out by the *Agence Nationale de l'Habitat* (ANAH).

Housing policy since 2000

After 2000, social rental landlords have become increasingly active in the urban renewal process. In this, they are actively encouraged to cooperate with other stakeholders in

⁹ H. van der Heijden, M. Haffner, and A. Reitsma, *Ontwikkeling van de woonuitgaven in zes West-Europese landen* [Trends in housing expenditure in six West-European countries] (Delft: Delft University Press, 2002), 134.

¹⁰ J. Kirchner, *Wohnungsversorgung für unterstützungsbedürftige Haushalte. Deutsche Wohnungspolitik im Europäischen Vergleich* [Social Housing for needy households. German housing policy in European perspective], (Wiesbaden: Deutscher UniversitätsVerlag, 2006).

¹¹ P.J. Boelhouwer, Frankrijk [France], in: *Financiering van de sociale huursector in West-Europa* [Financing the social rental sector in Western Europe], ed. P. Boelhouwer (Delft: Delftse Universitaire Pers, 1996), 78.

¹² Lévy-Vroelant, and Tutin, *Social Housing in France*, 73

¹³ Donner, *Housing Policies in the European Union*, 261.

¹⁴ Donner, *Housing Policies in the European Union*, 268.

the neighbourhood, such as local residents, schools, the police, and welfare organisations¹⁵. A national agency dedicated to urban renewal (*Agence Nationale pour la Rénovation Urbaine*: ANRU) was created in 2003 to invest in and coordinate urban renewal projects in the most vulnerable neighbourhoods.

A scheme known as the *Plan de Cohésion Sociale* came into force in 2005. The principal housing aims of this scheme are to improve housing quality, encourage the production of affordable rental dwellings and ensure that empty homes are put on the market. The plan is a response to the fact that over the past ten years, around 50,000 social rental dwellings have been constructed per year, whereas the rate of production required was 80,000 dwellings. This stagnation in the rate of construction of social rental dwellings was due to complexities in the financing and administrative system, long procedures and high land costs, as well as strong competition from the market sector.

An 'urgency programme' was proposed to overcome these problems. This programme contained an agreement between central government on the one hand, and social rental landlords on the other hand. With the help of the programme, the production of social rental dwellings was expected to rise considerably in the period 2005-2010.

Another policy aim is to develop the intermediate sector of the rental market further (*logement locatif intermédiaire*). Rent levels in this sector, in which both profit and non-profit providers can be active, are higher than in the social rental sector but lower than in the private rental sector. In recent years, the loans and fiscal concessions to promote investment in this sector have been improved¹⁶.

Furthermore, there has been a general trend towards decentralization of housing policy. With the second so-called decentralisation law of 2004, local authorities such as *départements* and groups of communities (*groupements intercommunaux*) were given more responsibility with regard to housing policy (they may now allocate loans and other state aids for example), provided they sign a contract with central government.

The political stance towards social housing strongly depends on the political ideology of the government that is in charge. Whereas the Sarkozy government favoured the owner-occupancy sector above the rented sector, the current Hollande government wants to give a new impulse to the social rental sector. This government wants to make public land available for the construction of social rental dwellings. It also wants to change the *Loi relative à la solidarité et au renouvellement urbain (loi SRU- No. 2000-1208)* that states that municipalities with more than 3500 inhabitants should at least have 20% social rental dwellings. The new government wants to raise this percentage to 25% in 2025. Furthermore, the fines for not complying with the loi SRU will be multiplied with a factor five¹⁷.

The development of the French dwelling stock and the different tenure sectors

¹⁵ F. Bougrain, 2004, France, in *Asset Management in the Social Rented Sector. Policy and Practice in Europe and Australia*. ed. V. Gruis and Nieboer (Dordrecht/Boston/London: Kluwer Academic Publishers, 2004).

¹⁶ Ministère de l'emploi, de la cohésion sociale et du logement, 2006, *Aides Financières au logement*, [Financial support for Housing] (Paris: Ministère de l'emploi, de la cohésion sociale et du logement, 2006).

¹⁷ *Logement social: Le sénat donne son feu vert au projet Duflot*, <www.latribune.fr>, 10-10-2012

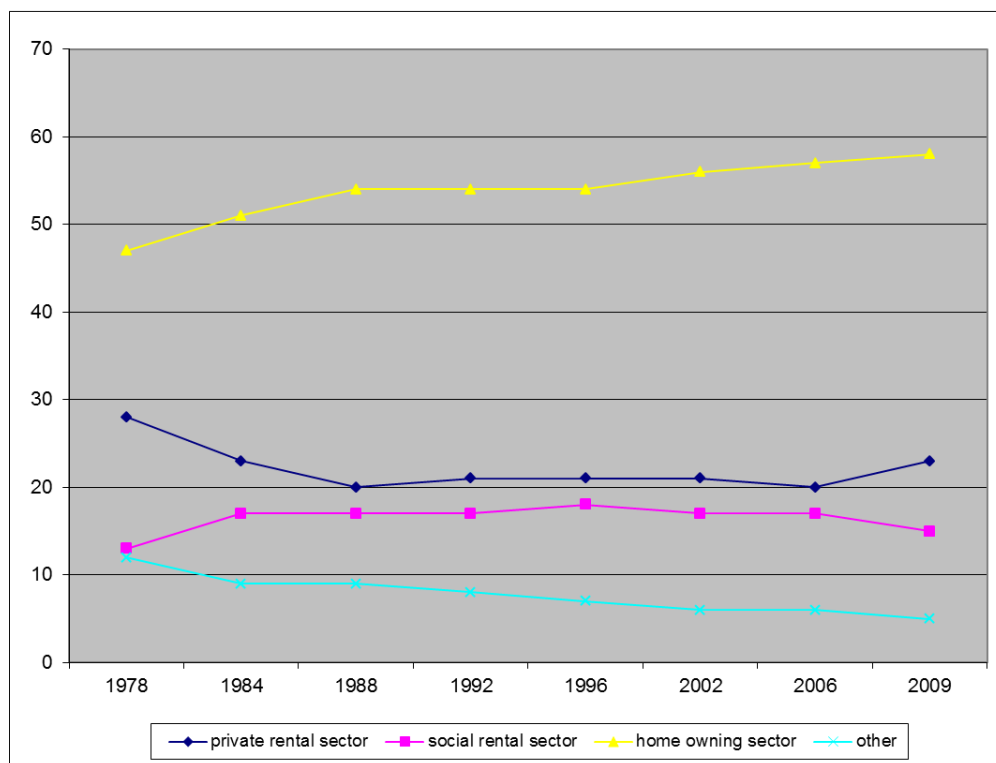
Figure 1.1 shows the development of the different tenure sectors in France since 1963, according to the type of landlord. Pre-1963 figures are not available, but we can assume that the French housing stock before the Second World War consisted predominantly of private rented property, as was the case in most other European countries. During the 1963-84 period, the proportion of private rented housing fell and that of social rented and owner-occupied housing rose. Many private rental homes were sold off, poor-quality dwellings were demolished and there were few incentives to build new homes in the private rental sector. At the same time, the government provided strong support for the development of both the social rental sector and the owner-occupancy sector. The social rental sector was stimulated through subsidies and low-interest loans for social rental landlords, whereas the owner-occupied sector was stimulated through various favourable loans for home owners¹⁸.

From the mid-1980s, the proportion of social and private rented dwellings stabilised and that of owner-occupied continued to rise slowly, at the expense of the category 'other'. In a European context this is rather exceptional; in many other European countries, the shares of both the social rental and private rental sectors show a steady decline¹⁹. After 2006, the share of the private rental sector started to increase at the expense of the share of the social rental sector. This is due to fiscal incentives to promote investment in the private rental sector on the one hand, and an increasing number of social rental dwellings that is being sold on the other hand.

Figure 1.1 Tenure distribution in France, 1963-2009 (percentages of the total housing stock)

¹⁸ Van der Heijden, Haffner and Reitsma, *Ontwikkeling van de woonuitgaven in zes West-Europese landen*, 130.

¹⁹ Tutin, *Social Housing: another French Exception?*



Source: Insee <www.insee.fr>, Satsangi, 1998

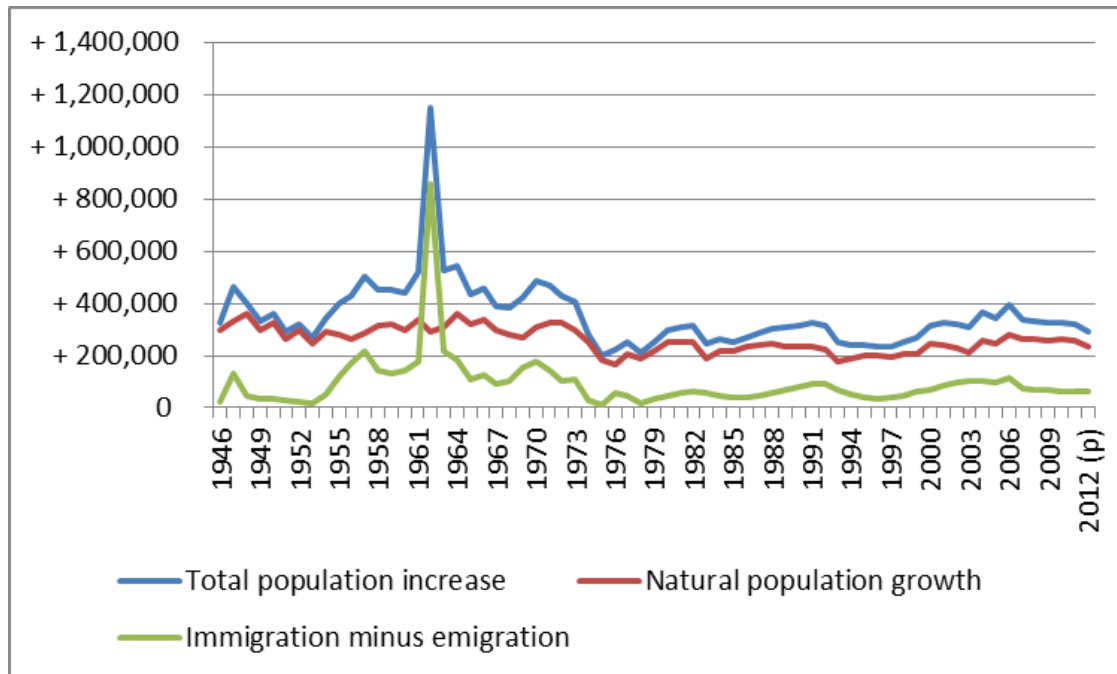
Demographic development and migration

Figure 1.2 gives insight into the demographic development of France since 1946. The figure shows that the population growth was relatively high in the 1950s and 1960's, largely as a result of the immigration of citizens from the former colonies (particularly in 1962; the year of the Algerian independence). Since the 1970s, both the natural population growth and the migration balance have remained relatively stable.

Immigrants constitute a significant proportion of tenants in social housing and they are particularly concentrated in the older part of the dwelling stock. Among immigrants, there is a high proportion of large low-income families and these families experience some of the worst housing conditions.²⁰

Figure 1.2 Demographic development in France since 1946

²⁰ J. Ball, *Housing disadvantaged people? Insiders and outsiders in French social housing* (London/New York: Routledge, 2012).

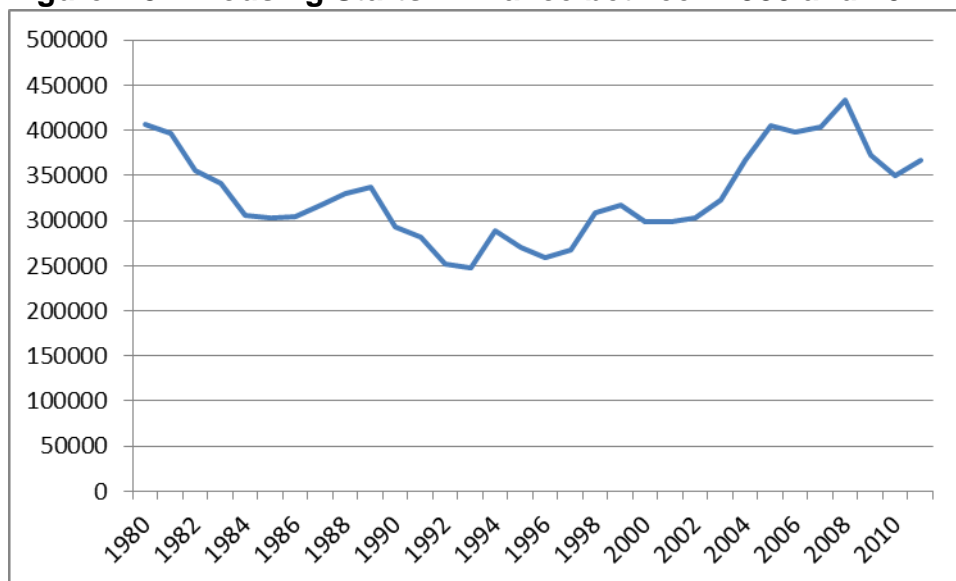


Source: INSEE <www.insee.fr>

Housing construction

Figure 1.3 shows the evolution of housing production in France in the period 1980-2011. In most years, housing production was between 300,000 and 400,000 dwellings, although in the years before the Global Financial Crisis (2008), it increased to a little over 400,000 dwellings. After 2008, the housing production has decreased, although not as dramatically as in many other Western European countries.

Figure 1.3 Housing Starts in France between 1980 and 2011



Source: French ministry of Housing

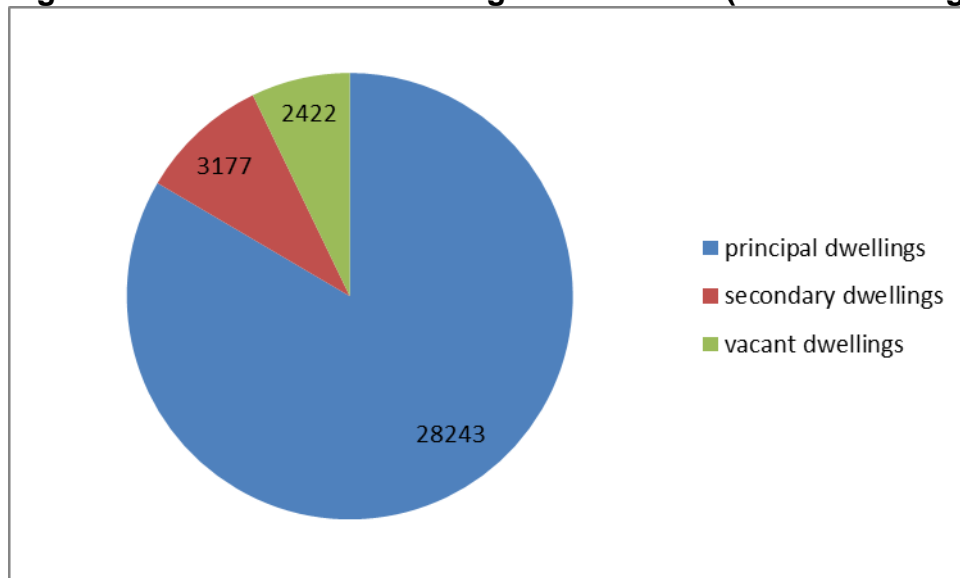
1.3 The current housing situation in France

- *What is the number of dwellings? How many of them are rented vs. owner-occupied?*

The French dwelling stock in 2011

Figure 1.4 gives insight into the size of the French housing stock in 2011. In total, there are 33.8 million dwellings in France. The vacancy rate is 7,15% whereas 9,39% of the dwelling stock is in use as a secondary dwelling. For more insight into the historical development of the tenure distribution, the reader is referred to Figure 1.1 and Table 1.1.

Figure 1.4 The French dwelling stock in 2011 (* 1000 dwellings)



Source: Commissariat Général au Développement Durable, Compte du logement 2011

1.4 Types of housing tenures

- *What is the market share (% of stock) of each type of tenure*

Home ownership:

- *How is the financing for the building of homes typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)*
- *Intermediate tenures.*
- *What is the housing quality in the different tenure sectors?*

The share of the various tenure sectors

Table 1.1 (Summary table) shows the number of dwellings owned by the different types of landlord in France. Owner-occupation is the largest tenure category (58%), followed by private renting (23%)²¹ and social renting (19%). The organizational and regulatory differences between the various types of rental landlord are explained in more detail in

²¹ In this report, renting without a public task is either called private renting or market renting.

Section 4. In this paragraph, we therefore only pay attention to the characteristics of the owner occupancy sector and the co-operative sector.

**Table 1.1 Tenure distribution in France (* 1000 dwellings), 2011
(Summary table 1)**

Tenure Sector	Number of dwellings	% of total dwelling stock
HLM ²² (public or private)	4143	15
Other social rental landlords (among which SEMs and cooperative housing companies)	1062	4
Individual private landlords	6374	22
Institutional private landlords	269	1
Total rental sector	11848	42
Owner-occupation	16395	58
Total dwelling stock	28243	100

Source: Commissariat Général au Développement Durable, Compte du logement 2011

Owner-occupancy housing

The share of the French owner-occupancy sector has gradually increased in the last two decades (see also Figure 1.1). Currently, about 58% of the principal residences in France are in use as an owner-occupied dwelling. Home purchase is stimulated by the government, for example by the provision of no interest loans to lower and middle income groups (so-called PTZ-loans: they cover part of the acquisition costs), and the incentives for owner-occupation have been temporarily intensified after 2008.

Especially the Sarkozy government (2007-2012) was inclined to favour the owner-occupied sector above the rental sector. It set itself the target of raising the home ownership rate to 70%²³. In order to meet this objective, the government wanted social rental landlords to sell more dwellings. The large-scale sale of social rental dwellings should increase the rate of home ownership among lower-income groups. It would also mean that social rental landlords could invest in restructuring and new house building with less state support. In reality, however, the number of social rental dwellings that is actually sold is substantially less than desired by the government²⁴.

France has a relatively healthy mortgage market. The interest rate is relatively low and there is a fair amount of competition between mortgage providers. For most mortgages, households have to bring in 10 to 20% own equity²⁵. There are special saving schemes available that prospective homeowners can use to save for their down payment (*Plan épargne logement*). Especially since 2012, the French banking system is

²² See Section for more information on the different types of landlords with a public task.

²³ M. Ball, *European Housing Review 2008*, (London: Royal Institute of Chartered Surveyors (RICS), 2008), 33

²⁴ M. Ball, *European Housing Review 2012* (London: Royal Institute of Chartered Surveyors (RICS), 2012), 25

²⁵ Bouwfonds property development, *Woningmarkten in perspectief. Duitsland, Frankrijk en Nederland* [Housing markets in perspective. Germany, France and the Netherlands] (Bouwfonds property development, 2012), 24

under strain because of the Eurozone crisis and lending conditions are tightening in consequence²⁶.

Pass-foncier and co-operative housing

The pass-foncier in the French homeownership sector²⁷ may also be seen as a form of intermediate tenure between full home-ownership and renting. The aim of this measure is to promote homeownership among households with a lower income. The pass-foncier can only be used for the purchase of newly built dwellings. The idea is that the household takes up a loan for the construction of a new dwelling. The amount of this loan can be relatively low, because the land on which the dwelling is built is leased rather than bought. After ultimately 25 years, the household has to buy this land as well²⁸. If a new dwelling is bought with the help of the pass-foncier, a lower value added tax rate applies. The pass-foncier was introduced at January 1 2007 and it was abolished again per January 1, 2011 in order to reduce government expenditure on housing policy.

Furthermore, in the French social rental sector there is a scheme that allows tenants to (partly) become homeowners: *Prêt Social Location Accession*²⁹. Finally, France also has a small co-operative sector, that consists of about 42.000 dwellings³⁰. In terms of property rights, co-operative housing is usually placed somewhere on the continuum between full home ownership and renting.

Housing quality in the different tenure sectors

Table 1.2 gives an overview of the housing quality in the different French tenure sectors. Based on Table 1.2, the following observations can be made:

- On average, the biggest dwellings can be found in the owner-occupancy sector. Dwellings are relatively small in the social rental sector and particularly in the private rental sector; almost half of the private rental sector dwellings only has one or two rooms.
- Generally speaking, social rental dwellings are considerably 'younger' than owner-occupancy dwellings and private rental dwellings.
- Owner-occupancy dwellings are overrepresented in smaller municipalities whereas social and private rental dwellings are overrepresented in bigger cities.
- Most owner-occupancy dwellings are individual dwellings, whereas as most social and private rental dwellings are located in a bigger block of apartments.

Table 1.2 Housing quality in the owner-occupancy, social rental and private rental sector, 2011 (column percentages)

	Owner-occupancy	Social rental sector	Private rental
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²⁶ Ball, *European Housing Review* 2012.

²⁷ See: <<http://www.anil.org/profil/vous-achetez-vous-construisez/achat-et-vente/accession-progressive/pass-foncierr/pass-foncier/>>

²⁸ K. Dol, J., Hoekstra, and M. Oxley, *Inventarisatie crisismaatregelen op de woningmarkt in negen West Europese Landen* [Inventory crisis measures on the housing market in nine Western European countries] (Delft: OTB Research Institute, 2009).

²⁹ <<http://www.developpement-durable.gouv.fr/AC00001-Dispositif-PSLA-Pret.html>>

³⁰ See: <<http://www.chfcanada.coop/icahousing/pages/membersearch.asp?op=country&id=6>>

	sector		sector
Number of rooms			
1 or 2	10,8	26,7	44,4
3	19,5	34,9	27,7
4	32,0	29,2	18,4
5	23,7	8,1	6,8
6 or more	14,0	1,1	2,8
Year of construction			
Before 1949	32,1	9,1	41,9
1949-1974	24,1	43,8	21,7
1975-1999	30,4	35,8	19,7
After 1999	13,4	11,3	16,7
Location			
Rural community	29,0	6,6	14,4
Less 20.000 inhabitants	19,4	12,9	15,9
20.000 - 100.000 inhabitants	13,0	16,7	14,8
> 100.000 inhabitants	25,9	38,1	37,1
Paris	12,7	25,7	17,8
Dwelling type			
Individual dwellings	77,5	15,4	30,6
Dwellings in an apartment block	22,5	84,6	69,4

Source: Commissariat Général au Développement Durable, Compte du logement 2011

1.5 Other general aspects of the current national housing situation

- Are there lobby groups or umbrella groups active in any of the tenure types? If so, what are they called?
- What is the number (and percentage) of vacant dwellings?
- Are there important black market or otherwise irregular phenomena and practices on the housing market (especially the rental market)?

Umbrella and lobby organizations

Landlords

At the national level, the social rental landlords are united in an organisation called *Union sociale pour l'habitat* (USH). In turn, the *Union Sociale pour l'habitat* is a member of the European social housing umbrella organisation CECODHAS (*Comité Européen de coordination d'habitat social*).

The umbrella organization for French individual private rental landlords is called UNPI (*Union Nationale de la Propriété Immobilière*). This organization acts as a lobby for the defence of the interests of private landlords towards government decisions.

Regarding professional management of real estate, including real estate in the private rental sector, a group called APOGEE (*Institut Français du Management Immobilier*) gathers most managers of real estate and provides advice and analyses on the sector, although for its members only³¹. The European umbrella organization for private rental landlords is the International Union of Property owners.

³¹ J. Hoekstra, *Country report France* (De Montfort University, 2010).

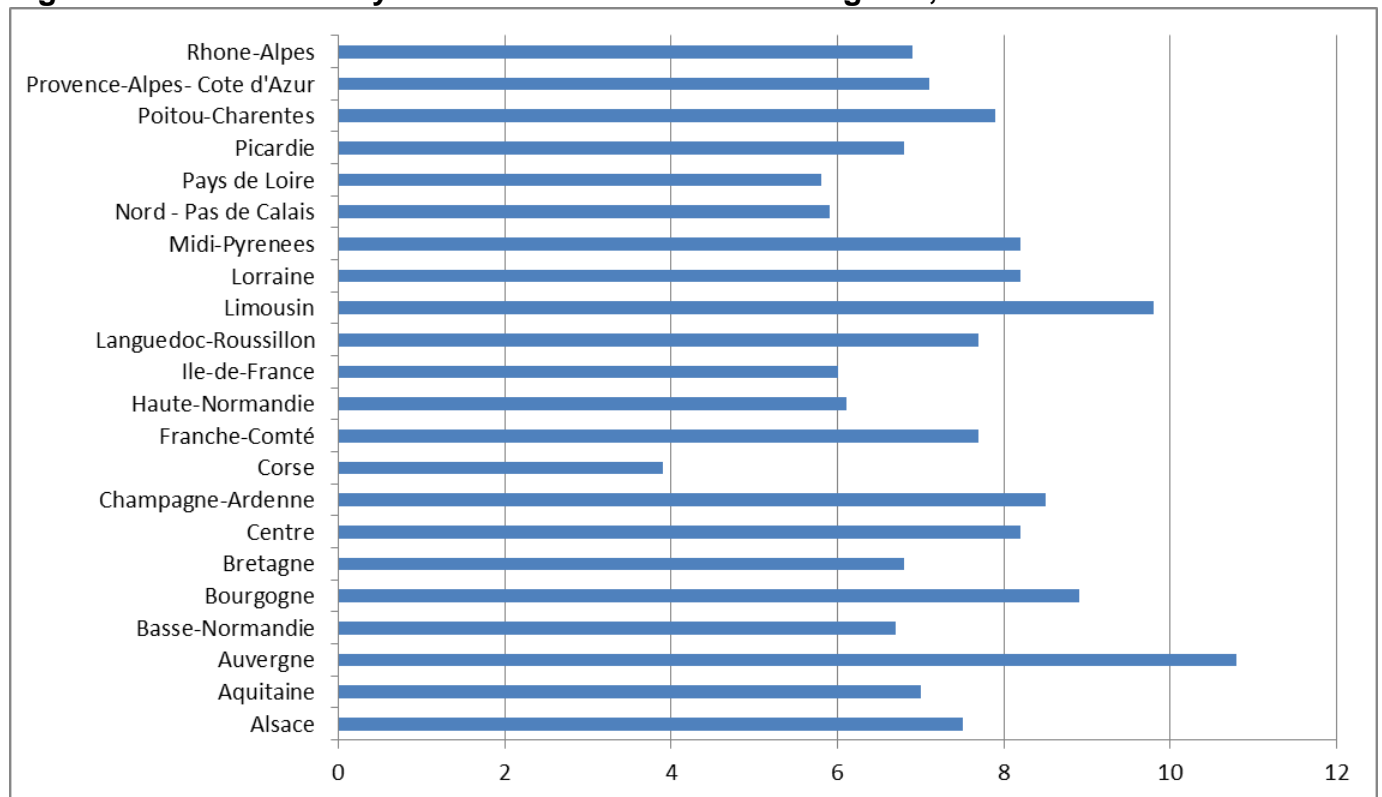
Tenants

The French umbrella organization for tenants, both in the social and the private rental sector, is called '*Confédération Nationale du Logement*' (CNL). This organization is member of the International Union of Tenants (IUT). Apart from the CNL, there are also four other organizations that represent the tenants in negotiations³².

Vacant dwellings

The vacancy rate in France (7.15%) is rather high. The high vacancy rate is related to the continued rural to urban migration and the population decline in older industrial areas³³. However, some homeowners also keep their dwelling(s) vacant for speculative reasons. Figure 1.5 provides an overview of the vacancy rate in the different French regions. The figure shows that the highest vacancy rates can be found in the rural regions of Limousin and Auvergne.

Figure 1.5 The vacancy rate in the different French regions, 2010



Source: INSEE

Irregular practices

Especially in the bigger cities there is a substantial black market on which '*marchands de sommeil*' rent small rooms or beds to people who have no other options on the housing market. Often, these accommodations do not meet the legal requirements

³² Ball, *Housing disadvantaged people?*, 77

³³ Ball, *Housing disadvantaged people?*, 24

regarding health, safety and housing quality (See also Section 2.2). Some French cities, for example Lyon, are now developing plans to better regulate this black market.

2 Economic urban and social factors

2.1 Current situation on the housing market

What is the current situation of the housing market? Is the supply of housing sufficient/insufficient and where is this the case (possibly in terms of areas of scarcity of dwellings in growth areas versus shrinkage areas)? What have been the effects of the current crisis since 2007?

- *How is the demand for housing expected to develop? What is the expectation about the growth and decline in number of households in the future in a scenario of average economic development?*
- *What is the relationship between household income and tenure distribution?*

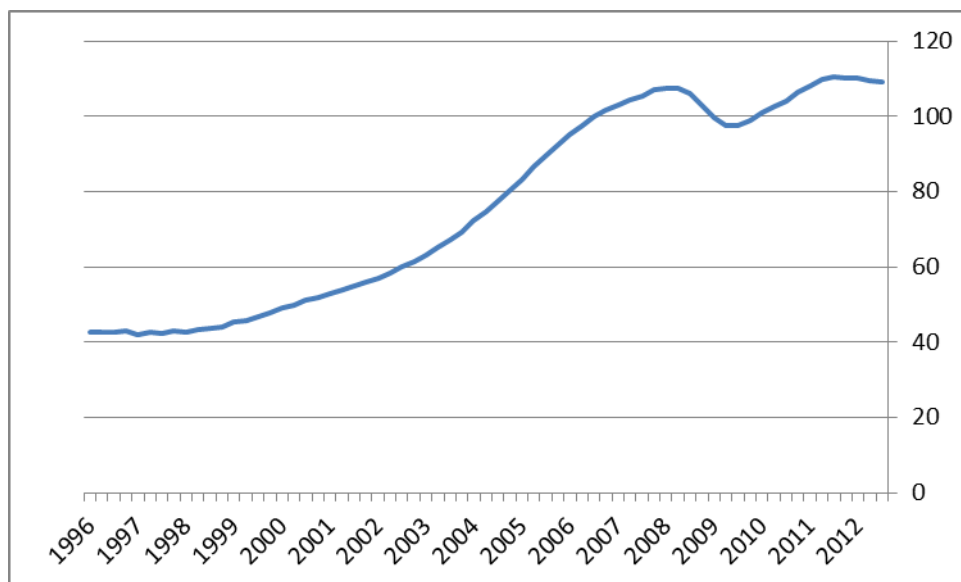
The French housing market in 2013

Compared to many other countries, the effects of the Global Financial Crisis (GFC) on the French have been relatively limited. Although house prices have decreased somewhat between the end of 2008 and the beginning of 2010, they have been increasing again since then. In nominal terms, current house prices are already higher than the pre-GFC peak level³⁴ (see Figure 2.1). However, since 2012 house prices are slowly decreasing again, due to deteriorating economic and credit conditions. The housing production did not suffer much from the GFC (see also Figure 1.3), which is also due to the fact that the French government conducted active policies to keep this production at a high level³⁵. The housing market situation in France strongly differs between areas. The pressure on this market is high in the Paris region and most the major cities, whereas it is much lower in much of the countryside. Housing affordability is a serious issue in the areas with much pressure on the housing market.

Figure 2.1 The development of the INSEE house price index of existing dwelling (2010=100)

³⁴ Ball, *European Housing Review* 2012, 22.

³⁵ Ball, *European Housing Review* 2012 (London: Royal Institute of Chartered Surveyors (RICS), 2012), 22.



Source: INSEE <www.insee.fr>

Future development of the French housing market

The population of France is still growing. Between 2010 and 2020, the number of households is expected to increase with about 3 million, which implies that at least 3 million new dwellings are needed to house these households. Making assumptions about items such as immigration, vacancy rates and demolitions, it is estimated that 320.000 to 370.000 new dwellings a year will be needed up to 2020³⁶. The highest household and population growth is expected in the Paris region and the attractive coastal regions in the West and the South of the country, not only as a result of natural population growth but also due to a positive migration balance. Negative population growth is expected in some inland regions and parts of Northern France³⁷.

Household income and tenure distribution

There is a clear relationship between income and tenure. Lower income groups, among which many immigrants, are overrepresented in the rental sector whereas higher income groups are overrepresented in the homeownership sector, as Table 2.1 shows.

Table 2.1 Median housing costs in the different tenure sectors and income brackets, 2010

Income group	Median housing costs	%
All households	18,5	100
Tenants in the private rental sector	26,9	21
Tenants in the social rental sector	20,1	18
Owner-occupiers with a mortgage	27,2	23
Owner-occupiers without a mortgage	9,5	38
1st quartile³⁸		

³⁶ Ball, *European Housing Review* 2012, 30.

³⁷ Bouwfonds property development, *Woningmarkten in perspectief. Duitsland, Frankrijk en Nederland*

³⁸ This concerns the household income, corrected for household size conform the OECD factors.

All households	23,6	100
Tenants in the private rental sector	33,6	31
Tenants in the social rental sector	20,2	35
Owner-occupiers with a mortgage	n.s.	11
Owner-occupiers without a mortgage	23,6	23
2nd quartile		
All households	21,3	100
Tenants in the private rental sector	29,1	22
Tenants in the social rental sector	23,2	20
Owner-occupiers with a mortgage	29,3	22
Owner-occupiers without a mortgage	11,4	36
3rd quartile		
All households	18,9	100
Tenants in the private rental sector	25,1	18
Tenants in the social rental sector	n.s.	13
Owner-occupiers with a mortgage	28,2	30
Owner-occupiers without a mortgage	9,9	39
4th quartile		
All households	11,0	100
Tenants in the private rental sector	18,8	13
Tenants in the social rental sector	n.s.	6
Owner-occupiers with a mortgage	22,5	27
Owner-occupiers without a mortgage	7,1	54

Source: Arnault, S. and L. Crusson, La Part du logement dans le budget des ménages en 2010 (*INSEE Première* No. 1395, 2012)

2.2 Issues of price and affordability

- What are the housing costs in the owner-occupancy and the rental sector?
- What are typical rent levels in the rental sector?

Housing costs in the rental and the owner-occupancy sector

The housing costs of tenants consist of rent, costs for gas, water and electricity and housing-related taxes. For owner-occupiers, they consist of mortgage interest costs, mortgage payments, and again, costs for gas, water and electricity and housing-related taxes. Table 2.1 gives an extensive overview of the housing costs of both tenants and owner-occupiers in the different income brackets and tenure sectors. Based on this table, the following conclusions can be drawn:

- The highest housing costs can be found among tenants in the private rental sector and homeowners with a mortgage. Homeowners without a mortgage have the lowest housing costs.
- Housing costs are lower in higher income brackets than in the lower income brackets.

Rent levels

In 2006, tenants in the French social rental sector paid on average 55 Euros annual rent per square meter. This corresponds with a monthly rent of a little more than 300 Euros. Tenants in the private rental sector on average pay much more: 90 Euros per square

meter per year. This corresponds with a monthly rent of a little more than 500 Euros³⁹. Table 2.2 shows the difference in rent levels in different geographical regions. The table shows that the differences in rent level between the social rental and the private rental sector are the biggest in regions with a large pressure on the housing market such as Ile de France.

Table 2.2 Monthly rent in Ile de France and the rest of France, social rental and private rental sector, 2006

Region	Social rental sector	Private rental sector	% difference
Ile de France	344	676	49%
Rest of France	293	463	37%
Total	306	517	41%

Source: Commissariat Général au Développement Durable, *Compte du logement 2011*, 140

2.3 Tenancy contracts and investment

- *What is the housing investment in the different tenure sectors?*
- *What is the return on investment of institutional private rental landlords?*
- *What is the role of tenancy contracts in investment strategies?*

Housing investment

There are three main investors in the French rental sector: social landlords, individual private rental landlords, and institutional private rental landlords. Table 2.3 gives insight into the share of these different landlords within the total housing production. The table shows that after the start of the economic crisis in 2008, investment in the social rental sector has increased, whereas investment in the private rental sector has decreased.

Table 2.3 Share of the different types of landlords in the total housing production in the period 2004-2010 (*1000 dwellings)

	2004	2005	2006	2007	2008	2009	2010 ⁴⁰
social housing (HLM)	44,0	54,0	57,0	64,0	68,0	80,0	100,0
intermediate rental housing	2,4	1,3	1,1	1,1	1,7	1,6	3
Private rental sector	57,9	73,3	85,5	79,7	58,4	44,3	57
Owner occupation	272,3	293,7	292,8	294,9	254,6	194,3	195,7
secondary homes	21,2	21,8	23,8	23,2	17,4	12,2	15,3
Total	397	441	460	465	400	334	371,5

Source: Hoekstra, *Country report France*, 4.

Investment in the social rental sector

Investment in the social rental is strongly related to government incentives (see Section 2.3). In general, this production is of a countercyclical nature (see also Figure 1.5). When private construction decreases, the social rental landlords are supposed to

³⁹ Commissariat Général au Développement Durable, *Compte du logement 2011. Premiers résultats 2012*, (Paris : Commissariat Général au Développement Durable, 2012), 134

⁴⁰ This is an estimation.

increase their construction efforts in order to keep the overall rate of housing production at an acceptable level, thus protecting the house-building sector. Social rental landlords do not have to make a commercial rate of return.

Investment in the private rental sector by individual landlords⁴¹

Investment in the private rental sector can be done by both individual and institutional private rental landlords and it may involve both new construction and the purchasing of existing dwellings for investment reasons. Traditionally, individual investors in the French private rental sector expect a rental yield of 5% per year. Recently, however, rental yields of 3,5% to 4% are mentioned in the advertisements of developers that try to encourage individuals to invest in the private rental sector. It should be noted that rental yields are not the only reason for individuals to invest in the private rental sector. Potential capital yields (as a result of growth in property prices) may also be a strong incentive. Furthermore, investing in rental property can also be a way to prepare financially for retirement. Last but not least, it should be realized that not all individual private rental landlords are letting dwellings for purely economic reasons. Some of these landlords are in the business for family-related and/or nostalgic reasons, for example of because they have inherited the dwelling. Also for individual private rental landlords, the government provides financial incentives that aim to promote investment, mainly in the form of fiscal subsidies.

Institutional private rental landlords and return on investment

The amount of money that institutional investors in France invest in the private rental sector varies per year, but generally ranges between the 500 million and 1 billion Euros. Every year, institutional investors add 3,000 to 6,000 new private rental dwellings to the French housing stock⁴². According to a panel of institutional private rental landlords⁴³ (Ad Valorem, 2010), the main impediments to residential investment in the private rental sector are the strict regulations with regard to letting (36%) and the relatively low yields (34%).

The importance of institutional private rental landlords has significantly decreased in recent decades. Their share within the total private rented sector dropped from about 12% in 1984 to about 3 to 4% nowadays. Especially the insurance companies, who used to be important private rental landlords, have disinvested considerably. They have moved their investments to the financial market where the returns on investment tend to be (or at least used to be) higher.

The returns that institutional investors in the private rental sector can make are dependent on both the returns from renting and the returns from capital growth (increase in property prices). According to the IPD France Annual Property Index, the returns from letting were 3,3% in 2011, whereas the return from capital growth was no less than 8,2%, thus resulting in a total return of more than 11%. Over a longer time period, the

⁴¹ This paragraph is mainly based on: Hoekstra, *Country report France*, 9-10.

⁴² Hoekstra, *Country report France*, 11.

⁴³ Ad Valorem, *Assises Ad Valorem de l'investissement résidentiel troisième édition* [evaluation of residential investment, third edition] (Paris: Ad Valorem, 2010).

total returns show a positive picture as well; they were 9,8% over the last 10 years (see Table 2.4).

Table 2.4 Returns on investments in property according to the IPD France Annual Property Index (results for December 31, 2011)

	Total yield	Total yield in %	Rental yield in %	Capital yield in %	Total yield per year		
	1997=100	1 yr	1 yr	1 yr	3 yrs	5 yrs	10 yrs
All property	372,5	8,4	5,6	2,7	5,5	6,5	9,5
Retail	637,9	9,5	5,9	3,5	6,3	8,4	13,0
Offices	374,3	7,2	5,7	1,4	5,0	5,9	8,7
Industrial	343,3	6,2	7,4	-1,1	3,1	3,8	8,6
Residential	321,4	11,7	3,3	8,2	7,1	7,3	9,8
Other	370,6	9,6	6,2	3,1	7,6	8,3	10,4

Source: <www.ipd.fr>

Real Estate Investment Trusts and securitization

France has recently developed specific fiscal regulations for Real Estate Investment Trusts (REIT's). However, until now, the impact of such REITS seems to be rather limited⁴⁴. We have not found any information on securitization of rental incomes.

2.4 Other economic factors

- *What kind of insurances plays a role in respect to the dwelling (e.g. insurance of the building, the furniture by the landlord; third party liability insurance of the tenant?)?*
- *What is the role of estate agents?*

Insurances

Apart from the 'normal' insurances that are recommended for tenants and landlords (fire, theft, liability), French private landlords can insure themselves against non-payment of tenants by means of a government-backed insurance scheme: 'La *Garantie universelle des Risques Locatifs*: GRL'⁴⁵.

The role of real estate agents

Some new developments, especially those associated with fiscal incentives in the private rental sector (see Section 3.7 for more details on this), are developed through specialized companies. In the last ten years, a network of developers has emerged that sells dwellings (mainly apartments) that are meant to be let by individual private landlords (buy-to-let). Some of the companies in this network are tied to banks and/or real estate agents.

A substantial share of these buy-to-let dwellings is sold to the landlords as a package that includes management of the flat and insurances for covering damage or rent arrears. The usual fee for such services is about 8% of the yearly rent, but fees may

⁴⁴ Hoekstra, *Country report France*, 20

⁴⁵ Hoekstra, *Country report France*

range between the 4,5% and the 12%, depending on the kind of services that are included in the package. Management fees can be deducted from the rental income for taxes.

It is difficult to estimate which percentage of the private rental dwelling stock owned by individual landlords is managed by professionals. It is clear, however, that this phenomenon is especially visible in the larger cities where it could reach up to one third of the market⁴⁶.

2.5 Effects of the current crisis

- *Has mortgage credit been restricted?*
- *Has the number of repossessions increased?*
- *Has new housing or housing related legislation been introduced in response to the crisis?*

Provision of mortgage credit

Until recently, the mortgage credit provision in France suffered relatively little from the GFC. Between 2009 and 2011, the residential mortgage debt as percentage of the GDP increased from 39,0% to 42,4%. In the EU-27 as a whole, this percentage decreased from 52,0 to 51,7.⁴⁷ However, there are signals that lending conditions have worsened somewhat in 2012.⁴⁸

Repossessions

Repossessions are not a big issue in France. Between 2008 and 2010, the number of doubtful loans increased from 0,92% to 1,28% of the total outstanding residential lending. According to the European Mortgage federation, there are various reasons for this relatively low figure⁴⁹:

- There are no subprime mortgages in France;
- Typical mortgage borrowers are not in the most unemployment-threatened social segment;
- The typical mortgage loan in France has fixed monthly payments and a fixed rate;
- After the start of the crisis, the house prices have not decreased much and prices quickly recovered;
- Active policies of the French government and the banks smoothened the effects of the crisis.

Crisis measures

In December 2008, the financial crisis prompted the French government to invest much more money in housing. With the help of this money, about 100,000 extra new dwellings were financed, most of them in the social rental (30,000 dwellings) and the intermediate rental (40,000 dwellings) sectors. Additionally, more money was invested in renovation and the financial support for first-time buyers (interest free PTZ-loans, looser conditions

⁴⁶ Hoekstra, *Country report France*, 9-10

⁴⁷ European Mortgage Federation (EMF), *Housing and mortgage markets in 2011* (EMF, 2011), 10.

⁴⁸ Ball, *European Housing Review 2012*, 23

⁴⁹ European Mortgage Federation, *Study on Non-Performing Loans in the EU* (EMF, 2011), 21

and more money for the '*pass foncier*') was improved. Furthermore, the tax incentives for individual investment in the private rental sector were made more generous. Finally, a new scheme has also been launched with the help of which private rental projects can be transformed into social rental programs and more money has become available for renovations in the existing housing stock⁵⁰.

Since the end of 2010, most of the crisis measures have been withdrawn or expired, whereas others have been made less generous. Nowadays fiscal austerity is the order of the day. In order to reduce the national budget deficit, capital gains taxes and VAT have been increased and housing subsidies have been diminished⁵¹. For example, In January 2011, the fiscal advantage for buy-to-let properties (*dispositif Scellier*) was cut by 50% and the PTZ-scheme was restricted⁵². This also means that the surge in demand that the crisis measures have caused is disappearing, which may be one of the reasons for the fact that there has been some stagnation on the French housing market since 2012.

2.6 Urban aspects of the housing situation

- *What is the spatial distribution of the different tenure sectors?*
- *Are the different types of housing regarded as contributing to specific, mostly critical, "socio-urban" phenomena, in particular ghettoization and gentrification?*
- *Do phenomena of squatting exist?*

Spatial distribution of tenure sectors

The French dwelling stock is not evenly distributed across the territory. This particularly applies to the social and the private rental sector. The French social rental dwellings are mainly concentrated in the medium-sized and larger cities and agglomerations. This is due to the fact that the history of social rented housing roughly parallels the industrial and economic development and the resulting urbanization of France. The share of social rental housing is particularly high in the formerly heavily industrialised areas, notably around Paris and in the north and the east of France. About one in five social housing units are located in vulnerable urban areas (ZUS: *Zone Urbaine Sensible*) that are selected out as top-priority districts for public efforts to diminish segregation. In the ZUS-areas, social rental dwellings have a share of about 60%⁵³. The proportion of social rental dwellings is considerably lower in the southeast and west of the country, especially in the more rural areas. In many small municipalities, there are simply no social rental dwellings available.

Furthermore, within cities, there are major differences between the 'peripheral stock', where estates are often dilapidated, and the more desirable central stock. By requiring each municipality (*commune*) with a certain size to have at least 20% of social

⁵⁰ Dol et al., *Inventarisatie crisismaatregelen op de woningmarkt in negen West-Europese landen*

⁵¹ Ball, *European Housing Review* 2012, 23.

⁵² European Mortgage Federation, *Housing and mortgage markets in 2011*, 37.

⁵³ J.C. Driant, Social housing in France: a sector caught between inertia and changes. The HLM system in the early 2010s. In Houard, N. (ed.) *Social Housing across Europe*, (Paris : Ministère de l'écologie, du développement durable, des transports et du logement, 2011).

rental housing (*loi SRU*), the government is attempting to counterbalance the uneven geographical distribution of social rental dwellings.

Socio-urban phenomena (segregation, ghettoization, gentrification)

In urban studies, the term segregation is used to indicate the separation of different population groups. This may concern, socio-economic groups but also ethnic groups. Especially since the urban riots in 2005, preventing segregation is an important policy goal in France. The government strives for neighbourhoods that are mixed, both in economic and in ethnic terms. However, despite these policy efforts, segregation still persists in France. A brief overview of recent literature^{54 55 56} on this topic reveals the following trends:

- Whereas socio-economic segregation is decreasing, ethnic segregation is increasing.
- Immigrants are overrepresented in the regions 'Ile de France', 'Rhône-Alpes' and 'Provence-Alpes- Côte d'Azur'.
- The degree of segregation differs between different immigrant groups. North Africans, sub-Saharan Africans, South East Asians and Turks are the most segregated groups. The segregation among European immigrant is relatively low.
- There is less segregation among second generation immigrants than among first generation immigrants.
- Discrimination in France is aimed primarily at North and Sub-Saharan Africans. European immigrants – Italians, Spaniards and Portuguese – although more numerous, have become '*invisible*' in France.
- Especially the African immigrants are overrepresented in vulnerable disadvantaged neighbourhoods that are characterized by a high share of social housing, high unemployment levels and relatively low rents.
- Africans find it harder to leave disadvantaged vulnerable neighbourhoods than French nationals. If they move, they relatively often end up in another vulnerable neighbourhood.
- Despite the relatively high-income ceiling for social rental dwellings, the social rental sector becomes more and more the domain of low-income households, people living alone and single-parent families⁵⁷.

Squatting

Squatting certainly exists in France, especially in the bigger cities. It can be both politically or economically motivated. Squatting is illegal although squatters also have particular rights and the expulsion of squatters has to be ordered by a judge⁵⁸. In the

⁵⁴ J.L. Pan Ké Shoen, Residential segregation of immigrants in France: an overview (*Population and Societies*, No. 477, 2011)

⁵⁵ J.L. Pan Ké Shoen, The Ambivalent Nature of Ethnic Segregation in France's Disadvantaged Neighbourhoods, (*Urban Studies*, Vol. 47, No. 8, 1603-1623).

⁵⁶ Driant, *Social housing in France : a sector caught between inertia and changes*

⁵⁷ Driant, *Social housing in France : a sector caught between inertia and changes*, 123.

⁵⁸ <<http://www.macsfr.fr/vous-informer/vie-pratique-professionnel-sante/immobilier-professionnel-sante/expulsion-d-un-squatter.html>>

winter period, expulsion of non-paying tenants is not allowed (*la trêve hivernale*)⁵⁹, except the expulsion of squatter as they do not have a legal title to stay in the dwelling.

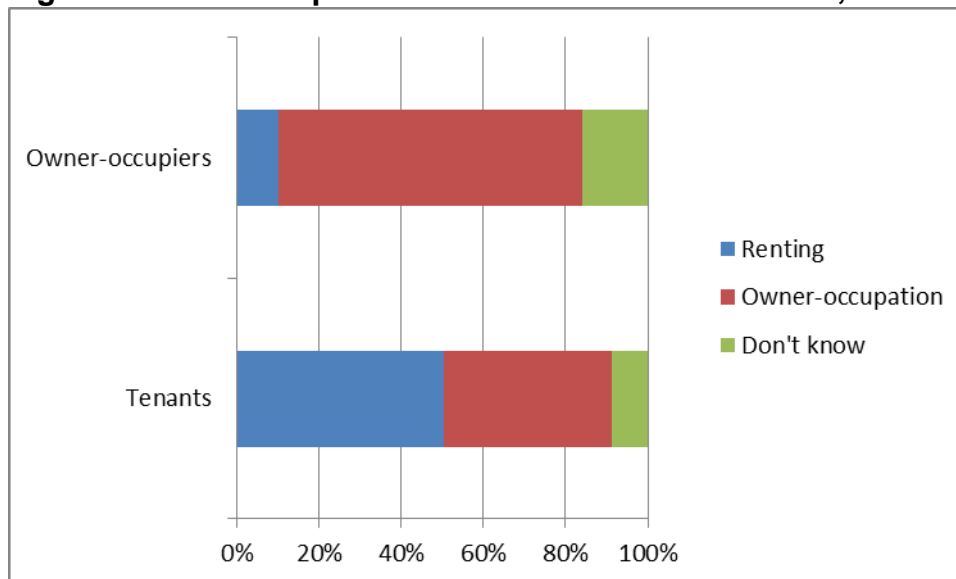
2.7 Social aspects

- What is (are) the dominant public opinion(s) towards certain forms of rental types or tenure forms?

Attitudes towards the different tenure sectors

The majority of French households have a preference for buying a dwelling rather than renting one. Research from Bouwfonds property development has shown that 74% of all owner-occupiers and 41% of all tenants have a preference for an owner-occupied dwelling (see also Figure 2.2). Table 2.5 (Summary table) gives insight into the general perception of the different tenure sectors in France.

Figure 2.2 Tenure preferences of French households, 2011



Source: Bouwfonds Property Development, 36

Table 2.5 Attitudes towards the different tenure forms (Summary table 3)

	Home ownership	Renting with a public task	Renting without a public task
Dominant public opinion	Positive	Associated with lower-income groups, segregation and social tenures, especially since the riots in 2005	Ok as a transitional tenure
Contribution to gentrification?	Yes	No	Yes
Contribution to ghettoization?	No	Yes	No

Source: the author's own interpretation of the French housing system

⁵⁹ <<http://centre.france3.fr/2013/10/31/treve-hivernale-comment-ca-marche-349023.html>>

3 Housing Policy

3.1 Introduction

- *How is housing policy related to the structure and concept of the (national) welfare state, to other welfare policies and the tax system?*
- *What is the role of the constitutional framework of housing? (in particular: does a fundamental right to housing exist?)*

The French welfare and housing system

France is known as a corporatist welfare state. Generally speaking, housing policies in corporatist welfare states are characterized by relatively little state influence in the field of housing; the state only intervenes to correct undesirable consequences of the market⁶⁰. However, in France the government interventions are more extensive and directly related to the general economy. One could say that housing policy is being used in a deliberately Keynesian manner to manage demand in the economy, which is a stated goal of housing policy in a way that is rare elsewhere⁶¹. French housing policy not only houses people on the fringes of the property market, but also serves urban planning strategies and irons out economic cycles by protecting jobs in the construction sector.⁶²

Another peculiar feature of French housing policy is the existence of a so-called 'enforceable right to housing' (*Droit au logement Opposable: DALO*). The enforceable right to housing implies that people who are not offered decent housing have the possibility of going to a mediation committee, or ultimately, to court. It came into force in 2008 for the most urgent house seekers (the homeless, low-income workers, single women with children). Since 2012, the right also applies to all other types of house seekers (for example people currently in inadequate public housing)⁶³. Since 2008, more than 140.000 households have demanded decent housing on the basis of this new law⁶⁴. However, despite the DALO, part of these households did not receive a housing offer within the appropriate legal term, which is due to housing shortages⁶⁵.

3.2. Governmental actors

- *Which levels of government are involved in housing policy (national, regional, local); what are they called; how many are there of each?*
- *Which level(s) of government is/are responsible for designing which housing policy (instruments)?*
- *Which level(s) of government is/are responsible for which housing laws and policies?*

⁶⁰ J. Hoekstra, Housing and the welfare state in the Netherlands. An application of Esping-Andersen's typology (*Housing, Theory and Society*, Vol. 20, No.1, pp. 58-71, 2003)

⁶¹ Ball, *European Housing Review* 2008, 32.

⁶² Driant, *Social housing in France : a sector caught between inertia and changes*.

⁶³ Haffner et al. *Bridging the gap between social and market rented housing in six European countries*, 115-116.

⁶⁴ B. Rolland, *Les Politiques du logement en France* [Housing policy in France], OECD Economics Department Working Papers, No. 870 (Paris : OECD, 2011).

⁶⁵ Rolland, *Les Politiques du logement en France*, 7.

France is known for its rather centralised administration and the far-reaching powers of its central government⁶⁶. However, in recent decades some decentralisation has occurred. In 1983, some powers previously held by the central government were transferred to lower tiers of government, and the regions (*régions*) were introduced as a new tier of government. The French regions are responsible for implementing national plans, developing regional plans and providing incentives to local authorities in the form of subsidies⁶⁷. Since 1983, the decentralisation process has continued to make steady progress⁶⁸.

At present, France comprises 22 *régions*, 96 *départements* and over 36,000 municipalities. In order to make municipal government more responsive and professional (economies of scale), many municipalities have entered into partnerships. Currently there are about 2,500 of these partnerships (*établissements publics de coopération intercommunale*). Increasingly, local policies are formulated at this level.

The municipalities, or the partnerships in which they are involved, have been charged with responsibility for local housing and building plans and the provision of building permits^{69 70}. Central government is still the main influence on housing policy, however, because of the extent to which local authorities are financially dependent on 'Paris'. After all, funding housing (production subsidies, housing allowances, fiscal concessions) is still predominantly a central government task⁷¹. Also, French law (*Loi relative à la solidarité et au renouvellement urbains – Loi SRU*) prescribes that municipalities with over a particular number of inhabitants (greater than 3,500 inhabitants, or greater than 1,500 inhabitants in the Paris area) should have at least 20%⁷² social rental dwellings⁷³. The municipalities have 20 years to meet this objective. If they do not make sufficient progress towards it, the central government can impose a fine.

Responsibility for housing policy has shifted between the different French ministries. Until 2004, it fell to the State Secretary of the Ministry of Infrastructure and Transport (*Ministère de l'Équipement*), while from 2004 to 2007, it fell under the responsibility of the Minister of Employment, Social Cohesion and Housing (*Ministère de l'emploi, de la cohésion sociale et du logement*). In May 2007, the Ministry of Housing and Cities was created (*Ministère du logement et de la ville*). In 2013, French housing policies are formulated at the Ministry of spatial equality and housing (*Ministère d'égalité du territoires et du logement*).

⁶⁶ Blanc, *The changing role of the state in French housing policies: a roll-out without roll-back*.

⁶⁷ Boelhouwer & van der Heijden, *Housing systems in Europe*, 177.

⁶⁸ A. Cole, Decentralization in France: Central Steering, Capacity Building and Identity Construction, (*French Politics*, No. 4, 31-57).

⁶⁹ Van der Heijden, Haffner and Reitsma, *Ontwikkeling van de woonuitgaven in zes West-Europese landen*, 123

⁷⁰ Tutin, *Social Housing: another French Exception?*

⁷¹ Kirchner, *Wohnungsversorgung für unterstützungsbedürftige Haushalte. Deutsche Wohnungspolitik im Europäischen Vergleich*, 175.

⁷² The current government wants to raise this percentage to 25%.

⁷³ Kirchner, *Wohnungsversorgung für unterstützungsbedürftige Haushalte. Deutsche Wohnungspolitik im Europäischen Vergleich*, 175.

3.3 Housing policies

- What are the main functions and objectives of housing policies pursued at different levels of governance?
- In particular: Does the national policy favour certain types of tenure (e.g. rented housing or home ownership (owner-occupation))?
- Are there measures against vacancies (e.g. fines or forced assignments of vacant houses)?

French housing policy has two main pillars:

1. To ensure that all households are housed in accommodation that corresponds to their needs and financial means;
2. Promoting homeownership.

Below, these two policy goals are briefly are briefly discussed.

To ensure households are housed in suitable and affordable accommodation

Like in many other countries, also in France the prime objective of housing policy is to ensure that all households are housed in accommodation that corresponds to their needs and financial means. This is also the main idea behind the *Droit au logement Opposable* (DALO). In order to meet this policy objective, a large array of housing policy instruments is employed:

- Subject subsidies (subsidies for households)
- Social housing
- Fiscal subsidies for investment in the rental sector
- Financial incentives for home improvement

Most of these policy instruments are discussed in more detail in the Sections 2.2. and 2.3.

The encouragement of homeownership

Like in many other European countries, the French government encourages home ownership. This is translated in various forms of financial support for starters on the home ownership and a relatively advantageous fiscal regime for homeowners.

In 2010, the financial incentives for home ownership in France were substantially reformed. Policy measures such as the *Pass-foncier* and the fiscal deduction of interest payments were abolished and the use of the PTZ-loans was restricted to the acquisition of new dwellings. This reform was carried out in order to make the support system less costly, less complex and more targeted. After all, in the past some of the financial support was received by households who in fact did not really need such support⁷⁴.

Since January 2011, an important financial incentive for starters on the homeownership market that remains is the zero interest loan (*Prêt à taux zéro*: formerly PTZ, now PTZ+). The PTZ + can be used for the acquisition of new dwellings or existing dwellings that social rental landlords sell to their tenants. In addition to the PTZ+, there are also soft (e.g. low interest) loans that can be used for the purchase of, or the

⁷⁴ Rolland, *Les Politiques du logement en France*, 17-18.

renovation of, existing dwellings (*Prêt Accession Sociale, Prêt Conventionné*). Furthermore, existing homeowners may apply for housing allowances, whereas future homeowners may save for their down payment with the help of subsidized loans (*prêts épargne-logement*)⁷⁵.

Finally, it should be noted that the French tax system is not tenure neutral, but favours owner-occupiers as against tenants. This is due to the fact that the so-called 'imputed rent' that homeowners enjoy is not taxed in France⁷⁶. However, homeowners do have to pay the local property tax (*taxe foncière*).

Other relevant housing policies

French regulation determines what a 'decent home' is; each dwelling should meet minimum quality standards in order to be suitable for letting. The quality regulations specify that a dwelling with a surface area below 9 square metres, a height below 1.80 meter or a volume lower than 22 cubic metres is not authorized for rental uses (but it can be sold). Local authorities are entitled to oblige landlords to ensure safety and prevent health hazards for the tenants. Especially in the big cities, where *marchands de sommeil* (sellers of accommodation for the night) rent rooms to immigrants, the aforementioned quality standards are sometimes not met⁷⁷.

The vacancy rate in France is relatively high. Therefore, the French government has developed policies, such as fiscal policies, to reduce this vacancy rate. Since 1999, there is a tax on dwellings that are vacant for more than 2 years. This tax specifically focuses on areas with a lot of pressure on the housing market.

3.4 Urban policies

- *Are there any measures/ incentives to prevent social segregation and ghettoization?*

Encouraging social diversity

An important urban policy objective is the encouragement of social diversity. Especially, the urban riots of 2005 led to the formulation of strong anti-segregation policies. The goals of these policies are twofold. First of all, they try to limit the concentration of disadvantaged people in particular neighbourhoods by attracting better-off people to these neighbourhoods. Second, they try to accomplish that disadvantaged people get more possibilities of finding a suitable and affordable dwelling in more affluent areas (*Loi SRU*). By striving for so-called 'mixed neighbourhoods', the French government hopes to increase the social cohesion and the economic integration of disadvantaged households.⁷⁸ Amongst other things, the policies that are developed within this framework focus on the building of new dwellings, the demolition of the worst social housing and the renovation of the dwellings that remain. These physical operations are integrated into a broader urban strategy that also includes socially oriented projects in

⁷⁵ Rolland, *Les Politiques du logement en France*, 17-18.

⁷⁶ Rolland, *Les Politiques du logement en France*, 18.

⁷⁷ Hoekstra, *Country report France*, 22.

⁷⁸ Rolland, *Les Politiques du logement en France*, 14

the field of job creation and education improvement⁷⁹. Many of the urban renewal projects are managed by *Agence Nationale pour la Rénovation Urbaine* (ANRU); the national agency dedicated to urban renewal.

3.5 Energy policy

- To what extent do European, national and or local energy policies affect housing?

Energy policy and housing

Since the 1990s, promoting sustainability and enhancing energy-efficiency have become important policy goals in French housing policy, not only for environmental reasons but also to dampen the energy costs that French households pay. Since 2009, newly built French dwellings have to comply with strict energy requirements. In the existing housing stock, such norms do not apply. However, there are various government incentives that aim to enhance the energy-efficiency of especially this housing stock⁸⁰:

- There is a special eco-variant of the PTZ-loan. This eco-PTZ-loan can be used to finance renovations in the existing housing stock that make the dwelling more energy-efficient.
- There is a soft loan for social rental landlords that want to make their dwelling stock more energy-efficient (*écoprêt HLM*).
- Part of the investments in energy-efficiency may be deducted from the income tax (*credit d'impôt développement durable*).

Table 3.1 (Summary table) gives an overview of the most relevant policy aims, laws and policy instruments in French housing. All elements in this table refer to the national level since, despite decentralizing tendencies, this is still the level at which most money is invested in housing and related policies.

Table 3.1 Relevant policy aims, laws and policy instruments in the French housing system (Summary table 4)

Policy aims	Laws	Policy Instruments
To ensure that households are housed in adequate and affordable accommodation	Droit au logement opposable (DALO)	<ul style="list-style-type: none"> • Subject subsidies • Social Housing • Fiscal incentives for investment in the private rental sector • Fiscal incentives for home improvement
The encouragement of home ownership		Soft and subsidized loans (PTZ+, PC, PAS, prêts épargne-logement)
Encouragement of social	Loi Solidarité et renouvellement	Various programs and policy

⁷⁹ C. Droste, C. Lelevrier, and F. Wassenberg, Urban Regeneration in European Social Housing Areas, in *Social Housing in Europe II. A review of policies and outcomes*, ed. K. Scanlon and C. Whitehead (London: London School of Economics and Political Science, 2008).

⁸⁰ Rolland, *Les Politiques du logement en France*, 14

diversity	urbain (SRU)	measures, largely coordinated by ANRU.
Promoting sustainability and enhancing energy-efficiency	LOI n° 2009-967 du 3 août 2009 de programmation relative à la mise en œuvre du Grenelle de l'environnement	Strict requirements for new dwellings (Loi 2009-967) Soft loans and tax incentives to stimulate investments in energy-efficiency in the existing housing stock.

3.6 Subsidization

- *Are different types of housing subsidized in general, and if so, to what extent? (give overview)*
- *Explain the different forms of subsidies for tenants, (certain) landlords and, if relevant, housing associations or similar entities acting as intermediaries (e.g. direct, by means of investment loans, tax privileges). Which level of government is competent to assign the subsidies?*

French housing subsidization

Loans and subsidies have always played a major role in the French housing policy, particularly during the period following World War II. This Section describes the current French housing subsidy system and makes a distinction between subsidies for landlords, subsidies for tenants and subsidies for owner-occupiers. However, we first pay attention to the general regulatory and financial framework for French rental housing.

The general regulatory and financial framework for French rental housing

The French government determines the instruments and objectives of social housing organisations. Support for French rental landlords is provided through an unusual financial system in which household savings (accumulated in the state-regulated *Caisses d'épargne*) are used to provide loans to landlords which build social rental housing. Most of these savings comes from tax-free or fiscally advantageous saving accounts for households such as the *Livret A* scheme or similar schemes⁸¹. The interest rate for the *Livret A* savings scheme is the mean of the Euribor and Eonia interest rates. The interest rate on the loans for landlords is linked to this *Livret A* interest rate.

The above financial system is called the *Fonds d'Epargne*. It is coordinated by the state-controlled National Deposit Office (*Caisse des Dépôts*). The system limits the amount of state subsidisation required for social rental housing but also obliges the French state to find a balance between a favourable interest rate for the lenders (the social rental landlords) on the one hand, and a favourable interest rate for the capital providers (households) on the other hand⁸². The repayment of the *Fonds d'Epargne* loans is guaranteed by the municipalities or the guarantee fund for the social rental sector: the *Caisse de Garantie du Logement Locatif Social* (CGLLS).

⁸¹ M. Amzallag and C. Taffin, *Le logement social* [Social Housing] (Paris: Collection Politiques Locales, 2003).

⁸² Amzallag and Taffin, *Le logement social*.

The *Fonds d'Epargne* loans are allocated following an analysis of the operations and financial health of the social rental landlords concerned. The *Caisse des Dépôts* (the manager of the fund) can refuse to provide loans if they deem the financial management of the social rental landlord that is applying for the loan to be unacceptable⁸³. It is also responsible for the financial supervision of social rental landlords.

Until 2009, only two banks (*Caisses d'Epargne* and *Banque Postale*) were allowed to provide Livret A saving accounts. However, following the EU free competition rules, other banks also got the opportunity to provide such accounts since then, under the condition that they transfer 65 percent of their livret A savings to CDC⁸⁴. In the longer term this may have negative consequences for the French social rental sector. If the money deposited at the *Caisse des Dépôts* decreases because of competition with regular banks, the social housing organisations will have to obtain loans from the regular banking system at less favourable conditions. This means that they will have less money available for investment and may have to raise their rents⁸⁵. Central government still has a significant influence on the allocation of the loans of the *Fonds d'Epargne*. It defines housing needs, approves projects and decides on the level of the subsidy given to social housing. Nevertheless, local authorities are playing a growing role: they also supervise social landlords, co-finance social housing programmes and are in charge of urban planning. Since 2004, the Second Decentralisation Law has allowed groups of local authorities to take responsibility for distributing state grants for social housing⁸⁶. This handover has partially altered the social housing production landscape by making more room for local and regional plans to increase available capacity⁸⁷.

Whereas the *Caisse des Dépôts* is responsible for the financial supervision of the social rental sector, the general performance of social rental landlords is evaluated by a central government organisation called MILOS: *Mission d'Inspection Interministérielle du Logement*, which is related to both the Minister of Housing and the Minister of Finance. MILOS can advise ministers to impose sanctions on social rental landlords that do not perform well, with the dismissal of the board of directors, and in extreme cases even the dissolution of the organisation as the ultimate penalty⁸⁸. Besides a controlling function, MILOS also plays an advisory role for the government.

Subsidies and loans for social and private rental landlords: housing production

There are currently four different loans that can be used for the construction, acquisition, or renovation of social rental dwellings⁸⁹. Each loan focuses at a specific segment of the social rental market. The main characteristics of the four loans are described below.

⁸³ Boelhouwer, *Frankrijk*, 76.

⁸⁴ J.C. Driant and L. Mingye, The Ongoing Transformation of Social Housing Finance in France: Towards a Self-financing System? (*International Journal of Housing Policy*, Vol. 12, No. 1, 2012), 100.

⁸⁵ L. Ghékière, Social housing as a service of general interest. In: *Social Housing in Europe II. A review of policies and outcomes*, ed. K. Scanlon and C. Whitehead (London: London School of Economics and Political Science, 2008), 282

⁸⁶ Lévy-Vroelant, and Tutin, *Social Housing in France*, 75.

⁸⁷ Driant, *Social housing in France : a sector caught between inertia and changes*, 120.

⁸⁸ Bougrain, *France*.

⁸⁹ A new loan that is not dealt with in this discussion is the *Prêt Social de Location-Accession* (PSLA).

More detailed information can be found in Table 3.2. It should be noted that the specific parameters of the four loans are subject to regular change.

Prêt Locatif à Usage Social (PLUS)

The PLUS (*Prêt locatif à usage social*) is the most common social housing loan. It is a loan that is solely available for private and public social rental landlords and SEMs (public-private partnerships). The maximum term of this loan is 40 years⁹⁰. The interest rate is variable; it is 0.6% higher than the interest rate that households receive on a *Livret A* saving account. PLUS loans can be used for the purchase of building land, the purchase of existing dwellings, the construction of new dwellings, the transformation of non-residential buildings into dwellings and the realisation of accommodation for vulnerable groups (*foyers*). Furthermore, the loan may be invested in urban restructuring operations. Dwellings financed with the help of the PLUS are subject to a reduced value added tax rate (5.5% instead of 19.6%) and for 25 years, no land and property taxes (*taxe foncière*) have to be paid.

The PLUS is accompanied by a subsidy. The amount of this subsidy is either 5% (newly built dwellings) or 10% (renovation work)⁹¹ of the estimated costs of the investment⁹². Dwellings subsidised with the PLUS must meet certain requirements with regard to the maximum rent and incomes of the tenants. The maximum rent levels differ between regions.

The income ceilings used in the PLUS serve as a benchmark for the income limits used in the other subsidised loans. These income ceilings vary between household types and regions. In France as a whole, about two-thirds of all households are eligible for PLUS-housing. This percentage was even about 10 percent higher in the past. However, in 2009 the “Boutin law” lowered the income ceilings, in an attempt to diminish the broadening rift between ceilings and demand and to reduce the risk of the EU challenging the French conception of social housing⁹³.

Although in theory, the target group for the PLUS is relatively broad, in practice this kind of housing is usually assigned to those applicants that are in most urgent need. As a result, the income levels of new tenants are often well below the stipulated ceiling for eligibility for PLUS dwellings. Nevertheless, in the literature, the French subsidized rental housing system is still often presented as the archetype of the ‘generalist’ conception of social housing, something which is called a ‘myth’ by some French scholars⁹⁴.

As far as the income requirements of the PLUS are concerned, there is not only an income limit but there are also conditions with regard to the spread of incomes around this income limit. In order to ensure a ‘healthy’ social mix, both middle and low-income groups should have access to PLUS-subsidised housing. Consequently, 30% of

⁹⁰ For land purchases, the term of the loan can be 50 years.

⁹¹ Under specific conditions, these percentages may be higher; for example in Corsica, in experimental projects or if a lot of quality is added to the dwelling.

⁹² This percentage is not applied to the actual costs but to the estimated costs of the investment. A formula is used to calculate these estimated costs. Also, if the cost of the land passes a certain ceiling, extra land costs above this ceiling are subsidised as well (at a subsidy percentage of 30 to 50%).

⁹³ Driant, *Social housing in France : a sector caught between inertia and changes*, 126.

⁹⁴ Driant, *Social housing in France : a sector caught between inertia and changes*, 116.

the tenants should have an income that is less than 60% of the maximum income level, whereas 10% of the tenants may have up to 20% more income than this income level⁹⁵.

Prêt locatif aidé d'intégration (PLA-I)

This loan is a variation of the PLUS that is specifically destined for the construction or acquisition of dwellings for people with social and/or economic problems. It has a maximum term of 40 years (50 years for land purchases). The principle of this loan is largely the same as that of the PLUS, but the interest rate is significantly lower, the maximum permitted rent is lower, the subsidies are higher (maximum 35% of the estimated costs) and the income obligations for residents of PLA-I dwellings are stricter. The PLA-I regime also consists of a social programme that aims to stimulate the social integration of the tenants of PLA-I dwellings. About 30% of all French households is eligible for PLA-I housing.⁹⁶

Prêt locatif social (PLS)

The PLS loan is available to any investor (individual household, company or social rental landlord) that wishes to provide rented homes in the 'intermediate sector' (*secteur intermédiaire*) – the rental segment just above the 'traditional' social rental sector. The loan is specifically destined for regions with tight housing markets, where there is a relatively large gap between the 'cheap' social rental sector and the 'expensive' market rental sector. The target group for PLS-housing is the upper middle class; households that are in the seventh or eighth income distribution decile⁹⁷.

About three-quarters of PLS loans are taken up by social rental landlords, and the remaining quarter by individual or institutional market rental landlords⁹⁸. Rents and tenants' incomes in this part of the rental sector are higher than in the case of social housing financed under the PLUS system, but they are still subject to state regulations. Dwellings financed with PLS loans are also subject to a lower rate of VAT, and no land or property taxes (*taxe foncière*) are payable on them for the first 25 years. PLS loans can be used either to build new homes or to purchase and refurbish existing property. Investors can obtain PLS loans through the *Caisse des Dépôts* or through banks or finance companies that have signed contracts with this organisation.

A PLS loan must cover at least 50% of the investment costs. The term of the loan is agreed between the borrower and the lender (the maximum term is 30 years, or 50 years for land purchases). The interest rate depends on the credit provider and the type of investor involved (social rental landlord or market rental landlord).

To apply for a PLS loan, the landlord must enter into a contract with the French state which runs for 15 to 30 years. During this period, the landlord is required to comply

⁹⁵ Ministère de l'égalité des territoires et du logement, *Les aides financières au logement* (Paris: Ministère de l'égalité des territoires et du logement. 2012), 21.

⁹⁶ Driant and Mingye, *The Ongoing Transformation of Social Housing Finance in France: Towards a Self-financing System?*, 93.

⁹⁷ Driant and Mingye, *The Ongoing Transformation of Social Housing Finance in France: Towards a Self-financing System?*

⁹⁸ Hoekstra, *Country report France*.

with regulations concerning the rent level and the income of the tenants. For social rental landlords, these obligations remain even after the loan has been fully paid off⁹⁹.

Tenants of dwellings financed by a PLS loan may not earn more than 130% of the income limit for 'normal' social housing (income ceiling for the PLUS).

Prêt Locatif Intermédiaire (PLI)

The PLI loan is similar to the PLS but targets a somewhat more up-market section of the intermediate rental sector. The PLI is specifically designed for very tight housing markets. In practice, this means that the loan is available in the Paris region, the larger cities (with over 250,000 inhabitants) and a few zones with a tight and expensive housing market such as the Côte d'Azur and the region around the lake of Geneva. In other areas, the loan can only be taken up after explicit permission of the government.

PLI loans are available to both social rental and market landlords. Interest on a PLI loan is slightly higher than on a PLS loan. The fiscal advantages that apply to PLA-I, PLUS and PLS loans, do not apply to PLI-loans.

Market rental landlords taking up a PLI loan are required to let the home they build or purchase with the loan for a minimum of nine and a maximum of 30 years. During this period, the landlord is required to comply with regulations regarding the rent level and the income of the tenants, although the rent and income limits are higher than in the case of a PLS loan. Tenants of dwellings financed with a PLI loan may not earn more than 180% of the income limit for 'normal' social housing (the income ceiling for the PLUS). Unlike PLA-I, PLUS and PLS dwellings, PLI dwellings do not count as social rental dwellings within the framework of the loi SRU¹⁰⁰.

Other forms of housing finance

Generally speaking, about 71% of the investments of social rental landlords are financed by the loans described above. An additional 15% comes from government grants and subsidies, mostly from local authorities. Furthermore, about 10% is financed by equity capital from the HLM body itself¹⁰¹. The remaining 4% comes from the 1% *logement* scheme (*Action Logement*). Any private company employing over 19 people has to put money in this scheme that is designed to express social solidarity between employers and employees on the one hand, and wider society on the other hand (personal communication Schaefer). The rate, initially set at 1% of the total gross wage bill of private companies, has been set at 0.95% since 1992. The largest proportion of this money (0.50%) goes to the *Fonds National d'aide au logement* (FNAL), which uses it to finance housing allowances. The rest of the contribution (0.45%) is transferred to registered intermediary organisations (CIL: *Comités Interprofessionnels du Logement*) and chambers of commerce. These organisations finance social housing and urban renewal operations and provide financial support, advice and services to households¹⁰². As compensation for their financial help, the intermediary organisations are often made

⁹⁹ Amzallag and Taffin, *Le logement social*, 9.

¹⁰⁰ Ministère de l'égalité des territoires et du logement, *Les aides financières au logement*

¹⁰¹ Driant and Mingye, *The Ongoing Transformation of Social Housing Finance in France: Towards a Self-financing System?*

¹⁰² Some of these services are open to all households whereas others only apply to the employees of the companies that participate in the 1% logement scheme.

shareholders of social rental landlords. A significant part of the social rental dwelling stock is also reserved for the employees of the companies that are involved in the 1% *logement* scheme¹⁰³. Furthermore, it should be noted that the French social rental landlords also receive indirect fiscal subsidies of the state since they pay a lower value added tax rate and the CDC-loans are accompanied by an exemption of the local land and property taxes; the state compensate the loss of income incurred by regional and local authorities¹⁰⁴.

With the multi-faceted finance system described above, social rental landlords have to liaise with financing consortia for each project, and to accommodate each financier's expectations with regard to the housing programme and the population group they target.¹⁰⁵

Table 3.2 Main characteristics of the four loans for rental landlords, France

	PLA-I	PLUS	PLS	PLI
Target group	Social rental landlords, SEMs, local authorities, organisations that deal with housing for vulnerable groups	Social rental landlords and SEMs	all investors	all investors
Interest rate	Livret A – 0.2% (2,05% in 2012) [`]	Livret A + 0,6% (2,85% in 2012)	Depends on credit provider and type of landlord, usually around Livret A + 1.1% (3,36% in 2012)	Depends on credit provider and type of landlord, usually around Livret A + 1.4%
VAT-rate	Low (7%)	Low (7%)	Low (7%)	Normal ¹⁰⁶ (19,6%)
Exemption of land and property taxes	Yes (25 years)	Yes (25 years)	Yes (25 years)	No
Term of the loan	40 years (50 years for the value of the land)	40 years (50 years for the value of the land)	30 years (50 years for the value of the land)	30 years (50 years for the value of the land)
Amount of the loan	Variable, maximum 100% of investment costs	Variable, maximum 100 % of investment costs	> 50% of investment costs	Variable
Duration of contract with	Long term	Long term	Term of the loan, minimum 15 years	Term of the loan, minimum 9 years

¹⁰³ Bougrain, *France*.

¹⁰⁴ Driant, *Social housing in France : a sector caught between inertia and changes*, 120.

¹⁰⁵ Driant, *Social housing in France : a sector caught between inertia and changes*, 120.

¹⁰⁶ However, for renovation work, the low Value Added Tax applies.

state			(longer term for social rental landlords)	(longer term for social rental landlords)
Maximum amount of direct subsidy ¹⁰⁷	25%	Depends on type of investment, usually between 5% and 10%	No subsidy	No subsidy
Maximum rent level in the most expensive region (Paris) in 2013	€5,74 /m ²	€6.44 /m ²	€12,57 / m ²	€ 17,77/ m ²
Maximum income level (based on taxable income: <i>revenu imposable</i>)	Depending on region and household size, < 60% of the income ceiling of PLUS dwellings	Depending on region and household size	Depending on region and household size, maximum 130% of the income level of PLUS dwellings	Depending on region and household size, maximum 140-180% of the income level of PLUS dwellings
Housing allowance for tenants?	Yes	Yes	Yes	Yes (but no APL)
Number of dwellings financed in 2006	8,000	51,000	33,000	2,800 (2003)

Source: Ministère de l'égalité, des territoires et du logement, 2012, Haffner et al. , 2009, websites of CDC (www.cdc-net.com), Action Logement (http://www.actionlogement.fr)

Subsidies and loans for private and social rental landlords: renovation

Besides the four loans discussed before, there are also some subsidies that aim specifically to improve the quality of the rental housing stock.

Prime à l'amélioration des logements locatifs sociaux (Palulos).

The Palulos is a state subsidy which social rental landlords can use for the renovation of dwellings of at least 15 years old. The government has set up a list indicating which kind of renovations can be subsidised. Dwellings subsidised through the Palulos scheme are part of the social rental sector. This means that they are tied to maximum rent levels, that the tenants have to meet certain income obligations, and the low value added tax rate applies.

The Palulos subsidy generally covers 10%¹⁰⁸ of the renovation costs with a maximum of €13,000 per dwelling. However, if the renovation leads to an increase in the habitable surface of the dwelling of at least 10%, the maximum subsidy rises to €20,000. The Palulos subsidy cannot be used in combination with any other subsidy

¹⁰⁷ In case of relatively high land costs, part of these costs may be subsidized by the state as well.

¹⁰⁸ Although in specific cases, this percentage can be much higher (up to 40% of the renovation costs).

arrangements such as the PLUS, the PLA-I, the PLS, the PLI or the ANAH subsidies. However, a Palulos grant may be complemented by a specific 15-year Palulos loan. This loan is also available for renovations that do not qualify for the Palulos subsidy and is known as a PAM: *Prêt à l'Amélioration*. The loan is provided by the *Caisse des Dépôts* at the same interest rate as the PLUS loans¹⁰⁹.

Grants for home refurbishment

The *Agence Nationale de l'Habitat* (ANAH) is a national body that provides grants for home refurbishment and improvements by homeowners and individual private rental landlords. In order to qualify for a grant from the ANAH, one has to meet the following conditions¹¹⁰:

- The dwelling in question must be at least fifteen years old;
- The renovation should cost at least € 1500, except for households with very modest resources;
- The refurbishment must be carried out by professionals;
- The work must be approved by the ANAH;
- The income of the applicant should be below a certain income level.

The ANAH grants normally cover 20 to 50% of the refurbishment costs, depending on the type of renovation and the income of the applicant. Individual private landlords can only receive an ANAH subsidy if they sign a contract with the state for nine years. During this period, the landlords has to comply with certain requirements regarding the rent level and the income of the tenants. Rental dwellings that are financed with the help of the ANAH grants are also subject to specific tax deductions¹¹¹.

Overview of the subsidies for landlords

Table 3.3 (Summary table) gives an overview of the different loans and subsidies that are available for landlords. The loans (PLUS, PLA-I, PLS, PLI, PAM) are already paid out before the rental contracts are signed and keep on running during the tenancy period. The Palulos and ANAH grant are typically provided before a new rental contract starts. During the tenancy period, individual private rental landlords can take profit of various fiscal deductions (see also the Section on taxation).

Table 3.3 An overview of the different loans and subsidies that are available for landlords (Summary table 5)

Subsidization of landlord	Social rental landlords	Private rental landlords
Subsidy before start of contract (e.g. savings scheme)	PLUS, PLA-I, PLI, PLS, PAM	PLI, PLS
Subsidy at start of contract (e.g. grant)	PLUS, PLA-I, PLI, PLS, Palulos	ANAH-grant
Subsidy during tenancy (e.g. lower-than market interest)	PLUS, PLA-I, PLI, PLS, PAM	Fiscal measures (see also section on taxation)

¹⁰⁹ Ministère de l' égalité des territoires et du logement, *Les aides financières au logement*, 24-25.

¹¹⁰ Agence nationale de l'habitat (Anah), *Les aides de L'Anah. Le Guide*, (Paris: Anah, 2013).

¹¹¹ Agence nationale de l'habitat (Anah), *Les aides de L'Anah. Le Guide*.

rate for investment loan, subsidized loan guarantee)		
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Subsidies for tenants

In France, the housing allowances are called *aides à la personne*. They are paid out by the social security offices (*Caisses d'Allocations Familiales* and *Caisses de Mutualité Sociale Agricole*). The housing allowances are funded by the *Fonds des prestations familiales* (National fund for family benefits) and the *Fonds national des aides au logement* (FNAL, National fund for housing benefits). Housing allowances in France are available to both tenants and owner-occupiers on lower incomes.

Formally, there are two kind of housing allowances. The APL (*L'aide personnalisée au logement*) en the AL (*L'allocation logement*). The two allowances have a different history, but since 2001, the difference is no longer relevant to tenants. Since that date, the AL and the APL have been based on exactly the same subsidy system, although they retain their different names and separate target groups¹¹².

Lower-income tenants who rent a dwelling let under a contract (*conventionnement*) between the landlord and the central government are eligible for the APL. These contracts cover most HLM dwellings, half of SEM dwellings as well as market rental dwellings that are financed through ANAH subsidies. The contract imposes certain obligations on the landlord regarding rent setting and the income of the tenants to which they let the dwelling. The aim of the contracts is to prevent housing allowances being translated into higher rents. Lower-income tenants that live in rental dwellings that are not let under a contract between landlord and state are entitled to the AL¹¹³. In order to be eligible for the AL, the dwelling must meet certain criteria with regard to comfort and surface area.

The level of the allowance depends on the income and composition of the household and its housing costs. Each household is reassessed annually to verify whether it is still eligible for housing allowances and how much support it is entitled to. The housing allowances are financed by the French state, by the contributions of employers (the 1% *logement* scheme) and by social security contributions made by households (through the *régimes sociaux*).

In 2011, about 6.12 million French households were receiving a housing allowance (5,03 million tenants, 540,000 households in *foyers* and 550,000 owner-occupiers). In total, these households received a sum of € 16,350 billion, or an average of €2670 per household¹¹⁴.

**Table 3.4 Overview of the subsidies for tenants that are available
(Summary table 6)**

¹¹² M. Satsangi, Housing Allowances in France, in P. Kemp, (ed.) *Housing allowances in comparative perspective* (Bristol: The Policy Press, 2007).

¹¹³ There are two kinds of AL benefits – those of a family nature (*l'allocation à caractère familial*, ALF) and those of a welfare nature (*l'allocation à caractère social*, ALS). ALF is available for newly married couples (married for less than five years) and for singles and married couples looking after another person in their household (a child or an elderly or disabled person). ALS is intended for low-income households who are not entitled to APL or ALF.

¹¹⁴ Commissariat Général au Développement Durable, *Compte du logement 2011. Premiers résultats 2012*.

Subsidization of tenant	Rental dwellings with a contract	Rental dwellings without a contract	Owner-occupiers
Subsidy before start of contract (e.g. voucher allocated before find a rental dwelling)	No	No	No
Subsidy at start of contract (e.g. subsidy to move)	No	No	No
Subsidy during tenancy (in e.g. housing allowances, rent regulation)	APL	AL	AL (APL in the case of an PC or PAS-loan)

Subsidies for owner-occupiers (see table 3.5 for an overview)

The most important financial incentive for starters on the homeownership market that remains is the zero interest loan (*Prêt à taux zéro*: formerly PTZ, now PTZ+). The PTZ + can be used for the acquisition of new dwellings or existing dwellings that social rental landlords sell to their tenants. PTZ+ loans are provided by credit provider that have signed an agreement with the central government. The loan is not a right. It is up to the credit provider to decide if they provide the PTZ + or not. Whether a household is eligible for a PTZ+-loan depends on the household income. As far as this is concerned, it should be noted that the income ceiling depends on the region and the number of persons in the household. The PTZ+ may cover 10 to 38% of the total financing costs, depending on the region, the type of operation that is financed (new or existing dwelling) and the energy performance of the dwelling, also taking into account a particular maximum. The term of the loan ranges between 8 and 23 years, again depending on the region, the characteristics of the household (income and number of persons) and the type of operation that is financed¹¹⁵.

In addition to the PTZ+, there are also other loans that can be used for the purchase of, or the renovation of, existing dwellings, as well as for the acquisition of new dwellings (*Prêt Accession Sociale*, *Prêt Conventionné*). These loans are destined for lower-income groups and can be taken out as principal loans. They give entitlement to the APL housing allowance¹¹⁶. Homeowners that not qualify for the APL housing allowance may still apply for the AL housing allowance. Furthermore, future homeowners may save for their down payment with the help of subsidized loans (*prêts épargne-logement*)¹¹⁷.

Table 3.5 Overview of the subsidies for tenants that are available (Summary table 7)

Subsidization of owner-occupier	
Subsidy before start of contract (e.g. savings scheme)	prêts épargne-logement
Subsidy at start of contract	ANAH-subsidies

¹¹⁵ Ministère de l' égalité des territoires et du logement, *Les aides financières au logement*, 30-37.

¹¹⁶ Ministère de l' égalité des territoires et du logement, *Les aides financières au logement*, 38-39.

¹¹⁷ Rolland, *Les Politiques du logement en France*, 17-18.

(e.g. grant)	
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee, housing allowances)	PTZ+, PC, PAS, AL, APL

3.7 Taxation

- *What taxes apply to the various types of tenure (ranging from ownership to rentals)? In particular tenants (do tenants also pay taxes on their rental tenancies? If so, which ones?) and homeowners (income tax of homeowners: is the value of occupying a house considered as a taxable income? And is the profit derived from the sale of a residential home taxed?)*
- *Is there any subsidization via the tax system? If so, how is it organized? (for instance, tenants being able to deduct rent from taxable income; landlords being able to deduct special costs; homeowners being treated favourably via the tax system)*
- *In what way do tax subsidies influence the rental markets?*

Taxation of housing in France

This Section discusses taxation issues. It makes a distinction between the taxation of tenants, the taxation of owner-occupiers and the taxation of landlords. Moreover, it pays extensive attention to the various tax incentives for landlords that exist in France.

Taxation of tenants

In France, there are no specific taxes for tenants. However, households that live in a social rental dwelling (defined as dwellings that are owned or managed by social rental landlords and financed with the help of the state) and who have an income that is at least 120% of the income ceiling for the social rental dwelling concerned have to pay a supplement (*supplément de loyer de solidarité*: SLS) on their rent in order to 'compensate' for their good financial situation. The amount of the supplement depends on the household income and the size of the dwelling. However, the total housing costs (rent + rent supplement) may not exceed 25% of the total household income¹¹⁸. Also, there is a region-dependent ceiling on the level to which the rent can rise. Tenants with a high income that live in vulnerable area (*Zones Urbaines Sensibles*: ZUS or *Zones de Revitalisation Rurale*: ZRR) don't have to pay the SLS¹¹⁹. If applicable, tenants also have to pay income tax, wealth tax and capital gains tax. Furthermore, they have to pay the local *taxe d'habitation*.

Taxation of owner-occupiers

The taxation of French owner-occupiers is relatively straightforward. The dwelling is treated as a consumption good, which means there is no mortgage interest deduction and the imputed rent is not taxed. However, owner-occupiers do have to have to pay local land and property taxes such as the *taxe foncière* (only to be paid by property and land owners) and the *taxe d'habitation* (to be paid by all residents). These taxes are

¹¹⁸ This is the general rule. Local exceptions to this rule are possible.

¹¹⁹ <www.anil.org>

raised on the basis of the rental value of the dwelling (*valeur locative cadastrale*)¹²⁰. Furthermore, owner-occupiers with assets that exceed € 800.000 have to pay a wealth tax: *l'Impôt de Solidarité sur la Fortune* (ISF). The assets that are accumulated in the dwelling of the owner-occupier count for 70% in this tax (before 2008, this was 80%). Also, a transfer tax has to be paid when a home owner buys an existing dwelling. The current rate of this transfer tax is 5,09%, but this rate will be increased in 2014. Finally, France has a capital gains tax that taxes capital gains on both moveable and immoveable possessions. However, capital gains that are made on the primary dwelling of owner-occupiers may often be exempt from this rather complex tax¹²¹.

Taxation of landlords

Social rental landlords

Social rental landlords are not required to pay corporation tax or local business taxes (*contribution foncière des entreprises*). They also pay a lower VAT rate than the standard rate, and they may be exempt from land and property tax^{122 123}.

Institutional market rental landlords

Private companies doing business in France are subject to corporation tax¹²⁴ (*impôt sur les sociétés*). It should be noted, however, that French companies can have many types of legal status, and the status adopted affects the tax regime that applies to the company. Smaller companies in particular are sometimes subject to income tax (with each person in the company declaring revenue separately) rather than corporation tax, because the French income tax system has a special facility for declaring commercial or industrial income¹²⁵.

A large number of items are deductible under French corporation tax, including various other taxes, reserves, labour costs, depreciation and interest. Corporation tax is payable on the difference between the revenue and the sum of these deductions. The current tax rate is 33.33%. Certain types of company are (partially) exempt from corporation tax, including the *Sociétés d'Investissement Immobiliers Cotées*: Real Estate Investment Trusts. However, the share of these companies is still rather limited. In addition to corporation tax, companies of which 50% or more of their total assets in France consist of real estate, also have to pay a tax of 3% on the market value of this property¹²⁶. French institutional market rental landlords also have to pay capital gains tax over their real estate sales, although there may be circumstances that can lead to an exemption of this tax¹²⁷. Finally, both institutional and individual rental landlords have to pay the *la taxe d'enlèvement des ordures ménagères* (TEOM). This tax, which is raised

¹²⁰ Elsinga, Marja, et al., *Beleid voor de private huur. Een vergelijking van zes landen*. [Policies for the private rental sector. A comparison of six countries] (Ministerie van de Vlaamse Gemeenschap, 2007).

¹²¹ <<http://www.french-property.com/guides/france/finance-taxation/taxation/capital-gains-tax>>

¹²² In the first 25 years after they have taken up a PLUS, PLA-I or PLS loan.

¹²³ Donner, *Housing Policies in the European Union*, 272, Amzallag and Taffin, *Le logement social*, 9.

¹²⁴ C. Parkinson, *Taxation in France 2004. A foreign perspective* (Guernsey: PKF Limited, 2004), 41.

¹²⁵ Parkinson, *Taxation in France 2004. A foreign perspective*, 98.

¹²⁶ European Property, Freeman Business Information plc (<www.efreeman.co.uk>)

¹²⁷ Elsinga et al., *Beleid voor de private huur. Een vergelijking van zes landen*, 58.

over the rental value of the dwelling (*valeur locative cadastrale*), is used for garbage collection and cleaning of public spaces. The landlord may charge this tax to the tenants by including it in the rent¹²⁸.

Individual market rental landlords

Individual market landlords have to pay income tax on the rental income they receive from their property. If the annual gross rental income is under €15,000, the *micro-foncier* regime applies. Under this regime, a fixed percentage of 30% may be deducted from the rental income to offset the costs incurred by the landlord. The *micro-foncier* regime cannot be combined with tax incentives that aim to encourage investment in the rental sector.

In the case of individual market landlords who receive over €15,000 in rental income, the standard *foncier* regime applies. Under this regime, the expenditure that the landlord incurs in connection with letting his property (and not only maintenance costs, but also the cost of refurbishment and improvement and property taxes, as well as interest on mortgages) may be deducted from the rental income. These expenses may in fact be higher than the rental income. A negative balance of a maximum of €10,700 per year¹²⁹ may be deducted from the market rental landlord's income¹³⁰. Individual market rental landlords may also have to pay capital gains tax over their house sales. However, they are exempt from this tax if they have possessed the dwelling concerned for more than 22 years¹³¹. Just as institutional private rental landlords, individual private rental landlords also have to pay *la taxe d'enlèvement des ordures ménagères* (TEOM).

Tax incentives for landlords

In France, fiscal incentives and fines are a commonly used instrument in housing policy. This Section gives an overview of the most relevant policy measures in this area.

Tax incentives for individual rental landlords

Individual private rental landlords who let dwellings under the standard *foncier* regime may take profit of tax incentives. Various tax measures have been brought in over the past 25 years. These are usually named after the Ministers who introduced them: *Méhaignerie*, *Périssol*, *Besson*, *Robien*, *Borloo* etc. The incentives generally entail a yearly deduction of a percentage of the rental income, as well as a yearly deduction of a percentage of the investment costs (depreciation).

Some of the tax incentives (for example *Borloo neuf*) for private rental sector investment can be interpreted as an attempt to provide more and better affordable rental housing for the middle-class households, whose incomes are too high to get access to the social rental sector. As far as this is concerned, they can be seen as the French answer to the housing problems that are experienced by the so-called key-workers,

¹²⁸ Elsinga et al., *Beleid voor de private huur. Een vergelijking van zes landen*, 60.

¹²⁹ The interest on mortgages may not be taken into account when calculating this deficit. This interest may only be deducted as long as the remaining balance is positive.

¹³⁰ <<http://impotsurlerevenu.org>>

¹³¹ <http://www.french-property.com/news/tax_france/capital_gains_tax_proposals_sept_2013/>

especially in the big cities. Tax incentives that seek to increase the supply of private rental housing for middle-class households typically use criteria with regard to the income of the tenants and the maximum rent that may be asked.

However, there have also been tax incentives without any income restrictions for tenants and no or very high maximum rents (for example *Robien recentré*). These incentives primarily aimed to stimulate the (private rental) housing production¹³².

Current tax incentives

In 2006, the law *Engagement national pour le logement (loi ENL)* has resulted in a reform of the various tax incentives. Since that time, only the *Dispositif Robien recentré*, the *Dispositif Borloo neuf ou populaire* and the *Dispositif Borloo ancien* were in use. Individual private rental landlords could apply for the first two tax incentives until December 31, 2009, whereas the *Borloo Ancien* tax measure is still accessible nowadays. In order to replace the *Dispositif Robien recentré* and the *Dispositif Borloo neuf ou populaire*, a new tax incentive called *Scellier* has been introduced on January 1, 2009. This tax incentive is supposed to be simpler than its predecessors¹³³. It is applicable for the acquisition of newly built or heavily renovated dwellings by individual rental landlords¹³⁴. Table 3.6 shows the main characteristics of the *Scellier* tax incentives. Because the French government considers this to be a crisis measure, the tax incentive has become much less generous after 2010 and it has stopped by the end of 2012 (with a transition period until March, 31).

Whereas the *Scellier* tax incentives focus on rental investment in newly built dwellings, the *Borloo Ancien* tax incentive is destined to stimulate investment in the existing housing stock. The main characteristics of this tax incentives are shown in Table 3.7. If the dwelling is renovated before it is let, the landlord can combine the tax incentive with an ANAH grant.

Table 3.6 Main characteristics of the *Scellier* tax incentives

	Scellier	Scellier intermédiaire
Period	1-1-2009 till 31-12-2012	1-1-2009 till 31-12-2012
Objective	Stimulate supply in the private rental sector	Stimulate the supply of private rental dwellings for middle income groups
Income limits for tenants	No	Yes (same limits as in <i>Borloo Neuf</i>)
Maximum rent levels in 2012	Depending on the region, ranging between 7,50 € and 22,08 € per square meter	Depending on the region, ranging between 6,00 € and 17,66 € per square meter (comparable to <i>Borloo Neuf</i>)
Yearly tax deduction as % of the investment cost	If the dwelling is bought in 2009 or 2010, a total of 25% of the	See dispositive <i>Scellier</i> for the

¹³² J.C. Taffin, *The tax incentives to private investors in France (1984-2007) and their impact on the private rented markets*, (Paper for the ENHR working group on private rented markets, Dublin Workshop, 21-22 January 2008).

¹³³ A. Bouteille, *Aide fiscale à l'investissement des particuliers pour le logement locative neuf: un poids pour les finances publiques?* [Fiscal aid for individual investors in the private rental sector: a burden for public finance] (*études foncières*, No. 144, pp. 6-11, 2010).

¹³⁴ Ministère de l'égalité des territoires et du logement, *Les aides financières au logement*, 66-67.

	<p>investment costs may be deducted from the income tax over a period of 9 years (with a maximum deductible amount of € 60.000). This corresponds to a yearly tax deduction of 2,78% of the value of the investment.</p> <p>If the dwelling is bought in 2011, 13% (or 22% in case of an energy-efficient dwelling) of the investment costs may be deducted from the income tax over a period of 9 years.</p> <p>If the dwelling is bought in 2012, 13% of the investment costs may be deducted from the income tax over a period of 9 years, but only if the dwellings is sufficiently energy-efficient. If this is not the case, there is a 6% reduction, but only if the building permit was issued before January 1, 2012.</p>	<p>years 1 to 9.</p> <p>In the years 10 to 16, 1,33% of the investment cost may be deducted from the income tax (in two 3-year periods)</p>
Fixed yearly tax deduction (as % of the rental income)	0%	30%
Term of the arrangement (during this period the dwelling has to be let)	9 years	9, 12 or 15 years
Geographical coverage	Only available in the more urbanized areas	Only available in the more urbanized areas

Source: Ministère de l'égalité, des territoires et du logement, *Les aides financières au logement*

Table 3.7 Main characteristics of the Borloo ancien tax incentives

	Borloo ancien	Borloo ancien social
Period	1-10-2006 till present	1-10-2006 till present
Objective	Make a larger part of the existing dwelling stock available for renting	
Income limits for tenant	Yes, depending on household type	Yes, depending on household type
Maximum rent level in 2012	Ranging between € 8,41 and € 17,77 per square meter, depending on the region	Ranging between 5,01 € and 9,52 € per square meter, depending on the region.
Yearly tax deduction as % of the investment cost	Not applicable	Not applicable
Fixed tax deduction (as % of the rental income)	30%	60%
Term of the arrangement (during this period the dwelling has to be let)	6 years (without subsidized renovation) or 9 years (with subsidized renovation)	6 years (without subsidized renovation) or 9 years (with subsidized renovation)
Geographical coverage	All regions	All regions

Source: Ministère de l'égalité, des territoires et du logement, *Les aides financières au logement*, 70-71

The Duflot tax incentive

Since 2013, the Scellier tax incentive has been replaced by the Duflot tax incentive. This tax incentive has the following characteristics¹³⁵:

- The tax incentive runs from January 1, 2013 until December 31 2016.
- It focuses on the stimulation of individual investment in new rental dwellings
- The tax incentive provides a total tax deduction of 18% of the investment costs, distributed over a 9 year period, during which the dwelling should be available on the rental market
- It focuses on the urban areas and the regions with a relatively tight housing market
- The dwelling concerned has to meet strict requirements regarding energy-efficiency
- The rents that may be asked should be at least 20% lower than the market rent.

Evaluation of the tax incentives for private rental investment

The tax incentives for French individual private rental landlords now exist for more than 25 years. Some schemes worked with a fixed reduction of rental income, whereas others offered a yearly deduction of part of the investments costs (accelerated depreciation). Often, both fiscal instruments were combined. The way in which a tax incentive is designed has an influence on its outcomes. For example, the mechanism of accelerated depreciation may result in larger and more expensive dwellings than the mechanism of a fixed deduction¹³⁶.

Some tax incentives had regulations with regard to the maximum rent and the income of tenants, whereas others did not have such restrictions. In general, one could say that the take-up of incentives with serious restrictions was considerably less than the take-up of incentives without or with few restrictions, even though the first incentives are generally much more generous¹³⁷. At the same time, it is argued that tax incentives without restrictions may push up prices. Moreover, they could lead to an oversupply of dwellings in areas where the housing market is less tight¹³⁸.

According to the French government¹³⁹, the tax incentives have clearly had a positive effect on the production of private rental housing, thus making the private rental housing market less tight. Between 2003 and 2007, the number of dwellings that was sold by developers to individual private rental landlords increased from 30.000 to 60.000. According to the French government¹⁴⁰ this surge in housing production was mainly due to the Robien tax incentive that was introduced in 2003 and that was revised in 2006. In 2008, almost 230.000 individual private rental landlords were taking advantage of this incentive. In 2008, the total expenses on tax benefits were about 600 million Euros. However, it should be realized that the extra construction in which the tax

¹³⁵ <<http://loi-duflot.scellier.org>>

¹³⁶ Hoekstra, *Country report France*.

¹³⁷ Hoekstra, *Country report France*.

¹³⁸ Taffin, *The tax incentives to private investors in France (1984-2007) and their impact on the private rented markets*.

¹³⁹ République Française, *Rapport évaluant l'efficacité des dépenses fiscales en faveur du développement et de l'amélioration de l'offre de logements* [Report evaluating the efficiency of fiscal expenditures that seek stimulate and improve the supply of dwellings] (Paris : République Française, 2012), 17.

¹⁴⁰ République Française, *Rapport évaluant l'efficacité des dépenses fiscales en faveur du développement et de l'amélioration de l'offre de logements*, 17-18.

incentives result, also lead to extra income for the government, for example through the value added tax and other taxes¹⁴¹.

Other tax incentives and disincentives

As indicated before, the taxation instrument is frequently used in French housing policy. Below is a list of policy measures in which taxation plays a role as either an incentive or a disincentive (see also table 3.8).

Tax relief on home improvement for individual private rental landlords

The cost of home improvement and refurbishment is deductible from the rental income for income tax purposes. Since the balance of (a) revenue from letting and (b) deductions and expenditure must not exceed minus €10,700 annually, the deduction may be spread over a number of years¹⁴².

Contribution sur les revenus locatifs

This is a special tax at a rate of 2.5% which is due on the annual revenue from the letting of market rented properties that are at least 15 years old¹⁴³. Since 2006, this tax only needs to be paid by private rental landlords who are subject to corporation tax. The money that is raised through this tax goes to ANAH.

Lower VAT (taxe sur la valeur ajoutée) on home improvement

Since 1999, under certain conditions, individual market landlords and owner-occupiers that are renovating their dwelling are liable for a VAT rate of only 7% instead of the normal rate of 19.6%. This concession, which ties in with an EU initiative to provide tax incentives for labour-intensive services.

Special tax on empty dwellings

In order to stimulate the market rented sector and reduce the vacancy rate, the French Government decided in 1999 to tax properties (other than second homes) located in eight major conurbations that were vacant for two years or more. This tax (*taxe sur les logements vacants*) is 10% of the (potential) rental value in the first year, rising to 15% in the third year. The money raised from this tax is channelled to the ANAH¹⁴⁴. The French government is currently developing plans to make this tax more strict¹⁴⁵.

Tax incentive for investments in energy-efficiency

¹⁴¹ Bouteille, *Aide fiscale à l'investissement des particuliers pour le logement locative neuf: un poids pour les finances publiques?*, Taffin, *The tax incentives to private investors in France (1984-2007) and their impact on the private rented markets*.

¹⁴² Haffner et al., *Bridging the gap between social and market rented housing in six European countries*, 135.

¹⁴³ <<http://www.legifrance.gouv.fr>>

¹⁴⁴ Kirchner, *Wohnungsversorgung für unterstützungsbedürftige Haushalte*, 193.

¹⁴⁵ *La taxe sur les logements vacants est en passe de devenir très pénalisante*. <www.leparticulier.fr>, 1-10-2012.

Part of the investments in energy-efficiency may be deducted from the income tax: *crédit d'impôt développement durable*¹⁴⁶. This tax deduction applies to both owner-occupiers and individual rental landlords.

Reduced value added tax on the purchase of newly built dwellings in vulnerable areas

Households that choose to buy a new dwelling in or close to (< 500 meter) a vulnerable urban area: (ANRU: *zone d'aménagement et de rénovation urbaine*) pay the lower rate (7%) of the Value Added Tax rather than the higher one¹⁴⁷.

Table 3.8 Overview of the most relevant taxes in the French housing system (Summary table 8)

	Home-owner	Tenant	Individual rental landlords	Commercial rental landlords
Taxation at point of acquisition	Transfer tax, reduced VAT on the purchase of newly built dwellings in vulnerable areas	No specific taxes	Transfer tax in case of the purchase of an existing dwelling, value added tax in case of the purchase of a new dwelling	Transfer tax in case of the purchase of an existing dwelling, value added tax in case of the purchase of a new dwelling
Taxation during tenancy	income tax, wealth tax, capital gains tax (but not on the primary dwelling), <i>taxe d'habitation</i> , <i>taxe foncière</i> , lower VAT-rate for home improvement, tax deduction for investments in energy-efficiency	<i>Supplément de Loyer de Solidarité</i> (SLS) if they live in a social rental dwelling and have a relatively high income, income tax, wealth tax, capital gains tax, <i>taxe d'habitation</i>	income tax over the rental income, wealth tax, capital gains tax, <i>taxe foncière</i> , tax for garbage collection and cleaning of public spaces, lower VAT-rate for home improvement, tax deduction for investments in energy-efficiency, tax incentives for investment in the private rental sector, special tax on vacant dwellings	Corporation tax (except for REITS), tax for garbage collection and cleaning of public spaces, <i>taxe foncière</i> , local business taxes, property tax, <i>contribution sur les revenus locatifs</i> , 1% logement scheme
Taxation at the end of tenancy	No specific taxes	No specific taxes	Capital gains tax may apply if the dwelling is sold	Capital gains tax may apply if the dwelling is sold

¹⁴⁶ Ministère de l'égalité, des territoires et du logement, *Les aides financières au logement*, 5.

¹⁴⁷ Ministère de l'égalité, des territoires et du logement, *Les aides financières au logement*, 5.

4 Regulatory types of rental and intermediate tenures¹⁴⁸

This Section pays attention to the regulation of the different types of rental tenures. A distinction is made between the social rental market, the intermediate sector and market rental sector. For each type of tenure, the most important characteristics are described. Furthermore, we pay attention to the housing allocation mechanisms in the different types of rental tenure.

4.1 Classifications of different types of regulatory tenures

- Which different regulatory types of tenure (different regulation about contracts and tenant security) do you classify within the rental sector? What are their shares in dwelling stock (compare summary table 4.1)?

The French tenure distribution

Table 4.1 shows the number of dwellings owned by the different types of landlord in France. Owner-occupation is the largest tenure category (58%), followed by private renting (23%) and social renting (19%). In the sequel, the characteristics of the latter two tenure types will be explained in more detail.

4.2 Regulatory types of tenures without a public task

- Regulatory types in the rental sector that do not have a public task. This category may be called private or market rental housing.¹⁴⁹
- Different types of private rental tenures and equivalents: rental contracts, housing allocation

The French private rental sector

The vast majority (97%) of French market rented dwellings are owned by private individuals (*personnes physiques*); only 3% of the rented stock is owned by institutional market rental landlords (companies or institutions: *personnes morales*). Two-thirds of individual market rental landlords own only one dwelling. In the last decade, the number of market rental dwellings let by individual landlords has grown significantly, mainly as a result of the advantageous tax deductions to which these landlords are entitled¹⁵⁰.

In the category of institutional market rental landlords, insurance companies play a major role. Dwellings let by institutional market rental landlords are generally of higher quality than those let by individual market rental landlords¹⁵¹. The proportion of institutional market rental landlords has declined steadily since the 1970s. This is due to the fact that these actors are increasingly focusing on investing in areas other than housing, where they can enjoy higher returns. Selling off homes previously intended for

¹⁴⁸ I.e. all types of tenure apart from full and unconditional ownership.

¹⁴⁹ Market rental housing means housing for which the rent price determines the conclusion of contracts and not some social rules of allocation based on need.

¹⁵⁰ Haffner et al., *Bridging the gap*, 106-107.

¹⁵¹ Donner, *Housing Policies in the European Union*, 283.

letting is also part of their strategy. Institutional market rental landlords that still invest in housing now concentrate their investments primarily in the larger agglomerations¹⁵², or in housing for specific target groups such as the elderly.

Intermediate rental housing

The term intermediate sector is not a formalized housing term. It can have different meanings in different contexts and it can refer to both rental housing and homeownership housing. Literally, the term intermediate means 'in between'. In housing policy, the term intermediate sector is generally used to indicate some kind of bridge between the formal tenure sectors; between the social rental sector and the market rental sector, or between the rental sector and the homeownership sector. This implies that the need for an intermediary sector is biggest when the gap between the formal tenure sectors is large. Many countries are for example characterized by a rather large difference in rent levels between the social rental sector and the market rental sector. Especially in areas with a tight housing market, such as many urban areas, these price differences tend to be large. This is also the case in France. Large house price differences between the two rental sectors are often seen as undesirable as they may hamper the mobility between the social and the market rental sector, thus resulting in a deadlocked housing market. Furthermore, a large price gap between social and market rental dwellings can cause accessibility and affordability problems for households with a middle income. For such households, the homeownership sector and the market rental sector are often too expensive, whereas their income may be too high to get access to the social rental sector.

The idea behind the French intermediate rental sector is that it fills the gap between the social rental sector and the private rental sector, by offering a good alternative to tenants from both these sectors. For tenants in the social rented sector with a slightly higher income, the intermediate sector might offer an opportunity to make a housing career within the rented sector. Tenants in the private rental sector, as well as newcomers on the housing market with a slightly higher income, will be attracted by the good price-quality relationships in the intermediate rental sector. In France, intermediate rental dwellings are especially present in regions with a tight housing market, in which there are large price differences between relatively 'cheap' social rental dwellings and relatively expensive market rental dwellings. In practice, this means that the French intermediate sector is primarily an urban phenomenon.

French intermediate rental dwellings are financed by different arrangements. First of all, there are low-interest loans that can be taken up by both social rental landlords and private rental landlords. Second, there are tax concessions and refurbishment subsidies for individual private rental landlords that agree to let their dwelling against a moderate rent. In exchange for the financial support of the government, landlords have to meet certain criteria with regard to the rent level and the income of the tenants. The financial arrangements between government and landlords apply to a rather long (typically more than seven years) but nevertheless fixed period of time. When this time period has passed, the dwellings concerned are again part of the free market.

¹⁵² Haffner et al., *Bridging the gap*, 106-107.

On many aspects, the French intermediate rental sector really occupies a middle position between the social rental sector and the private rental sector. The rent levels in this sector are higher than in the social rental sector but lower than in the market rental sector. Just as in the social rental sector, tenants who want to live in the intermediate rental sector generally have to meet certain income criteria. However, the income limits are higher than in the social rental sector. Finally, the rent regulation and tenant protection in the intermediate rental sector are less strict than in the social rental sector but stricter than in the private rental sector.

Although the intermediate rental dwellings are a significant part of the French rental market, statistical information on this housing market segment is rather scarce. This is due to the fact that most statistics in France are not collected on the basis of the financing arrangements but on the basis of the characteristics of the landlord. As indicated before, intermediate rental dwellings may be owned by both social rental and private rental landlords.

Rent regulation in the private and intermediary rental sector

A part of the market rental sector is subject to an agreement between landlords and the government. This concerns, for example, dwellings that are financed with the various tax concessions or with the renovation subsidies of the ANAH. With regard to rent regulation and tenant security, there are two main differences between this intermediary sector and the 'normal' market rental sector.

Firstly, initial rents in the regulated market rental sector may not exceed the maximum formulated in the contract between the landlord and the state. Second, the tenancy agreement is automatically renewed as long as the contract between landlord and government is valid. Apart from these points, rent regulation and tenant security in the regulated market rental sector is identical to rent regulation in the unregulated market rental sector. Rents can be set freely for new contracts in the unregulated market rental sector. The index of reference rents (*indice de révision des loyers*: IRL) that is developed by the French national statistical institute (INSEE) serves as a guide for annual rent rises during the term of the contract. This index is based on the consumption prices, except tobacco and rents.

Tenant security in the private and intermediary rental sector

In the market rental sector, the standard length of contracts is three years¹⁵³ for individual market landlords and six years for institutional market rental landlords¹⁵⁴. Six months before the term expires the landlord may offer a new contract. If the landlord can prove that the old rent was substantially below current rents on the market, he can set a new rent on the basis of reference dwellings. The landlord then has to prove that the rents of six (in urban areas of over one million inhabitants) or three comparable dwellings are significantly higher than the rent he/she is currently asking. In order to simplify this process, some French cities have set up an observatory of market rental

¹⁵³ Shorter contracts are permitted in certain specific cases, e.g. if someone is going abroad for a year and wishes to let his home for that period.

¹⁵⁴ Donner, *Housing Policies in the European Union*, 270.

sector rents. In the Paris urban area, the rent increase at the renewal of contracts in the unregulated market rental sector is sometimes limited by a central government decree.

If the landlord does not offer a new contract with a new rent when the old one expires, the old one is automatically renewed for three years under the existing terms¹⁵⁵.

The landlord can only terminate the tenancy agreement in the following cases:

- The landlord wishes to use the home for his own occupation or to house a close relative.
- The landlord wishes to sell the property. In this case the dwelling must first be offered to the sitting tenant (*droit de préemption*).
- The landlord wishes to refurbish the property thoroughly.
- The tenant has not met his obligations in the past (e.g. by falling into arrears with the rent).

Notice to terminate a contract during the tenancy period may only be given if the contract contains a special clause (*clause résolutoire*) and the tenant has several months of rent arrears. In practice, this involves a relatively time-consuming and complex legal process¹⁵⁶.

Housing allocation in the private and intermediate rental sector

For market rental dwellings that are financed with the help of subsidised loans (PLI), subsidies (ANAH) or tax concessions, tenants have to meet certain income requirements. These dwellings can be seen as the intermediate rental segment. For the rest of the market rental dwellings, there are no formal allocation criteria. Market rental landlords can allocate these dwellings to whomever they wish, provided they comply with basic French law. Recently, increasing attention has been devoted to preventing discrimination by market rental landlords and real estate agents (personal communication Schaefer).

4.3 Regulatory types of tenures with a public task

- *Regulatory types of rental and intermediary tenures with public task (typically non-profit or social housing allocated to need): rental contracts, housing allocation.*

The French social rental sector

Like many other West European countries at the end of the 19th century, France underwent rapid urbanisation, resulting in poor living conditions in the large cities. Between 1850 and 1914, the population of Paris rose from one million to almost three million. During this period of rapid industrialisation and urbanisation there was an absence of regulation and planning for the housing that was built for the emerging working class. Consequently, the living and housing conditions were bad. Social housing was introduced to improve these conditions. The first social housing initiatives were not

¹⁵⁵ N. Boccadoro, and A. Chamboredon, France, in *Tenancy Law and Procedure in the European Union* (European University Institute, 2004), 17.

¹⁵⁶ Boccadoro and Chamborleon, *France*, 21.

taken by local or state authorities but by private actors such as companies, factory owners and philanthropists¹⁵⁷. The state did not intervene until 1894 when the *loi Siegfried* came into force, followed by the *loi Ribot* (1908) and the *loi Bonnevey* in 1912¹⁵⁸. These laws provided the statutory basis for French social rented housing.

Initially, social rental dwellings were built by *sociétés d'Habitations à Bon Marché* (HBMs), which in 1950 became *Habitations à Loyer Modéré* organisations (HLMs). Since 2008, the public HLMs have been known as *Offices Publics de l'Habitat*. These social rental landlords have a predominantly public character and are controlled by the local authorities (municipalities, groups of municipalities or departments), who are responsible for their creation and for managing their finances and their tasks¹⁵⁹.

There are also HLMs with a private character¹⁶⁰. These are called *Entreprises sociales pour l'habitat* (see Table 4.1). Such social rental landlords are private organisations with a non-profit objective (although they are allowed to pay a very limited dividend, referring to a very low capital, to their shareholders) which date back to the nineteenth century¹⁶¹. The initiators of these social rental landlords were often companies that wanted to provide housing for their own employees such as for example the French railway company SNCF¹⁶². Other are subsidiaries of financial institutions (CDC, savings banks, insurance companies)¹⁶³. Private social rental landlords usually operate under the supervision of shareholders from both the private and public sectors. They not only provide social rental housing but are often also involved in the construction of subsidised owner-occupancy dwellings for lower-income groups¹⁶⁴. In the literature, all French social rental landlords, whether they have a public or private character, are often simply referred to as HLMs. In 2005, the total HLM stock consisted of 54% public HLMs and 46% private HLMs.¹⁶⁵

Public and private social rental landlords have the same competences, expressed in the *Code de la Construction et de l'Habitation* (CCH). The traditional core objective of social rental landlords is the construction and the management of affordable rental housing for low-income groups. In recent years, some additional objectives have been added to this vocation, such as combating segregation, and providing affordable home ownership housing in areas where this is considered to be desirable¹⁶⁶. In 2008, there were about 560 HLM organisation in France, public and private HLM's taken together. As a result of mergers, the number of HLM organization in France has steadily declined in recent years¹⁶⁷. The HLM organization have not only become bigger, but also more professional and more commercial. They have extended their operation scope beyond their core business such as for example construction for home-buyers, have outsourced

¹⁵⁷ Lévy-Vroelant, Reinprecht and Wassenberg *Learning from history: changes and path dependency in the social housing sector in Austria, France and the Netherlands (1889-2009)*, 33.

¹⁵⁸ Lévy-Vroelant et al., *Learning from history*, 35.

¹⁵⁹ *Social Housing in France*, Information from the website <www.cecodhas.org>

¹⁶⁰ This means that they are subject to private law (Amzallag and Taffin, *Le logement social*, 20).

¹⁶¹ Amzallag and Taffin *Le logement social*, 21.

¹⁶² Bougrain, *France*.

¹⁶³ Driant, *Social housing in France*, 122.

¹⁶⁴ Boelhouwer and van der Heijden, *Housing systems in Europe*.

¹⁶⁵ Haffner et al, *Bridging the gap*.

¹⁶⁶ Amzallag and Taffin, *Le logement social*.

¹⁶⁷ Driant and Mingye, *The Ongoing Transformation of Social Housing Finance in France*.

some of their activities to business firms and have improved their professional standards.

Specific providers of social rental housing are the *Sociétés d'Economie Mixte* (SEMs), also called *Entreprises Publiques Locales*. These are partnerships between local government and private partners that may also provide social rental housing. SEMs that provide social housing operate under the same conditions as the other social rental landlords. The SEMs possess around half a million dwellings.

Finally, there are various smaller providers of social rented housing. This involves local authorities (municipalities), public or semi-public companies (public hospitals and the state railway company, the SNCF, have dwellings which they let to their employees) and the co-operative housing companies (although the latter mainly focus on the owner-occupied sector). In total, these providers possess more than half a million social rental dwellings. In Figure 1.1, both the SEMs and the other providers of social housing are part of the category 'other', together with furnished dwellings and dwellings for which no rent is paid.

The French social rental sector offers a variety of products: standard social housing for salaried workers, 'upper' social housing for middle class households and 'lower' social housing for the more vulnerable groups. According to article 411 of the French construction and housing code (L. 411) which has been in force since 1998, the mission of French social rental landlords is as follows: "The construction, outfitting, allocation and management of rented social housing aims to improve living conditions for people with modest incomes or in need. These operations contribute to honouring the right to housing and help to achieve the necessary social mix in cities and neighbourhoods"¹⁶⁸.

Rent regulation in the French social rental sector

Rents in the social rental sector are subject to state regulations. The maximum rent that can be asked varies according to the financial support schemes, which have been granted to the social landlords, as well as according to the size of the dwelling. Each subsidised loan has a maximum square meter price. These maximum square meter prices differ between regions, implying regional variation in the maximum admitted rents. However, notwithstanding this regional variation, social housing rents still depend mainly on cost-related factors (mainly construction costs) and not on the housing market conditions. As a result, there is a large diversity of rent levels that are uncorrelated to applicable income ceilings, not to mention the quality of the building or the convenience of their location.¹⁶⁹ Consequently, in urban areas (where housing markets are generally tight), rents in the social rental sector tend to be significantly lower than those in the market rental sector, whereas these differences are usually much smaller in the more relaxed housing markets in small and medium-sized towns¹⁷⁰.

The state also makes recommendations with regard to annual rent increases in the French social rental sector, based on the rent revision index (*indice de révision des loyers*). However, social rental landlords are not obliged to follow these

¹⁶⁸ Driant, *Social housing in France*, 117.

¹⁶⁹ Driant, *Social housing in France*, 127.

¹⁷⁰ Amzallag and Taffin, *Le logement social*.

recommendations¹⁷¹ and they may also decide to apply different rent increases to different complexes¹⁷².

The maximum rents that are allowed in the social rental sector are not always high enough to cover the investment that the social rental landlords make in construction and renovation projects, even when they make use of the subsidised loans available. The rent level that would cover the expenses¹⁷³ of the social rental landlords is called *loyer d'équilibre* (equilibrium rent). If the equilibrium rent is higher than the maximum permitted rent, social rental landlords may have to look for additional financial support. To do this, they could decide to substitute part of the state loan with cheaper loans from the 1% *logement* programme, they could ask for financial support from the local authorities, they could invest part of their own funds or they could use surpluses on the exploitation of their older property to cover the losses incurred through their new investment¹⁷⁴.

Tenant security in the social rental sector

Security of tenure in the French social rental sector is greater than in the market rental sector. This is largely due to the fact that, in principle, rental agreements in the social rental sector are of an indefinite nature and can only be terminated if tenants fail to comply with their duties¹⁷⁵. Non-paying tenants can be evicted, but this requires relatively long and complex procedures. However, the “Boutin” law of 2009 has slightly diminished the tenant security in the French social rental sector:

- Since 2009, households with incomes that are equal or higher than twice the income ceilings for social rental housing, are required to sign non-renewable three-year leases since they clearly don't belong to the target group for the social rental sector.
- Social rental landlords now have to offer more suitably-sized dwellings to households that live in dwellings that are considered too large for them. In tight housing market, tenants who decline three housing units lose their occupancy rights after a six-month period. However, this rule does not apply to tenants that are 65 years old or that have disabilities¹⁷⁶.

There is no right to buy in the French social rental sector. However, social rental landlords may sell dwellings to former tenants as part of their real estate strategy. The sale of dwellings provides equity that can be used for new investment. Only social rental dwellings older than ten years can be sold. Moreover, the sale must be approved by the local authorities because they lose their allocation right on the dwellings that are to be sold¹⁷⁷. Occupied dwellings can only be sold to sitting tenants.

¹⁷¹ Nevertheless, the rent after rent increase may not exceed the maximum rent permitted in the financial agreements by means of which the social rental dwelling has been financed. These maximum rents are reviewed annually on the basis of the index of construction costs.

¹⁷² Haffner et al., *Bridging the gap*, 118.

¹⁷³ The expenses include the repayment of the loan and the interest, maintenance costs, administration costs, local property taxes (where applicable) and the risk of non-paying tenants and vacant properties.

¹⁷⁴ Amzallag and Taffin, *Le logement social*, 76

¹⁷⁵ Driant, *Social housing in France*, 129.

¹⁷⁶ Driant, *Social housing in France*, 129.

¹⁷⁷ Hoekstra, *Country report France*.

Households that already live in a social rental dwelling (defined as dwellings that are owned or managed by social rental landlords and financed with the help of the state) and whose income rises above the income ceiling prescribed for the dwelling concerned are not required to leave their dwelling, but they may have to pay a supplement on their rent: (*supplément de loyer de solidarité: SLS*) in order to 'compensate' for their good financial situation.

Housing allocation in the social rental sector

The French social rental sector is characterised by a rather complex and sophisticated housing-allocation process involving several stages and various actors¹⁷⁸. This system is laid down by the French *Code de la Construction et de l'Habitation*, which is regularly reformed¹⁷⁹. Article L 441 of this code states:

"Allocating rented social housing is part of the State's efforts to honour the right to housing and thereby cater to the disadvantaged and low income earners. The process must in particular address demand diversity in the area and promote equal opportunities for applicants and social mix in cities and neighbourhoods"¹⁸⁰.

The social rental landlords have signed agreements with the various institutions that contribute to the financing of the social rental sector. These agreements give the financing parties a say in the allocation of part of the social rental dwelling stock¹⁸¹. This is done by means of a quota system which generally uses the following shares¹⁸². The central state (usually represented by *le Préfet*) is entitled to allocate 30% of the social rental housing stock (25% is reserved for the most disadvantaged people and 5% is destined specifically for civil servants)¹⁸³, while the local municipality (*commune*) reserves 20% of the social rental dwellings on offer (as compensation for the fact that they guarantee the loans to social rental landlords). The various local collectors of the 1% *logement* fund (the CIL: *Comité Interprofessionnel du Logement* and a number of other actors involved in social housing)¹⁸⁴ are responsible for the allocation of the rest of the available stock of social rental dwellings¹⁸⁵. However, the exact distribution of the contingents may differ between municipalities.

The actors entitled to a reservation (or contingent) in social housing will usually propose three candidates (in order of priority) when a dwelling earmarked for them falls vacant or is completed. The dossiers of these candidates are then presented to the

¹⁷⁸ Ball, J. *The insider/outsider thesis and its extension to social housing in France* (paper for the ENHR 2006 conference in Ljubljana, Slovenia, 2006)

¹⁷⁹ Driant, *Social housing in France*, 127.

¹⁸⁰ Driant, *Social housing in France*, 127.

¹⁸¹ Observatoire de l'habitat de Paris, *L'accès au logement social à Paris en 2005* [Access to social housing in Paris 2005] (Paris : Observatoire de l'habitat de Paris, 2005).

¹⁸² *Social Housing in France* < www.cecodhas.org >.

¹⁸³ However, the state can also delegate its allocation rights to local authorities. This is a very recent development (personal communication Schaefer).

¹⁸⁴ This may include social rental landlords, ministries, chambers of commerce, and public companies such as the Post Office and the national railways.

¹⁸⁵ Ball, *The insider/outsider thesis and its extension to social housing in France*.

commission d'attribution, a committee that consists of the various relevant stakeholders (employees of the social rental landlord, the mayor of the municipality concerned, representatives of the *département* and representatives of the tenants). This committee decides to which household the free dwelling is allocated. In reality, however, the committee usually follows the advice of the different parties that put forward the candidates¹⁸⁶.

There are multiple allocation criteria for social rental housing in France. First of all, there are income ceilings that depend on the financial support scheme used. These income ceilings are revised by central government every year (in line with the minimum wage) and vary between regions and household types¹⁸⁷.

However, meeting the income requirements is only one of the conditions that must be met to obtain a social rental dwelling. Most tenants in the social rental sector in reality have incomes that are well below these ceilings. Two-thirds of all those entering the social rental sector live on an income below 60% of the income level that gives access to social rental housing (income ceiling of the PLUS). This is due to the fact that next to income, a number of other criteria play a role as well in the housing allocation process. These requirements may differ between localities, but all allocation systems prioritise people with housing problems and/or social problems. These priorities are not cumulated so that different priorities can conflict with each other. This makes the allocation process rather complex and somewhat lacking in transparency. This may also explain why there are often complaints that discrimination has taken place¹⁸⁸.

Although French housing allocation in the social rental sector is, in principle, needs-based to a high degree, the reality may sometimes be different. Local stakeholders and existing tenants may be strongly represented in the allocation process, and they could have an interest in excluding prospective tenants who may be unable to pay the rent or be seen as 'difficult neighbours'. There can thus be a conflict between the rights of local stakeholders and the rights of the disadvantaged¹⁸⁹. The funding system also plays a role here since it provides landlords with upfront loans for construction but does not offer funding to meet tenants' social needs later. Extra support for the most disadvantaged households has to come from external sources and is generally in short supply. As a result, social rental landlords are sometimes reluctant to help the neediest¹⁹⁰. In order to solve these problems, the current French government is developing plans to make the housing allocation process in the French social rental sector more simple, transparent and efficient¹⁹¹.

Households who want to apply for a social rental dwelling should register with the social rental landlords, the local authorities or various state services. All applicants are

¹⁸⁶ Ball, *The insider/outsider thesis and its extension to social housing in France*, Kirchner, *Wohnungsversorgung für unterstützungsbedürftige Haushalte*, 207.

¹⁸⁷ Bougrain, *France*.

¹⁸⁸ Kirchner, *Wohnungsversorgung für unterstützungsbedürftige Haushalte*, 207.

¹⁸⁹ J. Ball, Property, altruism and welfare: how national legal concept affect allocation of social housing to the disadvantaged, in: K. Scanlon, and C. Whitehead (eds.) *Social Housing in Europe II. A review of policies and outcomes*, (London: London School of Economics and Political Science, 2008), 64.

¹⁹⁰ Ball, *European Housing Review* 2008, 173.

¹⁹¹ *La ministre du logement Cécile Duflot a lancé ce mercredi une concertation sur un nouveau système d'attribution des logements sociaux*, La Tribune 16-1-2013 <www.latribune.fr>.

subsequently given a unique number at the level of the *department* or a regional registration number if they are living in the Ile-de-France region¹⁹². Waiting times for a social rental dwelling can vary greatly, depending on the housing market situation in the region concerned. In areas with a particularly tight housing market, such as Paris, the waiting time can in fact be very long (up to 3 or 4 years).

Table 4.1 Rent regulation, tenant security and other property rights in the social rental sector, the intermediary sector and the private rental sector, France

	Social rental sector	Intermediary sector	Private rental sector
Initial rent setting	Maximum rents are determined by a contract between landlords and the state	Maximum rents are determined by a contract between landlords and the state	Free
Annual rent increase	The state provides non-obligatory guidelines for the maximum annual rent increase	May not exceed the INSEE rent revision index	May not exceed the INSEE rent revision index
Term of the contract	Indefinite, except for very high income groups are people whose dwelling is considered too big for their household size.	3 years	3 years for individual market rental landlords, 6 years for institutional market rental landlords
Renewal of the contract	Not applicable	During the contract between landlord and state, the tenancy agreement is automatically renewed after the three-years period has elapsed	Market rental landlords may not renew the contract if they have a legitimate reason to do so.
Rent in renewed contract	Not applicable	Same rent as in the old contract unless the landlord can prove that that rent is below the market rate. However, the new rent may never be higher than the maximum admitted rent	Same rent as in the old contract unless the landlord can prove that that rent below the market rate
Right of refusal for sitting tenant in case of sale of the dwelling	Yes	Yes	Yes
Right to buy	Not applicable	Not applicable	Not applicable

¹⁹² Driant, *Social housing in France*, 128.

Rent surcharge for higher income groups	Yes	Not applicable	Not applicable
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5 Origins and development of tenancy law

- What was the origin of national tenancy law and where was and is it laid down (civil code, special statute, case law)?
- Who was the political driving force? Was it based on a particular legal philosophy (e.g. socialism)? Is there a particular philosophy behind the rules (e.g. protection of the tenant's home as in Scandinavia vs. just a place to live as in most other countries)?
- What were the principal reforms and their guiding ideas up to the present date?

The Civil Code of 1804, also called "*Code Napoléon*" is the basis of the French civil law¹⁹³. Adopted after the French revolution (1789-1799), this code aimed to unify the rules at a national level but also to renew completely the provisions applicable to property rights.

The Civil Code is divided into books that are divided into titles that are divided into chapters. Lease agreements are the object of one chapter ("*Du louage des choses*", articles 1709 to 1778) of the eighth title ("*Du contrat de louage*") of the third book that concerns means to become owner ("*Des différentes manières dont on acquiert la propriété*"). Many articles are unchanged since their adoption in 1804.

This chapter contains general provisions for all types of lease agreements, but also specific rules for special lease contracts such as lease contracts concerning farms ("*baux à ferme*"). But, the Civil Code does not contain any specific provisions for lease contracts concerning dwellings.

The first specific law concerning tenancy was adopted the 1st September 1948¹⁹⁴ (hereafter the 1948 Act)¹⁹⁵. One of the consequences of the Second World War was a lack of dwellings that created an imbalance among the situations of landlords and tenants. The government needed to intervene to prevent abuses from landlords and to facilitate and encourage lease agreements.

The aim of this act was more to find a solution to the lack of dwellings than to regulate the contractual relationship among tenants and landlords. The 1948 Act is still applicable to contracts concluded when it was in force. From time to time, there are discussions to replace this text in order to have a unified regime for all the lease agreements, but up to now; no changes were made to the regime of the 1948 Act. Time passing, the number of contracts concerned by this act has been decreasing little by little.

¹⁹³ All the provisions concerning the French law, including the Civil Code, the specific acts or the cases can be found on the official website: www.legifrance.gouv.fr.

¹⁹⁴ Act 48-1360 of the 1st September 1948 amending and codifying the rules concerning the relationship among landlords and tenants or occupants of residential premises or of premises for professional use and establishing housing allowances (in French: *Loi n° 48-1360 du 1 septembre 1948 portant modification et codification de la législation relative aux rapports des bailleurs et locataires ou occupants de locaux d'habitation ou à usage professionnel et instituant des allocations de logement*), www.legifrance.gouv.fr.

¹⁹⁵ N. Damas, "Loi de 1948 : forme de la contestation du droit au maintien dans les lieux", *AJDI*, 2014, p. 39 ; C. Beddelem, « Loi du 1^{er} septembre 1948 », *Annales des loyers*, 2013 p. 2170.

The second act dealing with this topic was adopted the 22th June 1982¹⁹⁶ (called loi “Quillot” after the name of its author, here-after the 1982 Act), just after a change of the political driving force of the country from liberal to socialism. In 1981, François Mitterrand, from the socialist party (left wing), was elected *Président de la République*.

The 1982 Act is the first one to consider precisely the relationships between and landlords.

This act stated that a written contract is mandatory, but also what the contents of the contract should be and how to terminate it. The law also insisted on the collective bargaining of rent control.

One of the main goals of this law was to reinforce the protection of the tenant, seen as the weak party, against the landlord. This law was strongly criticized, especially by the more liberal opponents (right wing of the political scale). They considered that the law infringes the right of property, as the owner is no more able to dispose of his/her building as he/she wants and when he/she wants. They asserted that the obligation to write the contract is an attempt to freedom of contract. Finally, they also considered that it is not efficient to regulate too much the content of the contract, as it would dissuade people from investing in properties to rent. The criticisms were strong and not all justified, but they pointed out that the 1982 Act did not manage to find a balance among the interests of landlords and tenants.

Thus, after the nomination of a new prime minister from a more liberal party (right wing) Jacques Chirac, a new law was adopted the 23th December 1986¹⁹⁷ (called “loi Méhaignerie”, here-after 1986 Act).

Despite the criticisms made concerning the 1982 Act, the 1986 Act maintained the obligation of a written contract and some provisions concerning the contents of the agreement. The idea that such rules could affect property rights was no more discussed. But the 1982 Act was still seen as too strict and the new act was adopted to encourage people to invest in real estate and to rent their properties to find solution to the lack of dwellings.

To achieve such a goal, the law made it easier to evict the tenant and to change the rules concerning the increase of the rent. One of the main aspects of the law was to organise control made by judicial authority and local conciliation committees.

After the adoption of this law, the amount of rents increased and many people were no more able to access the rental market. Once again, the law did not manage to find a balance among the interest of tenants and landlord but this time it was in favour of landlords.

Thus, when François Mitterrand was elected French President for the second time in 1988 a new law was once again prepared and adopted the 6th July 1989¹⁹⁸ (called “loi

¹⁹⁶ Act 82-526 of the 22th of June 1982 regarding tenants and landlords rights and obligations, (in French: *Loi n° 82-526 du 22 juin 1982 relative aux droits et obligations des locataires et des bailleurs*), www.legifrance.gouv.fr.

¹⁹⁷ Act 86-1290 of the 23th December 1986 designed to encourage investment in real estate to rent, access to home ownership and increase of real estate offer, (in French: *Loi n° 86-1290 du 23 décembre 1986 tendant à favoriser l'investissement locatif, l'accession à la propriété de logements sociaux et le développement de l'offre foncière*), www.legifrance.gouv.fr.

Mermaz’, here-after the 1989 Act). The 1989 Act will be detailed throughout this study as it is still into force today. Since 1989, some of its provisions have been changed but only on technical aspects.

This law is quite accurate concerning the contents of the contract, the rights and duties of each party and the termination of the contract. Contrary to the previous ones, the 1989 Act is considered to reach a balance among the interests of the tenants and the landlords and to respect the economic and social function of tenancy. Since the beginning of the global economic crisis, the need to facilitate the access to rental market has increased. However, the founding principles of the 1989 Act remain uncontested.

These four laws were the main ones concerning tenure contracts. None of them was codified, which means that they were not integrated in the Civil Code¹⁹⁹. Each of them was completed by enforcement decrees and sometimes by circulars, e.g. the 1986 Act was completed by two decrees adopted the 26th of August 1987²⁰⁰.

A new act, called ALUR (i.e. in French “*Loi pour l’accès au logement et un urbanisme rénové*”) (here after ALUR Act) was adopted the 24th of March 2014²⁰¹. The draft was first voted by the French *Assemblée nationale* in September 2013 and by the *Sénat* in October. After discussions and changes in the law, a common version was adopted the 19th February 2014 by the *Assemblée nationale* and the 20th February by the *Sénat*.

The *Conseil Constitutionnel* was asked to check the validity of this act towards the French Constitution. The *Conseil constitutionnel* rendered a decision on the 20th of March 2014²⁰² and approved the content of the law. The Act was published in the Official Journal the 26 March 2014. According to article 1 of the Civil Code, It enters into force the following day, i.e. the 27th March 2014. The ALUR act also contains provisions that will enter into force later, after the adoption of decrees to supplement the text. For example, concerning the creation of a mechanism to guarantee the payment of the rent (*Garantie universelle des loyers, i.e. GUL*). The content of the new law is mainly

¹⁹⁸ Act 89-462 of the 6th July 1989 for the improvement of tenancy relations and amending Act 86-1290 of the 23th December 1986, (in French: *Loi n° 89-462 du 6 juillet 1989 tendant à améliorer les rapports locatifs et portant modification de la loi n° 86-1290 du 23 décembre 1986*), www.legifrance.gouv.fr.

¹⁹⁹ There is no real explanation for the absence of codification. It could be linked to political reasons or to a lack of opportunity. For practical reasons, editors of the Civil code, such as Dalloz and Litec, include the 1989 Act, annexed to the relevant provisions of the Civil Code concerning lease agreement, but the 1989 Act is not integrated to the provisions of the code itself.

²⁰⁰ Decree 87-713 and Decree 87-712 of the 26th August 1987 adopted in application of 18 of the Act 86-1290 of the 23th December 1986 aimed at boosting rental investment, home ownership and social housing development of land supply and determining the list of recoverable costs, (in French: *Décret n°87-713 du 26 août 1987 pris en application de l'article 18 de la loi n° 86-1290 du 23 décembre 1986 tendant à favoriser l'investissement locatif, l'accession à la propriété de logements sociaux et le développement de l'offre foncière et fixant la liste des charges récupérables*), www.legifrance.gouv.fr.

²⁰¹ Act 2014-366 of the 24th March 2014 concerning access to housing and urban renewal (in French: *Loi n° 2014-366 du 24 mars 2014 pour l'accès au logement et un urbanisme rénové*), www.legifrance.gouv.fr. See on the topic : Mendak P. « Projet de loi "Alur", entretien avec Cécile Duflot », *Revue des loyers et des fermages*, p. 314. Y. Rouquet, “Projet de loi "logement et urbanisme" (deuxième lecture) : volet baux d'habitation”, *D.* 2014, p. 208 ; Y. Rouquet, “Projet de loi "logement et urbanisme" : volet bail d'habitation”, *D.* 2013, p. 2171

²⁰² Conseil constitutionnel, 20 March 2014, N°2014-691.

included in the 1989 Act (On that topic, see p.155, “ **6.8. Tenancy law and procedure “in action”**”). The lease of dwellings is the main area covered by the new text: e.g. the law deals with rent control, creation of a universal guarantee for rent, agency fees, improvement of the system called « marchand de listes », demand for social housing, fight against swindler landlords or slumlords, increase of the winter break (period of time where expulsion are forbidden).

The 1989 Act and the other texts are completed by other acts that are not focused on tenure law but that have an impact on it. The main texts are:

- Act of the 31st May 1990²⁰³ concerning the implementation of the right to housing (here-after 1990 Act),
- Act of the 13 December 2000²⁰⁴ concerning solidarity and urban renewal (called SRU, here-after 2000SRU Act),
- Decree of the 30 January 2002²⁰⁵ concerning features of a decent housing (here-after 2002 Decree),
- Act of the 17 January 2002²⁰⁶ concerning social modernization (here-after 2007 Act),
- Act of the 13th July 2006²⁰⁷ concerning national commitment for housing (here-after 2006 Act),
- Decree of the 21st of December 2006²⁰⁸ concerning the period of validity of documents included in the technical diagnosis about the dwelling (here-after 2006 Decree),
- Act of the 5th March 2007²⁰⁹ called DALO (Droit au logement opposable) creating a justiciable/enforceable Right to housing, (here-after 2007 DALO Act),
- Act 2008-496 of the 27th May 2008 concerning implementation of the European Law against discrimination which gives a definition of the concept (here-after 2008 Act concerning discrimination)²¹⁰

²⁰³ Act 90-449 of the 31st May 1990 on the implementation of the right to housing, (in French: *Loi n°90-449 du 31 mai 1990 visant à la mise en œuvre du droit au logement*), www.legifrance.gouv.fr.

²⁰⁴ Act 2000-1208 of the 13th December 2000 on solidarity and urban renewal (in French: *Loi n°2000-1208 du 13 décembre 2000 relative à la solidarité et au renouvellement urbain*), www.legifrance.gouv.fr.

²⁰⁵ Decree 2002-120 of the 30th January 2002 on the characteristics of decency, (in French: *Décret n°2002-120 du 30 janvier 2002 sur les caractéristiques de la décence*), www.legifrance.gouv.fr.

²⁰⁶ Act 2002-73 of the 17 January 2002 concerning social modernisation, (in French: *Loi n°2002-73 du 17 janvier 2002 de modernisation sociale*), www.legifrance.gouv.fr.

²⁰⁷ Act 2007-290 of the 13 July 2006 on national commitment to housing, (in French: *Loi n°2007-290 du 13 juillet 2006 portant engagement national pour le logement*), www.legifrance.gouv.fr.

²⁰⁸ Decree of the 21st of December 2006²⁰⁸ concerning the period of validity of documents included in the technical diagnosis about the dwelling, (in French: *Décret n° 2006-1653 du 21 décembre 2006 relatif aux durées de validité des documents constituant le dossier de diagnostic technique*), www.legifrance.gouv.fr.

²⁰⁹ Act 2007-290 of the 5th March 2007 establishing the enforceable right to housing and various measures to promote social cohesion "DALO", (in French: *Loi n°2007-290 du 5 mars 2007 instituant le droit au logement opposable et portant diverses mesures en faveur de la cohésion sociale "DALO"*), www.legifrance.gouv.fr.

²¹⁰ Act 2008-496 of the 27th May 2008 concerning implementation of the European Law against discrimination which gives a definition of the concept (in French: *Loi n° 2008-496 du 27 mai 2008 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations*), www.legifrance.gouv.fr.

- Act of the 25th March 2009²¹¹ concerning mobilization for housing and the fight against exclusion (here-after 2009 Act).

Some remarks are necessary to understand the applicable rules and the order of priority in France. Acts (in French: “*Loi*”) are adopted by the Parliament which is composed of two chambers the *Assemblée nationale* and the *Sénat*. Decrees (in French: “*Décret*”) are adopted by the executive power, i.e. the government. Administrative acts, in French “*arrêté*” or “*circulaire*” can be adopted by ministries or by lower administrative entities, e.g. the Préfet or the mayor.

In France, the hierarchy of rules is symbolised by a pyramid established according to the theory developed by Hans Kelsen, an American jurist native of Austria (1881-1973). According to his theory, the validity of each rule is based on his compliance with the superior rule. In the French system, following a descending order we find: Constitutional texts (including the Constitution of the 4th October 1958), International agreements, Regulation and directive of the European Union, Acts, general principles of law, Decrees (in French: “*Règlement*”) and the administrative acts (In French: “*arrêté*”, “*circulaire*”). The value of the administrative acts is linked to the authority that adopts the act, no matter what the name of the act is. For example, a *circulaire* or an *arrêté* adopted by a ministry has more value than a *circulaire* or an *arrêté* adopted by a mayor.

Concerning the influence of the acts mentioned above on lease agreements, for example we can note that the 2009 act introduced a specific provision to regulate the lease of furnished flats in the “*Code de la construction et de l’habitat*” (here-after Building and Housing Code)²¹². The changes provided by these texts will be explained in the relevant parts of the report.

In some cases, consumer law can have an impact on lease contract. It is the case only if the landlord is a “professional” and the tenant a consumer. In the French law, a professional is someone who acts in a professional or a commercial goal. A “professional landlord” is someone whose main income comes from the renting of dwellings, but who can also have other sources of income. The consumer is defined as a natural person acting for private purpose, i.e. out of the scope of his/her work as a professional. In such a case, the tenant benefits from a higher level of protection, e.g. provisions concerning unfair provisions (i.e. in French: “*clauses abusives*”) apply.

Concerning social housing in French law²¹³, we must note that the law applicable to the contract is the same as the one for others contracts. Some provisions may differ but

²¹¹ Act 2009-323 of the 25th March 2009 mobilization for housing and the fight against exclusion, (in French: *Loi n° 2009-323 25 mars 2009 de mobilisation pour le logement et la lutte contre l'exclusion*), www.legifrance.gouv.fr.

²¹² Art. L632-1 of the Building and Housing Code. Introduced by the 2009 Act, www.legifrance.gouv.fr; Vial-Pédroletti B., “Domaine d'application de l'article L. 632-1 du CCH : incidence d'une domiciliation”, *Loyers et copr.* 2013 p. 23.

²¹³ See Stébé J.M, *Le logement social en France*, Que sais-je?, PUF Paris, 2013 and the article written by Patrick Kamoun for the website of the association: “*L’union sociale pour l’habitat*”

they will be dealt with in the relevant sections of the report. (See e.g. the duration of the contract). Few introductory remarks can be made. The development of social housing²¹⁴ has started at the end of the 19th century. In 1889, social housing was created with the *Société française des Habitations à Bon Marché*.

At the end of the 19th century, some manufacturers were among the first one to build dwellings for their employees. In 1894, the first act organising the financing of social housing was adopted. The results were small but at least the first step was taken. Between 1894 and 1905 only 3000 dwellings were built by 109 societies. In 1906, a new law was adopted so that municipalities and local administrations (*départements*: a French division of the territory) can finance social housing. In 1908, the Ribot Act (10 April 1908) created the “*sociétés régionales de Crédit Immobilier*”, organisms that helped people to become owner of their dwellings by facilitating access to cheap loans.

In 1910, the first tenant association was created: “*Union syndicale des locataires ouvriers et employés*”. This association became famous because of its president Georges Cochon who was very active to protect the poorest. Then, the Bonnevey Act, in 1912, created institutions entitled to build social houses: the “*Offices publics communaux et départementaux d’Habitations à Bon Marché*”. All these acts were adopted more to avoid riots than to protect tenants. But little by little, the political consciousness of the need to use social housing to improve the life of the poorest has appeared.

During the interwar period, an act, that planned the building of real estate, was adopted the 13 July 1928²¹⁵. For the first time, the State became a real actor of the social housing, both by actions to help people buying properties and by actions to help people renting dwellings. After the Second World War, the crisis of dwellings was terrible and acts were adopted to help the poorest people and to encourage private initiative to build dwellings. For example, the 1948 Act mentioned above also created allowance to help people to rent a flat. An act of the 21st July 1950²¹⁶ stimulated the creation of social housing and transformed the “*Habitation à Bon Marché*” into “*Habitation à loyers modérés*” also called *HLM*. In 1953, companies with more than 10 employees had to pay a small tax to finance the construction of dwellings. At the end of the 1950’s, many new dwellings were constructed and specific areas which need strong measures to improve living conditions were identified and called ZUP (“*Zones à urbaniser en priorité*”), which means priority area where to build houses. At that time a kind of segregation appeared among “*normal*” areas and areas for migrants and poor people. After this period, the building of social housing followed the variations of the economy.

<http://www.union-habitat.org/les-hlm-de-%C3%A0-z/l%E2%80%99histoire-des-hlm/il-%C3%A9tait-une-fois-le-logement-social>;

²¹⁴ See N. Boccadoro and A. Chamboredon, *Report concerning French tenancy law*, 29/03/2004.

²¹⁵ Act of the 13th July 1928 called Loucheur Act and establishing program for the building of social housing (called *Habitations à bon marché*) and dwellings in order to address the housing crisis, (in French: *Loi du 13 juillet 1928 dite Loucheur établissant un programme de constructions d’habitations a bon marche et de logements, en vue de remédier à la crise de l’habitation*), www.legifrance.gouv.fr.

²¹⁶ Act 50-854 of the 21st July 1950 concerning authorisation for spendings concerning operations scheduled by the modernization plan, (in French: *Loi n°50-854 du 21 juillet 1950 autorisations de dépenses pour opérations prévues au plan de modernisation*), www.legifrance.gouv.fr.

In the 1980's, with the improvement of the protection of the tenants, finding a dwelling for the poorest people became the main issues. Many owners were reluctant to rent their properties and thus the State had to compensate. The 1990 Act (mentioned above) gave an important role to social landlords and tried to achieve a real right to housing. A new act of the 13th July 1991²¹⁷ obliged municipalities of more than 200,000 inhabitants to have at least 20% of social housing. It also created a zero rate loan to facilitate people to buy their own home. The 28th of July 1998²¹⁸, a new act was adopted and changed the rules concerning the beneficiaries of a social house.

In 2003²¹⁹, a new act dealt with urban renewal and defined when the State is supposed to intervene in specific areas called "sensible" (ZUS: *zone urbaine sensible*). Old buildings started to be demolished in order to build new ones.

Finally, in 2013²²⁰, a new act reinforced the obligation of the municipality concerning social housing. 25% of the total housing stock in each municipality must be social housing. In some specific areas, the obligation to have social housing is reinforced. This law has been supplemented by a Decree adopted the 22 November 2013²²¹ concerning requisition process (here-after 2013 Decree).

- *Human Rights:*
 - *To what extent and in which fields was tenancy law since its origins influenced by fundamental rights enshrined in the national constitution and international instruments, in particular the ECHR*
 - *Is there a constitutional (or similar) right to housing ("droit au logement")?*

The right to housing is not included in the Constitution. It was first mentioned in the 1982 Act, which referred to a "*droit à l'habitat*". It means that people must have a place to live and this right does not concern a second home²²². Article 1 of the 1989²²³ Act replaced

²¹⁷ Act 91-662 of the 13th July 1991 concerning guidance for cities (in French: *Loi n° 91-662 du 13 juillet 1991 d'orientation pour la ville*, www.legifrance.gouv.fr).

²¹⁸ Act 98-657 of the 29th July 1998 concerning the fight against exclusion, (in French: *Loi n° 98-657 du 29 juillet 1998 d'orientation relative à la lutte contre les exclusions*), www.legifrance.gouv.fr.

²¹⁹ Act 2003-590 of the 2nd July 2003 concerning urbanisation and housing, (in French: *Loi n° 2003-590 du 2 juillet 2003 urbanisme et habitat*), www.legifrance.gouv.fr.

²²⁰ Act 2013-61 of the 18th January 2013 on the mobilization of public land for housing and building obligations for social housing, (in French: *Loi n° 2013-61 du 18 janvier 2013 relative à la mobilisation du foncier public en faveur du logement et au renforcement des obligations de production de logement social*), www.legifrance.gouv.fr.

²²¹ Decree 2013-1052 of the 22 November 2013 concerning the application of article L642-10 to L642-12 of the Building and Housing Code (these articles deal with requisition process), (in French: *Décret n° 2013-1052 du 22 novembre 2013 pour l'application des articles L. 642-10 à L. 642-12 du code de la construction et de l'habitation*), www.legifrance.gouv.fr.

²²² Civ. 3rd 29 November 1983 n°83-10063; Civ. 3rd 11 November 1989 n°88-14501; Civ. 3rd 6 November 1991 n°90-15923.

²²³ Art. 1 of the 1989 Act: "The right to housing is a fundamental right; it is carried out in the framework of the laws that govern this right. The realisation of this right includes the freedom for everybody to choose his/her dwelling thanks to the maintenance and the development of a rental market and of a market to accede to ownership open to all social categories. (...) In French : "*Le droit au logement est un droit fondamental ; il s'exerce dans le cadre des lois qui le régissent./L'exercice de ce droit implique la liberté de choix pour toute personne de son mode d'habitation grâce au maintien et au développement d'un secteur locatif et d'un secteur d'accession à la propriété ouverts à toutes les catégories sociales. (...)*"

“*habitat*”, a word from the architectural vocabulary, by “*logement*”, “housing”, which is more concrete and makes more sense.

The real change came in 2007 with the DALO (*droit au logement opposable*) Act²²⁴. This act created a mechanism to ensure the right to housing to be justiciable and enforceable. The mechanism created is very complex. Only specified people can bring their case before a special commission “*Commission de médiation*” to complain about the fact that they were not awarded a dwelling. These people are the one who already asked for a social housing and who got a negative or an inappropriate answer. The answer can be inappropriate if they are offered a dwelling that does not correspond to their needs, e.g. if it is too small for the all family. Depending on the decision of the commission, the Prefect (in French: “*Préfet*”), who is the State's representative in an administrative division, department or region, must find a dwelling within 3 to 6 months depending on the department. If the Prefect does not respect his obligation, the enquirer can petition the administrative tribunal (in French: *Tribunal administratif*), which is the tribunal competent for disputes between public authorities or States companies and citizens²²⁵. This Tribunal has to render a decision within two months.

The 1989 Act also refers to the liberty for everybody to choose his/her dwelling (Article 1 paragraph 2 of the 1989 Act) and to prohibition of all kind of discrimination (Article 1 of the 1989 Act as modified by the 2002 Act). Before the 2002 Act that added this rule against discrimination, cases were mainly based on article 14 and 8 of the European Convention on Human Rights (ECHR), but now that the anti-discrimination rule is included in the French law, there is no need to refer every time to the ENHR (On the topic of discrimination see p. 78, p. 71 and p. 93)

To avoid proof issues, the tenant is not supposed to prove the discrimination but only to denounce the situation. On the contrary, the landlord has to prove he did not discriminate the tenant, i.e. he has to prove he has good reasons not to rent him his flat. Case law concerning discrimination issues will be dealt with on the section concerning the choice of a tenant by a landlord.

²²⁴ Act 2007-290 of the 5th March 2007 establishing the enforceable right to housing and various measures for social cohesion (DALO Act) (in French: *Loi n° 2007-290 du 5 mars 2007 instituant le droit au logement opposable et portant diverses mesures en faveur de la cohésion sociale (loi DALO)*), www.legifrance.gouv.fr.

²²⁵ For an explanation of the French legal system see the website of the ministry of justice: <http://www.justice.gouv.fr/multilinguisme-12198/english-12200/>.

6 Tenancy regulation and its context

6.1 General introduction

- *Short overview over core principles and rules governing the field e. g. basic requirements for conclusion, conditions for termination of contracts by the landlord, for rent increase etc.; social orientation of tenancy law in force; habitability (i.e. the dwellings legally capable of being leased).*

Requirements:

- The first requirements concern the contract itself. The contract must be in writing and it must contain all the information required by article of the 1989 Act. The duration of the contract is 3 years if the landlord is a natural person and 6 if he/she is a corporate body (in French: "*personne morale*"). The rent is freely determined between the party, except for the cases of social housing (HLM) or for specific region where there are regulations.
 - The landlord can terminate the contract only following specific conditions. It can only be terminated at its term, for fair reason and with a six months notice. If the landlord does not respect the conditions, the contract is renewed for the same length and following the same conditions.
 - The tenant can terminate the contract when he/she wants with a three months notice. If he/she can give specific reasons, the notice can be shortened to one month.
 - The rent can be increased rules only if it is mentioned in the contract and only once a year. The calculation of the increase is based on a national benchmark index called: "*Indice de référence des loyers*".
 - The habitability of dwellings has become one of the main issues of the French law. The landlord has an obligation to deliver a decent housing (criteria concerning security/health, size and equipment such as water, place to cook, toilet, central heating)
- *To what extent is current tenancy law state law or infra-national law (if legislative jurisdiction is divided: what is the allocation of competencies and for which subject matters)*

Tenancy law is state law as there is no infra-national jurisdiction competent on that topic.

The French constitution specifies what areas are of the competence of the legislative power (Government) and what areas are of the competence of the executive power (Parliament). Article 34 of the Constitution listed the competence of the legislator. The executive power is thus in charge of all the other areas (Article 37 of the Constitution). In the field of tenure law, the main acts are supplemented by decrees adopted to give the details needed for the application of the act. As long as they are not contradictory to the acts (see the explanation of the hierarchy of norms, p. 64), decrees are enforceable the same way as acts.

- *Is the position of the tenant also considered as a real property right (and therefore also governed by property law) or (only) as a personal (obligatory) right?*

Lease agreements belong to the category of personal rights, which means that such contracts do not create absolute rights on the rental object. The position of the tenant is not considered as a real property right. E.g., one of the consequences is that the tenant

is not allowed to modify the dwelling without the approval of the landlord (See concerning the changes in the dwelling, p.141).

- *To what extent is the legislation divided up into general private law and special statutes? To what extent are these rules mandatory and dispositive? Does the relationship between general and special rules work properly so as to create legal certainty?*

As mentioned above, the French law (see Seite 68) is divided into the general provisions of the Civil Code and the specific acts dealing with renting dwellings i.e. either the 1948 Act either the 1989 Act depending on the date of signature of the contract. The relevant specific act will be applied in priority and it is only if the solution cannot be found in the specific rules that the general ones are applicable.

Concerning the mandatory character of the rules, article 2 of the 1989 Act specifies that this act is “*d’ordre public*”²²⁶ which means that the law is mandatory. The notion of “*ordre public*” has two meanings depending if we consider this to be “*ordre public de protection*” or “*ordre public de direction*”.

The notion of “*ordre public de protection*” refers to the idea that private interest must be protected. Thus, the people concerned by the protection can decide to give up this protection, but nobody else than the protected people can make such a decision. Judges check if the protected person clearly expressed his/her wish to abandon the protection, otherwise, the 1989 Act remains applicable²²⁷.

The notion of “*ordre public de direction*” refers to the idea that public interest must be protected. It is impossible to deviate from the application of such rules, even the one protected by the rules is not entitled to abandon them. If the parties do not apply, or even mention the rules, the judge has to apply them²²⁸.

The articles of the Civil Code concerning lease agreements are not considered as mandatory and parties can decide to apply other rules. But, as mentioned above, they are applicable only if there is no provision in the 1989 Act.

The scope of the 1989 Act is very clear and precisely determined by its article 2. If one can regret the multiplication of rules that affect the readability of the law, we can say that the relationship between general and specific rules works properly so as to create legal certainty.

- *What is the court structure in tenancy law? Is there a special jurisdiction or is the ordinary one competent? What are the possibilities of appeal?*

The first option in case of dispute between landlord and tenant is to bring the dispute before a “*Commission départementale de conciliation*” (Article 20 of the 1989 Act)²²⁹ composed of representatives of landlords’ associations and of tenants’ associations.

²²⁶ Art. 2§1 L1989 “The provisions of this title are public policy” (in French: « *Les dispositions du présent titre sont d’ordre public.* »)

²²⁷ Civ. 3rd 29 March 1995 n°93-10578, *RJDA* n°6/1995, n°698.

²²⁸ Civ. 3rd 2 June 2010 n°08-17731.

²²⁹ Derrez P. “Les commissions départementales de conciliation”, *Opérations immobilières*, 2013, p. 46.

The Commission is competent for disputes concerning rent, service charges, repairs, deposit, and inventory of fixtures.

The goal of the Commission is to reach an agreement between the landlord and the tenant. The Commission gives a recommendation within two months. If no agreement is reached and a party decide to go to court, the recommendation of the Commission can be transmitted to the judge ("*Tribunal d'instance*").

To start the procedure in front of the Commission, the landlord or the tenant just has to send a registered letter

Parties can be assisted by the person of their choice, e.g. a professional association or a lawyer. It is not mandatory to be represented by a lawyer. The proceeding in front of the Commission is free of charge.

Parties can always decide to go to court, as it is not mandatory to resort to such Commission.

The ALUR Act extends the competency of the Commission départementale de conciliation. This one is now also in charge of the disputes concerning the resignation.

The competent tribunal for matters related to lease agreements concerning dwellings is the *Tribunal d'instance* (Article R221-38²³⁰ of the *Code de l'organisation judiciaire* i.e. Code of the Judicial Organisation) where the rental property is located (Article R221-48 of the *Code de l'organisation judiciaire*).

This tribunal is competent in first and final instance for disputes of a maximum of 4000 euros (Article L321-2-1 of the *Code de l'organisation judiciaire*²³¹). In such a case no appeal is possible, but parties can go to the Cour de cassation. If the demands worth more than 4,000 euros, parties have the right to challenge the decision of the *Tribunal d'Instance* in front of the *Cour d'appel*. Eventually, they can also challenge the decision of the *Cour d'appel* in front of the *Cour de cassation*.

The ALUR Act creates a new provision to be included in the 1989 Act (article 7-1) concerning the prescription: three years for the procedure concerning the contract and one year for the revision of the rent by the landlord. These new rules entered into force the 27th of March 2014 for the contracts concluded after this date.

²³⁰ Art. R221-38 of the Code of the judicial organisation (in French: *Code de l'organisation judiciaire*): "Except for jurisdiction of the local court (*juridiction de proximité*) concerning deposit under section R. 231-4, the district court (*tribunal d'instance*) has jurisdiction for cases involving a lease of buildings for residential use or a contract whose object, cause or occasion is the occupation of a dwelling and for lawsuits concerning the application of the Act 48-1360 of the 1st September 1948 amending and codifying the rules concerning the relationship among landlords and tenants or occupants of residential premises or of premises for professional use and establishing housing allowances.", in French "*Sous réserve de la compétence de la juridiction de proximité en matière de dépôt de garantie prévue à l'article R. 231-4, le tribunal d'instance connaît des actions dont un contrat de louage d'immeubles à usage d'habitation ou un contrat portant sur l'occupation d'un logement est l'objet, la cause ou l'occasion, ainsi que des actions relatives à l'application de la loi n° 48-1360 du 1er septembre 1948 portant modification et codification de la législation relative aux rapports des bailleurs et locataires ou occupants de locaux d'habitation ou à usage professionnel et instituant des allocations de logement.*"

²³¹ Art. L321-2-1 of the Code of the judicial organisation (in French: *Code de l'organisation judiciaire*).

Finally, if a case is related to discrimination issues, specific organisations can be in charge of the resolution of the dispute. From 2005 to 2011, the organisation in charge of discrimination issues was the *HALDE (Haute autorité de lutte contre les discriminations)*. Since the 1st of May 2011, the competent organization is the *Défenseur des droits*. This institution can give recommendations that help to bring the dispute to court. It has a power of investigation and sometimes one member of the team can go to check on site if there is, or not, a discrimination. This organization also has the power to decide to set up a “mediation”, threatening the “guilty” party to publish its recommendation. The power of the “*Défenseur des droits*” has a symbolic aspect and is more efficient towards companies or corporate bodies than towards natural people. Corporate bodies may fear the impact of such a “bad” recommendation on their image and may accept a compromise in order to avoid publicity.

The *Défenseur des droits* rendered two decisions concerning discrimination in the field of tenure law. In the first one²³², after the signature of the contract, the agency refused to deliver the dwelling to the tenants. It states that they refuse to rent to people who benefit from a specific regime according to the law. As the 1989 Act organises a specific regime for people above seventy, the people who wanted to rent the flat invoked discrimination due to their age. The agency and the represent of the landlord did not respect articles 225-1 and 225-2 of the Criminal Code. These articles forbid discrimination based on age for the delivery of services or goods. They also did not respect the contract they signed with the tenants. Thus, the *Défenseur des droits* considered there was a discrimination due to the age of the potential tenant.

In the second case²³³, the discrimination concerned disability. Real Estate Agencies refused to rent flats to people because of the nature of their incomes which were invalidity pension and allowances for disabled people. This decision is based on article 1 of the 2008 Act concerning discrimination and on article 1 of the 1989 Act and article 16 a) of the Convention on the Rights of Persons with Disabilities adopted on the 13 December 2006²³⁴ that prohibit discrimination in tenure contracts on dwellings. The *Défenseur des droits* in its decision advises the agencies to change their practice and the Ministry in charge of housing issues to find solution to respect the Convention on the Rights of Persons with Disabilities by helping disabled people to have the opportunity to choose their dwelling.

- Are there regulatory law requirements influencing tenancy contracts?

²³² Ruling n°MLD-2012-28 concerning the refusal to rent to a couple of elderly because of their age (in French: “*Décision n°MLD-2012-28 relative au refus de location opposé à un couple en raison de leur âge*”): http://www.defenseurdesdroits.fr/sites/default/files/upload/decisions/decision_mld-2012-28.pdf.

²³³ Ruling n°LCD-2011-60 concerning indirect discrimination on grounds of disability by practices of a real estate group that has the effect of systematically exclude applications of the beneficiaries of allowance for disabled adults (in French: “*Décision n°LCD-2011-60 relative à une discrimination indirecte fondée sur le handicap constituée par la pratique d'un groupe immobilier qui a pour effet d'écarter systématiquement la candidature des bénéficiaires de l'Allocation aux adultes handicapés (AAH)*”): http://www.defenseurdesdroits.fr/sites/default/files/upload/decisions/decision_mld-2011-60.pdf.

²³⁴ See concerning this convention the website of the United Nations : <http://www.un.org/disabilities/index.asp>.

- *E.g. a duty to register contracts; personal registration of tenants in Eastern European states (left over of soviet system)*

The French law does not create any duty to register the contract. There is also no possibility to register the contract, as there is no register dedicated to that purpose. In French law, properties rights are very important. The idea of asking the landlord to register can appear as an infringement to such a right as it will affect his/her possibility to freely use the dwelling.

- *Planning/zoning law requirements on (new) habitable dwellings, e.g. on minimum size, number of bathrooms etc.*
- *Regulatory law requirements on - new and/or old - habitable dwellings capable of being rented - e.g. on minimum size, number of bathrooms, other mandatory fittings etc.*
- *Regulation on energy saving*

One of the main issues concerning dwelling in France is linked to what is called “*marchand de sommeil*”. Poorest or people without any legal situation regarding to visa and permit to stay have difficulty to access rental market and may find a dwelling contacting swindler landlords (see p. 79). These landlords may offer them a dwelling that does not respect the law requirement on habitable dwelling.

One of the most important notions in the French law is the “decent housing”²³⁵ (in French: “*logement décent*”). Article 1719 paragraph 1 of the Civil Code²³⁶ specifies that the landlord has to deliver to the tenant a decent dwelling. The 2002 Decree (see Seite 68) gives details about what a decent housing must be²³⁷.

There are three sorts of criteria:

1. health and security of tenants
2. required equipment
3. available space

First, article 2 of the 2002 Decree concerns the health and security of tenants. The list of measures or equipment required is very precise. The dwelling has to be enclosed and cover. It should protect the tenant from humidity, but also from infiltration of the rain. For example, balconies, stairs, loggias, windows must be protected with balustrades. Electricity, gas and heating systems must be in working condition, safe and must abide by the applicable safety rules. The tenant must be able to renew the air in the dwelling due to openings or to ventilation mechanism. Construction materials, pipes and coatings

²³⁵ S. Bréna, « Appréciation et sanction de l'indécence d'un logement composé d'une chambre », *Rev. des loyers et des fermages*, p. 20.

²³⁶ Art. 1719 paragraph 1 of the Civil Code: “A lessor is bound, by the nature of the contract, and without need of any particular stipulation: 1° To deliver the thing leased to the lessee and, where the main dwelling of the latter is concerned, a decent lodging. *If the premise rented to be used as a dwelling are unsuitable for this purpose, the landlord cannot rely on the invalidity of the lease or on its termination to demand the expulsion of the occupier*” (for the part in Italic, our translation).

²³⁷ Specific provisions can be applicable for dwelling overseas on that topic. The examples given here concern mainland France.

of the house must be harmless to the health and security of the tenants. The main room must have enough natural light and be opened to outdoors or equivalent.

Second, article 3 of the 2002 Decree also states very precisely what type of equipment is concurrently required. For example, is required an installation for proper central heating, provided with power supply and ventilation. That installation has to be adapted to the size and characteristics of the house.

The dwelling must contain an installation of drinking water inside the dwelling with a pressure and flow sufficient enough for normal use by tenants. A sewer system, with siphons, preventing odours must be installed. The *Cour de cassation*²³⁸ stated that the landlord has to supply water even if the 1948 law is applicable.

The tenant must also have access to a kitchen or an area with a place for cooking appliance, with a sink connected to hot and cold water and to sewerage.

The tenant must also have access inside the dwelling to sanitary facilities, including a toilet apart from the kitchen and the room where meals are served. The dwelling must contain a shower or a bath supplied with hot and cold water and provided with sewage and the layout must enable people to protect their privacy. If the dwelling is made up of one single room, the toilets can be outside the dwelling but must be in the same building and easily accessible.

The electrical system of the dwelling has to allow adequate lighting in all rooms and access to the place at the same as functioning of electrical appliance required for daily life.

Finally, article 4 of the 2002 Decree concerns the size of the dwelling. It must be at least 9 m² and the height must be at least 2.2 m. The volume must be at least 20m³.

If the dwelling does not comply with the conditions of a decent housing, the tenant can bring the dispute before the *Commission départementale* or the judges of the *Tribunal d'instance* (See competency of the judges, p. 69). The sanctions the landlord incurs are to be obliged to do the necessary work, to reduce the rent or/and to pay damages. Moreover, if a dwelling is considered as indecent, the tenant has a right to leave the dwelling when he/she wants without any prior notice²³⁹.

The ALUR act creates an authorisation to rent for some sensitive urban areas. A decree is required to know precisely which areas are concerned. The city council or either competent authority (to be determined) may have to deliver an authorisation for these areas. If the landlord does not comply with these rules, the contract is not nul but the landlord can be sentenced to a fine from 5,000 euros to 15,000 euros. An authorisation is required for each new contract. In some other areas, the ALUR act creates an obligation to register the contract. A statement shall be made 15 days after the signing of the contract. If the landlord does not comply with these rules, he can be sentenced to a 5,000 fine. For these areas, decrees will be adopted to supplement the ALUR Act.

²³⁸ Civ. 3rd 15 December 2004, Bull. Civ. III n°239.

²³⁹ See the Official interpretation of the ministry in charge of housing issues n°107681 of the 17th January 2012 of the Ministry in charge of housing issues to the questions of a Deputy (in French: *Réponse ministérielle n°107681 du 17 janvier 2012 relatif au départ du locataire sans préavis*). In the French law, in some case, a deputy is allowed to ask the relevant ministry about the official interpretation of a law. These "answers" are published in the Official journal (*Journal Officiel*), www.legifrance.gouv.fr.

The French law also oblige the landlord to have a so-called “technical diagnosis”²⁴⁰ (in French: “*diagnostic technique immobilier*”) realised prior to sign a lease agreement. These diagnoses are based on the European directive concerning energy performance of buildings²⁴¹.

The first one is called “*diagnostic de performance énergétique*”²⁴², which means that an analysis of the energy performance of the dwelling is made. This diagnosis concerns all the dwellings, except those inhabited less than four months a year, and is valid for a duration of 10 years. It must be realised before the sale or the rent of the premises. The diagnostician has to use two labels. The first one is an “energy” label that indicates the annual energy consumption of the dwelling on a scale from A (low consumption less than 51 kWh / m²) to G (high consumption more than 450 kWh / m²). The second is a “climate” label that indicates the annual impact of energy consumption on emissions of greenhouse gases CO₂ on a scale from A (low emission, less than 6 pounds carbon / m² equivalent) to G (important emission, more than 80 pounds carbon / m² equivalent).

If the landlord does not comply with his/her obligation to annex this document to the lease agreement, this contract can be considered null or the rent can be reduced.

The second one is called “*constat de risque d'exposition au plomb*”²⁴³ and concerns risks of exposure to lead. It concerns dwellings of which the building permit was delivered before the 1st January 1949. The diagnosis is valid for six years if it indicates the presence of lead otherwise it is valid indefinitely. It must be annexed to the rental contract. It must also be accompanied by information concerning effects of lead on health and safety precautions in the presence of lead. If these documents are missing and the tenant discovers the presence of lead, the landlord is liable for hidden defects and can be sued in front of the *Tribunal d'instance*. If the presence of lead presents a danger to the health of the occupants, the mayor or the Prefect (see the notion of Prefect p. 56) can order the landlord to make repairs.

²⁴⁰ All these diagnosis must also be completed in case of sale but the rules are different concerning the duration of validity of the diagnosis and the consequences.

²⁴¹ Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJEU 18.06.2010 N° L153/13).

²⁴² See: art. L134-1 to L134-5 and art. R134-1 à R134-5 of the Building and Housing Code; art. 1116 of the Civil code; Art. L121-1 and L213-1 of the Consumption code, 2006 Decree, Decree of the Ministry in charge of housing issues (*Ministère de l'égalité des territoires et du logement*) of the 11th July 2013 on the updated content in CO₂ of the heat and cold networks (in French: *Arrêté du 11 juillet 2013 relatif à la mise à jour des contenus en CO₂ des réseaux de chaleur et de froid*), Decree of the Ministry in charge of housing issues (*Ministère de l'égalité des territoires et du logement*) of the 21st of September concerning the energy performance diagnosis (in French: *Arrêté du 21 septembre 2007 relatif au diagnostic de performance énergétique*), and Official interpretation of the ministry in charge of housing issues (*Ministère de l'égalité des territoires et du logement*) n° 25618 of the 18 June 2013 (in French: *Réponse ministérielle n°25618 du 18 juin 2013*), www.legifrance.gouv.fr.

²⁴³ See: 2006 Decree and Art. L1334-5 to L1334-13 and art. R1334-4 à R1334-12 of the Code of public Health (*Code de la santé publique*), www.legifrance.gouv.fr.

The third diagnosis is the “*état des risques naturels miniers et technologiques*”²⁴⁴, which aims to inform the tenant about risks concerning the area where the dwelling is located. These risks can be natural (floods, landslides), mining or technological (industrial, chemical) hazards. The document is a standard form filled in by the landlord according to information he/her can find in decrees adopted by the Prefect (see the notion of Prefect p. 56) in each department or region. It is valid for six months, or in case of rent, for the duration of the lease. If the document is not given to the tenant with the rent agreement, the tenant can sue the landlord in front of the *Tribunal d’instance* and ask for a reduction of the rent.

These three documents are attached together with the contract and formed what is called “*diagnostic technique immobilier*”.

Finally, a last diagnosis concerning asbestos²⁴⁵ has to be made. It does not have to be given to the tenant but it has to be kept at the disposal of the tenant.

The ALUR Act changes the rules concerning the diagnosis. The diagnosis concerning asbestos has to be joined to the other ones and given to the tenant. New diagnosis concerning the indoor installation of electricity and gas will be required. These new rules will be applicable when decrees will be adopted to supplement the content of the ALUR Act.

If the dwelling rented does not respect the law requirements on habitable dwellings, the tenant can go to the *Commission départementale* to reach an agreement with the landlord about the improvement to realise. If no agreement is reached the tenant can bring his case before the judge. The tenant can also directly bring the case before the judge (*Tribunal d’instance*, see question concerning the competence of the judges, p.69). If the judge considered that the dwelling is indecent, he/she can force the landlord to make the repairs, impose a reduction of the rent or/and force the landlord to pay damages.

6.2 The preparation and negotiation of tenancy contracts

- *Freedom of contract*
 - *Are there cases in which there is an obligation for a landlord to enter into a rental contract?*

The main principle is freedom of contract. Thus, there is no obligation for a natural person (in French: “*personne physique*”) to enter into a rental contract, even if some mechanism to strongly encourage

²⁴⁴ Art. L125-5 of the Environnement Code; 2006 Decree, www.legifrance.gouv.fr.

²⁴⁵ Art. R1334-14 to R1334-21 Public Health Code (In French: *Code de la santé publique*) ; see article annex 13-9 of the Public Health Code concerning the program to search for asbestos, that provides the details of the materials and products to check; Decree 12 December 2008 concerning the organisms allowed to carry out measurements of the concentration of asbestos dust in built buildings NOR: SJSP0830180A (In French: “*Arrêté du 12 décembre 2008 portant agrément d’organismes habilités à procéder aux mesures de la concentration en poussières d’amiante des les immeubles bâtis*” NOR: SJSP0830180A); 2006 Decree, www.legifrance.gouv.fr.

However, there are two mechanisms to force the landlord to enter into a rental contract or at least him: I) the requisition and II) taxation on empty dwellings. These two mechanisms will be elaborated hereunder.

I) The requisition

The French law organises a procedure of requisition but only for buildings belonging to corporate bodies (in French: “*personne morale*”, association, bank, insurance companies, etc.) and not for buildings belonging to natural person (in French: “*personne physique*”). Thus, only corporate bodies can be forced to enter into a rental contract.

To be requisitioned, the building must be unoccupied for at least 18 months and be located in an area where there is a huge discrepancy among supply and demand.

Three different proceedings exist:

- The first one can be decided by the mayor of a city applying article L2212-2 of the *Code général des collectivités territoriales*.
- The second one can be decided by the Prefect (see the notion of Prefect p. 56) applying the “*ordonnance*” of the 11 October 1945. The Prefect, representing the State, acts as a mediator between the potential tenant and the landlord.
- The third one, called “*réquisition avec attributaire*”²⁴⁶, can be decided also by the Prefect applying the 29th July 1998 Act. In this case, someone called “*attributaire*” is nominated to be a mediator between the potential tenant and the landlord. The role of the State is less important than in the second type of mechanism where the State is the mediator.

In every case of requisition, the procedure is similar. There are four steps.

- The first one is to identify the dwellings that are unoccupied since at least 18 months.
- The second step is to send a notice to the landlord to inform him/her about the procedure. An application to visit the place and to check whether it is vacant or if it needs to be repaired is joined to the notice.
- The third step is the answer of the landlord who has two months to respond from the day he/she receives the notice. To avoid the requisition, the landlord must commit himself/herself to stop the vacancy within three months from the day he receives the notice or to make repairs in order to rent the dwelling. The 2013 Decree²⁴⁷ gave details about this last hypothesis. If the landlord decides to make repairs, he/she has to send to the Prefect the schedule of the work within a month. The Prefect has one month to give his decisions. If he/she agrees with the works, the landlord has to give him estimates he agreed on with professionals also within a month. During the works, the landlord has to be able to prove the progress of the works and then to prove the dwelling is rented out. Otherwise, if the landlord does not agree, the

²⁴⁶ See art. L641-1 to L642-28 of the Building and Housing Code, www.legifrance.gouv.fr.

²⁴⁷ Decree 2013-1052 of the 22 November 2013 concerning the application of article L642-10 to L642-12 of the Building and Housing Code (these articles deal with requisition process), (in French: “*Décret n° 2013-1052 du 22 novembre 2013 pour l'application des articles L. 642-10 à L. 642-12 du code de la construction et de l'habitation*”), www.legifrance.gouv.fr.

Prefect sends him/her a formal demand to perform the work. Then, he will serve him/her a requisition decree.

- The fourth step is the decision of the Prefect to intervene within four months after the sending of the notice. Depending on the answer of the landlord, the Prefect can decide to carry on or to stop the procedure. A notice is sent to the landlord and if needed published on the wall of the dwelling. If the building is requisitioned, the name of the mediator and the duration will be written in the notice. The requisition can last from one year up to six years. In case the mediator made repairs in the dwelling, the requisition can even last up to twelve years.

II). Taxation on empty dwellings

We must mention that even if the natural people are not concerned by the requisition, special taxes can be created for owners of empty dwelling. It is a way, especially in area where there is a lack of dwellings to rent, to encourage people to rent their properties. Where such a tax exists, renting the dwelling is the only way for the landlord to avoid the taxation.

- The first tax is called "*taxe sur les logements vacants*" and concerns people who own a dwelling empty since at least one year. This tax is only applicable in some "urbanized" areas called "*zone d'urbanisation continue*". These areas must have at least 50,000 inhabitants. They are determined by decree (Article 232 of the *Code général des impôts*, i.e. Tax Code). The amount of the tax is calculated based on the rent the owner could earn if he decides to rent. The first year it is 12,5% of the expected rent plus administrative cost, the second year and the following ones it is 25% of the expected rent.
 - The second tax is the "*taxe d'habitation sur les logements vacants*" applicable when the other one is not and when the municipality, where the building is located, created such a tax. It is applicable when the dwelling is empty for at least two years. The rate depends on each city.
- *Matching the parties*
 - *How does the landlord normally proceed to find a tenant?*
 - *What checks on the personal and financial status are lawful and usual? In particular: May the landlord ask for a salary statement? May he resort to a credit reference agency and is doing so usual?*
 - *How can information on the potential tenant be gathered lawfully? In particular: Are there blacklists of "bad tenants"? If yes, by whom are they compiled? Are they subject to legal limitations e.g. on data protections grounds?*

To find a tenant, the landlord can appoint a real agency that will be in charge of looking for potential tenants, putting ads on their website, in the windows of their shops or in specific newspapers (see the role of such agency p. 79).

The owner of a premise to rent can also look by himself/herself for a tenant. In such a case, he/she can put ads in the newspaper, on Internet or in shops.

When potential tenants reply, the landlord or the real estate agency organises visits of the premise and give all the information needed. If the visitors are interested, the potential tenant and the owner can start discussing the content of the contract.

The landlord will have to decide if he wants to rent the place to the person who is interested by the dwelling. There is no specific provision concerning the choice of a tenant by the landlord. Nevertheless, article 1 of the 1989 Act prohibits discrimination among potential tenants (see concerning the topic of discrimination p. 93).

To avoid discrimination, the law also specifies which documents the landlord is not allowed to ask to the tenant²⁴⁸. These documents are those who give personal information of the tenants and that can be used to discriminate him. E.g. the landlord cannot ask information about the savings of the tenant or proof that the tenant regularly paid his/her former rent, or medical information. The list is strict but allows the landlord to have the information he needs to decide if the tenant can afford to pay the rent, how many people will live in the dwelling, etc. The landlord is allowed to ask for the following: payslips, employment contract, photocopy of the last tax declaration (to know how much the tenant earned the previous year)²⁴⁹, a photocopy of the family record book and bank details.

There are no provisions in the French law concerning black listing of bad tenants. But as discrimination is forbidden, the *Commission nationale informatique et liberté*²⁵⁰ (hereafter *CNIL*) rendered a decision on that point. This commission is an administrative independent administrative body that is in charge of data protection issues. It has to inform, advise and educate people but it also has power to regulate control and if needed to impose penalties. Concerning black list of bad tenants, the *CNIL*²⁵¹ was asked to give its point of view. It states that such a list creates a risk of exclusion. Thus, information must be given to the “bad” tenant prior to his/her inscription in the list. Only professionals of the rental sector are allowed to have such list but also the content of the list must be accessible only to professionals. The *CNIL* recalled that the law²⁵² prohibits listing condemnations of people, e.g. it is not allowed to put on the list information concerning judgments sentencing a tenant to pay the rent.

²⁴⁸ Article 22-2 of the 1989 Act states that the landlord cannot ask: - identity picture; -health care insurance card; -copy of the statement of their bank account; -attestation of the bank concerning the good behaviour on their bank account; -certificate that he/she has no credit; -debit authorization; -divorce judgment except the paragraph starting with “*par ce motif*” (this paragraph just says that the spouses are divorced but do not give details concerning the reason of divorce, the repartition of the belongings or the children); - certificate from the previous landlord if the tenant can give other proof; -certificate of the employer if the employee can give his/her working contract and his/her wage slip; -marriage contract, -certificate to prove cohabitation; -“*chèque*” voucher (cash) to make a reservation of the place; -medical information even for specific dwelling; -extract of criminal record (“*extrait de casier judiciaire*”), -cash or values, or goods to guarantee the payment of more than one month on a locked ban account; -more than two “*bilan*” (balance sheet) for independent worker; -copy of information contained in the “*fichier national des incidents de remboursements des crédits aux particuliers*” (national register of incidents of loan repayments to natural persons), www.legifrance.gouv.fr.

²⁴⁹ In France, taxpayers have to declare their income of the previous year to the tax authority. The tax once pays every year is thus linked to the amount he/she earns the previous year.

²⁵⁰ See their website : <http://www.cnil.fr/>

²⁵¹ See <http://www.cnil.fr/les-themes/conso-pub-spam/fiche-pratique/article/position-de-la-cnil-sur-les-listes-noires-de-locataires/>

²⁵² Art. 226-19 of the Criminal code (see www.legifrance.gouv.fr).

- *What checks may and does the tenant carry out on the landlord (e.g. to avoid being trapped by a swindler landlord)*

There are no specific rules concerning what a tenant can check about the landlord. The issues about swindler landlord are linked to the dwelling itself (indecent housing)²⁵³. The options offered to the tenant are explained with the question concerning indecent housing (see p.72)

Some landlords rent indecent dwelling for a very high price to people who cannot access the rental market. Sometimes, hotel owners rent a room for a family for the price of a full apartment in the regular rental market. These landlords are called “*marchand de sommeil*”, which literally means people who sell sleeps. This expression is a negative way to say these people are only renting a place to sleep and not to live in for a very high price. Landlords take advantages of the precarious situation of tenants to demand rent higher than the ones of the regular market.

- *Services of estate agents*
- *What services are usually provided by estate agents?*
- *To what extent are estate agents regulated? In particular: are there rules on how an agent should present a house, i.e. on the kind of information which needs to be given?*
- *What is the usual commission they charge to the landlord and tenant? Are there legal limitations on the commission?*

The main rules, such as ethic rules, concerning the different professions of the real estate sector were first established by their own federation and later included in the law²⁵⁴. Their status are now regulated by the *Hoquet Act* of the 2nd January 1970 (hereafter the 1970 Act)²⁵⁵ and a supplementing Decree of the 20 July 1972²⁵⁶. These texts have been amended an important number of time, the last changes were made by the

²⁵³ Some issues are linked to holidays rent but these contracts are not concerned by the rules applicable for the rent of a dwelling. E. g. people are supposed to rent a holiday house which does not exist.

²⁵⁴ See the first rules, which are no more into force: Ruling 58-1229 of the 16th December 1958 concerning the regulation of the agency dealing with real estate transaction (In French: *Ordonnance n°58-1229 du 16 décembre 1958 portant réglementation des agences de transactions immobilières*); Act 60-580 of the 21 June 1960 forbidding some practices as regards as transactions concerning real estate and business goodwill (in French: *Loi n°60-580 du 21 juin 1960 interdisant certaines pratiques en matière de transactions portant sur des immeubles et des fonds de commerce et complétant l'article 408 du code pénal*); Decree of the 25 March 1965 establishing the conditions of application of the act of the 21 June 1960 (in French: *Décret du 25 mars 1965 fixant les conditions d'application de la loi du 21 juin 1960*); www.legifrance.gouv.fr.

²⁵⁵ Act 70-9 of the 2nd of January 1970 organising the conditions to conduct activities related to specific transactions involving buildings and business goodwill, (in French: *Loi n° 70-9 du 2 janvier 1970 réglementant les conditions d'exercice des activités relatives à certaines opérations portant sur les immeubles et les fonds de commerce*), www.legifrance.gouv.fr.

²⁵⁶ Decree 72-678 of the 20 July 1972 setting the condition of application of the 1970 Act n°70-9 of the 2 January 1970 organising the conditions to conduct activities related to specific transactions involving buildings and business goodwill, (in French: *Décret n°72-678 du 20 juillet 1972 fixant les conditions d'application de la loi n° 70-9 du 2 janvier 1970 réglementant les conditions d'exercice des activités relatives à certaines opérations portant sur les immeubles et fonds de commerce*), www.legifrance.gouv.fr.

ruling 2013-676 of the 25 July 2013 changing the legal framework for asset management²⁵⁷.

All the professionals need to have a professional card, *i.e.* a “*carte professionnelle d’agent immobilier*” (Article 1 of the 1970 Act) which is delivered by the Prefecture. To obtain this card, one must prove that she/he has the relevant qualification –e.g. diploma or former experience in the field of housing-, that she/he was not convicted of crime such as economic crime, embezzlement, fraud, money laundering²⁵⁸, that she/he has an insurance for professional liability (in French: “*responsabilité civile professionnelle*”), that she/he has an escrow account and that he/she has a financial guarantee given by a bank or an insurance company. There is no need for a guarantor when the real estate agency decides not to receive money except its own remuneration, *i.e.* in case of rent, the tenant will pay directly the landlord.

For each agency, only the one who is the “*agent immobilier*” needs to have this card. His/her employees, people who have a mandate to negotiate in his/her name do not need to have this card. The consequence is that most of the people who negotiate lease agreements every day do not have this card. Real estate negotiators must hold a professional certificate issued by the owner of the professional card after approval by the Prefect. On that topic, we must add that there is no training obligation for people working in the real estate sector.

The real estate agencies²⁵⁹ have an obligation to write in all their documents, contracts and letters, the number of their professional card, the place where it was issued, their name or the name of their society, their address and (when applicable) the name and address of the guarantor. In all the places where the customer is received, they have to bring out the same information.

Concerning advertising, the real estate agency must follow the general consumer rules. Concerning the price of the service, the Decree of the 29 June 1990²⁶⁰ obliges the real estate agencies to display readable and visible information about the price they charge concerning the sale or lease of dwellings and drafting of lease agreements at the entrance of their establishment. For each price, they have to specify who is responsible for the payment: tenant, landlord, seller or buyer. The fees can be fixed freely by the agencies but must be displayed all taxes included. If the prices are calculated in proportion to the value of the property or the amount of rent, the display should indicate the percentage and give all information needed to calculate the price. If the agencies do not comply with these rules, they might be punished by a fine up to 1500 euros (5th class

²⁵⁷ Ruling 2013-676 of the 25 July 2013 changing the legal framework for asset management, (in French: *Ordonnance n° 2013-676 du 25 juillet 2013 modifiant le cadre juridique de la gestion d’actifs*), www.legifrance.gouv.fr.

²⁵⁸ In France, when one is convicted of a crime or an infraction, it is written in an official police record called “*casier judiciaire*”. To prove one has never been convicted of any crime, he/she just has to give this document which will be blank.

²⁵⁹ B. Vial-Pédroletti, “Responsabilité de l’agent immobilier : manquement à son obligation d’information et de conseil”, *Loyers et copr.* 2013 p. 11.

²⁶⁰ Decree of the 29th June 1990 concerning advertising of prices charged by professionals involved in real estate transactions, (in French : *Arrêté du 29 juin 1990 relatif à la publicité des prix pratiqués par des professionnels intervenant dans les transactions immobilières*, NOR: ECOC9000086A), www.legifrance.gouv.fr.

of infraction in the French scale of infractions called “contravention” Article R.113 -1 of the Consumer Code). Concerning lease agreements on dwelling, only the costs related to the preparation of the deed should be shared equally between the landlord and the tenant. The costs of research and negotiation obligations are to be paid by the owner.

The agencies must also comply with the regulation concerning misleading advertising (Article L 121-1 of the Consumer Code). E.g. a difference between the surface shown in the ad and the real size or the absence of information concerning the division of the cost between tenant and landlord can be considered as misleading advertising. These rules are also applicable for advertising on Internet.

The provisions of the Consumer Code on doorstep selling apply to real estate professionals when the client and the agent sign the contract concerning the dwelling outside of the office of the agent. Articles L121-23 and L121-24 of the Consumer code give details about the content of the consumer contracts in case of door-to-door sales apply. It also means that the consumer has a seven days period of withdrawal. During this period no payment can be asked to the consumer.

Various types can be distinguished among the professionals²⁶¹ of the real estate sector: “*agent immobilier*”, “*administrateur de biens*”, “*marchand de biens*”, “*vendeurs de listes*”, “*promoteur immobilier*”. The “*promoteur immobilier*” and the “*marchand de biens*” are only in charge of selling real estate. The “*agents immobilier*” are also in charge of operations concerning business goodwill and selling buildings and they can also have annex activities concerning tourism or some banking activities. All the activities, which are not linked to lease agreements on dwelling, will not be described in detail in this report.

- An “*agent immobilier*” is a real estate agent. He/she is the one who is, on a regular basis, in charge of interventions and transactions concerning real estate: renting or selling.
- An “*administrateur de biens*” is a manager who exceptionally acts as an intermediary for his/her customers. One of his/her missions is to be in charge of the rental management for his/her clients which means: looking for tenants, organizing the signature of the lease contract, collecting the rent and the service charges, organizing the termination of the contract (inventory, return of the deposit etc.)
- A “*vendeurs de listes*”²⁶² is someone²⁶³ who sells a list of dwellings to rent to potential tenants. The cost is cheaper than the ones of estate agencies, but

²⁶¹ On that topic see the book: J.-M. Moyse, G. Amoyel, *Agent immobilier*, éditions Delmas, (Paris 2013), 606 p.

²⁶² See concerning the definition of this notion: the Official interpretation of the ministry in charge of housing issues (*Ministère de l'égalité des territoires et du logement*) n°36451 of the 13th May 1996 (in French: *Réponse ministérielle n°36451 du 13 mai 1996*), www.legifrance.gouv.fr.

²⁶³ The 1970 Act is applicable to these people since an Act adopted in 1994: Act 94-624 of the 21st July 1994 concening housing (in French: *Loi 94-624 du 21 juillet 1994 relative à l'habitat*), and Ruling 2004-634 of the 1st July 2004 concerning intervention and management of real estate and business goodwill (in French: *Ordonnance 2004-634 du 1er juillet 2004 relative à l'entremise et à la gestion d'immeubles et de fonds de commerce*) www.legifrance.gouv.fr.

providing a list is their only task. They give contact details of potential landlords but they do not help people finding a dwelling. They do not go to visit dwellings with their clients and they do not negotiate at all with the landlords. Many criticisms have arisen as frequently some of the dwellings of the list are already rented. Some of them were sentenced for misleading advertising²⁶⁴ or for fraud (in French law: “*escroquerie*”)²⁶⁵.

The agency is obliged to sign a written mandate with their clients, owners of dwellings. The mandate should be very clear and very precise. The contract signed between the agency and the landlord must include:

- the term (in general three months),
- the remuneration of the agent and the mention of who will pay: tenant or landlord,
- the conditions in which the agency receives funds due to the landlord,
- the description of the power given to the agency to find a tenant.

The agency can also be in charge of the administration of the dwelling and it represents the landlord for the relationship with the tenant: receipt of payment, ask for repairs, notice and renewal of the contract. In such a case, the landlord gives his/her approval for the repairs or for any important decision, the agency only has to communicate to the tenant the decision of the landlord but it does not decide by itself.

The contract signed between the agency and the tenant must specify:

- the type of dwellings the clients are looking for,
- the nature of the service provided to the client,
- the price of the service,
- the condition of reimbursement of the client if the service is not provided within a certain duration.

If the parties do not sign such a contract, no compensation shall be paid to the agency.

The real estate agent has a duty to check that all the conditions are fulfilled to sign the contract. He/she is also liable for the specifications contained in the lease contract and for all the obligations of the law e.g. the technical diagnosis that must be given to the tenant or the respect of the rules concerning a decent housing. In the case of hidden defects, the agent is liable only if he/she knew the defaults before the conclusion of the contract.

When the agency writes the lease agreement signed by the tenant and the landlord, it is a private contract “*acte sous seing privé*”. If one of the parties does not fulfill his/her obligations, the other has to take the case to the judge for the performance of the contract.

A public officer can witness the signature of a lease agreement: a notary or a judicial officer (i.e. bailiff). In such a case, the deed is more secure and there is no need

²⁶⁴ CA Rennes, 13 December 1994, *RTcom* 1995 p. 491, note Bouzat.

²⁶⁵ Civ. 1st, 1st December 1993, 91-17.746; Civ. 1st, 1st December 1993 91-18.284; CA Paris, 25th Chamber, B. 13 December 1991 RG n° 131291.

to go to court to obtain the execution of the contract. When a public officer makes the contract, this one deliver to the parties a copy called “*copie exécutoire*”, and this act is directly enforceable. For example, if the tenant does not pay the rent, the landlord can directly contact the relevant judicial officer for the enforcement of the agreement.

The ALUR Act modifies the role of the real estate agency and their rights and duties. Most of the provision concerning that topic must be supplemented by the adoption of decrees.

- *Ancillary duties of both parties in the phase of contract preparation and negotiation (“culpa in contrahendo” kind of situations)*

In French law, the phase of contract preparation is considered as non-contractual stage. French law does not have any mechanism as the *culpa in contrahendo*²⁶⁶. It means that the general rules concerning non-contractual liability apply: articles 1382, 1382, 1383 and 1384 of the Civil Code. In some cases, article 1116 of the Civil Code dealing with wilful misrepresentation can be used combined with good faith (which is normally reserved to contractual aspects 1134 of the Civil Code)²⁶⁷. But, article 1382²⁶⁸ is the most important text. The conditions of article 1382 of the Civil Code are quite strict; the plaintiff has to prove the fault of the defendant, the existence of damage and the causal link between both. E.g. the length of the negotiations²⁶⁹ can be considered as a fault. If there is a fault and if the plaintiff manages to prove it, the defendant has to reimburse the negotiation costs²⁷⁰. Concerning contractual liability, judges refuse to compensate what is called in French “*Perte d’une chance*” and which means the loss of an opportunity²⁷¹. Otherwise, they consider that parties would lose their freedom to conclude a contract, as they may be forced to sign a contract that does not suit them to avoid paying compensation.

Some scholars consider that even if there is no *culpa in contrahendo* in the French law, the solutions adopted by the French and German judges seem quite similar²⁷². Both accept on limited conditions to repair damages that occur in the phase of contract preparation.

6.3 Conclusion of tenancy contracts

- *Tenancy contracts*

²⁶⁶ See rejecting this mechanism: Com. 11 January 1984 n° 82-13259. All the cases mentioned to answer this question refer to pre-contractual issues but not specifically to tenure contract.

²⁶⁷ See Civ. 1st 15 March 2005 Bull. Civ. I n°136, Civ. 1st 10 May 1989 Bull. Civ. I n°187.

²⁶⁸ Art. 1382 Civil code: “Any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate”.

²⁶⁹ Com, 22 February 1994, n°91-18842.

²⁷⁰ Com. 26 November 2003, Bull. civ. IV, n°186.

²⁷¹ Com. 26 November 2003, Bull. civ. IV, n°186, Civ. 3rd 28 June 2006 Bull. civ III n°164.

²⁷² See Ph. Guez, « *La culpa in contrahendo, commentaire du § 311 alinéa 2 BGB, par René Martin de Lagarde* », <http://m2bde.u-paris10.fr/content/la-culpa-contrahendo-commentaire-du-%C2%A7-311-alin%C3%A9a-2-bgb-par-ren%C3%A9-martin-de-lagarde>.

- *Distinguished from functionally similar arrangements (e.g. licence; real right of habitation, Leihe, comodato)*
- *Specific tenancy contracts, e.g. contracts on furnished apartments; student apartments; contracts over room(s) only (e.g. student rooms); contracts over rooms or apartments located in the house in which the landlord lives himself as well. Please describe the legal specificities in these cases.*

Lease agreements concerning a dwelling have to be distinguished from usufruct (In French: “*usufruit*”, articles 578 to 624 of the Civil Code). It is a temporary real right to use the property that someone else owns and to collect the fruits, i.e. the income linked to this property (e.g. the usufructus can decide to rent the thing and to collect the rent). In such a case, the property right is divided: the owner keeps the bare property (In French: “*nue-propriété*”) and the usufructuary has the usufruct, i.e. the fruits. In exchange, the usufructuary has to ensure the conservation of the thing object of the usufruct i.e. he/she is in charge of all the repairs, except for the main building work). He/she also has to pay the taxes (concerning a dwelling in French: *taxe d’habitation*, i.e. tax when a dwelling is inhabited and in French: *taxe foncière*, i.e. property tax).

Usufruct is possible only in limited cases: parents can have the usufruct of the property of their child during his/her minority (articles 382 to 387 of the Civil Code), the husband/wife can have the usufruct of the property of his/her spouse after her/his death (article 756 to 758-6 of the Civil Code), people can become usufructuary under a will or due to a contract (sale or donation of a right of usufruct).

The usufruct ends when the usufructuary dies, when the contract end (for contractual usufruct), when the usufructuary become the bare owner, when the usufructuary does not use his/her right for 30 years, when the object of the usufruct is destroyed, when the usufructuary does not take good care of the dwelling (abuse of his/her right to use and collect the fruits or lack of maintenance) or when the minor reaches 16 years in case of usufruct of the parents.

The French Civil code also organises a right to use a property (in French: “*droit d’usage*”) at articles 625 to 631 of the Civil Code. It can concern any type of goods. This right is similar to the usufruct but more limited: the beneficiary has only the right to use and to collect the fruits. The right cannot be given to someone else or to be the object of a lease. A similar right concerning the use of a dwelling (in French: “*droit d’habitation*”) is organised by articles 631 to 636 of the Civil Code. It follows the same regim as the “*droit d’usage*”. In practise, these right are rarely used, but they have to be distinguished from the lease agreement.

Then, lease agreements on dwellings must be distinguished from other types of lease agreements. Article 2 of the 1989 Act specifies that the provisions of this act apply to: “lease contracts of premises used as a main residence or used simultaneously as a main residence and for commercial purpose as well as to garages, parking spaces, gardens and other premises that are accessory to the main dwelling but rented by the same landlord. However, they do not apply to seasonal rentals, with the exception of Article 3-1 (technical diagnosis), or to “*logement foyer*” (house where people leave in common), with the exception of the first two paragraphs of article 6 and article 20 -1 (both articles concern decent housing). They do not apply either, with the exception of Article 3-1 (technical diagnosis) and of the first two paragraphs of article 6 and of article

20-1 (decent housing), to furnished premises, to dwellings allocated or leased due to the exercise of a function or job and lease for seasonal workers.”

The ALUR Act, adopted the 24th of March 2014, introduced a definition of the concept of main residence (in French: “*residence principale*”). The definition is added to the article 2 of the 1989 Act. It states that the tenant or his/her spouse or people dependant on them must occupy the rented dwelling at least eight months per year, except in case of health reasons, professional necessity or force majeure. If the rented place can be considered as the main residence, the 1989 Act is applicable. The new law also created specific rules concerning furnished flat.

The 1989 Act does not apply to the second homes (“*résidences secondaires*”). In such a case, the provisions of the Civil Code (Articles 1709 to 1778 of the Civil Code) are applicable. In practice, it can be hard to determine if a house is or not the main residence of a family. For example, a family living during the working days in the city and during the week-ends and holidays in another house where the family has all its activities and interests.

The real main residence can differ from the legal domicile, i.e. the place where the family declares she is established (Article 102 of the Civil Code refers to the “*principal établissement*” i.e. main establishment). To check if the 1989 Act applies, one must check in concrete terms where the family lives.

The 1989 Act does not apply to furnished dwelling (in French: “*location meublée*”). For these specific contracts, articles L632-1 to L632-3 of the Building and Housing Code are applicable²⁷³. This rule states that the duration of the contract is one year, automatically renewed for the same duration. If the landlord wants to change the condition of the contract before the renewal, he/she has to give notice three months before the termination of the contract. If the tenant agrees, the contract is renewed for a year. If the landlord does not want the contract to be renewed, he/she has to give notice to the tenant three months before the end of the contract and to justify the refusal by his/her wish to take the dwelling back or to sell the property or by a legitimate and serious reason, including the fact that the tenant fails to respect his/her obligations. The duration is reduced to nine months without automatic renewal if the tenant is a student. The tenant can leave the dwelling anytime with a one-month notice.

For all the elements that are not specified in these articles, the general provisions of the Civil Code (Articles 1709 to 1778 of the Civil Code) apply.

Both parties negotiate freely the content of the contract, including the amount of the deposit (generally one or two months’ rent). The tenant is protected by the ban of unfair clauses. The national commission against unfair clauses established a list of these clauses based on the European directive concerning unfair terms in consumer

²⁷³ Some specific rules applies when the landlord is not the owner of the dwelling but when she/he holds a commercial lease ad if his/her rental contract is about to end or if the end of his/her activity is expected. In that case, the duration can be shorter than a year but the contract must specify the reasons. If the lease of the landlord is renewed or if the activity is not stopped, the contract with the tenant concerning the furnished dwelling is also renewed and for a year. See also L632-2 of the Building and Housing Code, www.legifrance.gouv.fr.

contracts²⁷⁴. Such clauses can concern various aspects: provisions contrary to the law, abusive fees, abusive rent or service charges or repairs, limitation too important to the enjoyment of the dwelling, provisions concerning the termination of the lease or disclaimer.

Neither the 1989 Act nor the Building and Housing Code give a definition of what a “furnished apartment” is. The *Cour de cassation* stated that the judges of first and second degree are competent to determine if that the furniture must allow a normal life²⁷⁵. E.g. it considers that a dwelling without any fridge, hob or cooker that are considered as “essential” for a normal life is not a furnished dwelling. The judges also consider that there must be enough furniture in the dwelling²⁷⁶ and that worthless furniture is not enough²⁷⁷.

If the dwelling cannot be considered as a furnished one, the 1989 Act is applicable. The 1989 Act offers a higher protection to the tenants than the specific provisions of the Building and housing Code. Thus, the judges give a strict interpretation of the notion of furnished flat. A new law, to be adopted in 2014, plans changes on that topic. A specific chapter is created concerning furnished flat in the 1989 Act and the protection for the tenant is similar to tenant renting an empty house.

In any case, as mentioned above, articles 3-1 (technical diagnosis) and 20-1 (decent housing) and the first two paragraphs of article 6 (decent housing) of the 1989 Act are applicable to lease of furnished dwellings.

The ALUR act changes the rules concerning furnished dwellings. The furnished flat are no more excluded by the 1989 Act when it is the main residence of the tenant. The act creates a new part in the 1989 Act concerning the relation between the landlord and the tenant when this one rent a furnished as his main residence (in French: *Titre Ier bis : Des rapports entre bailleurs et locataires dans les logements meublés résidence principale* : Articles 25-3 to 25-11). The provisions are supposed to be applicable on the 27th March 2014 but for most of them decrees are required to supplement the content of the law.

The new article 25-4 of the 1989 Act²⁷⁸ contains a definition. “A furnished accommodation is a decent housing with furniture, sufficient in number and in quality, to allow the tenant to sleep, eat and live properly according to the needs of everyday life”. An inventory of the content of the dwelling shall be made jointly both by the tenant and the landlord when the tenant enter the place and when he leaves. The new law states that the deposit is of a maximum of two months rates. The content of article L632-1 of the Building and Housing Code concerning the duration (12 month/9 if the tenant is a student) is transferred to the 1989 Act. The notice shall be send by registered letter or

²⁷⁴ See Recommendation 13-01 concerning lease contracts on furnished dwelling, excluding seasonal lease (In French: *Recommandation n° 13-01 relative aux contrats de location non saisonnière de logement meublé*) available on the website : <http://www.clauses-abusives.fr/>

²⁷⁵ Civ. 3rd 9 February 2005 n°03-15128.

²⁷⁶ Soc. 9 July 1963, Bull. Civ. IV n°551, Civ. 3rd 18 July 2000 n°98-21452.

²⁷⁷ Soc. 24 May 1966, Bull. Civ. IV p. 426.

²⁷⁸ Article 25-4 of the 1989 Act : « Un logement meublé est un logement décent équipé d'un mobilier en nombre et en qualité suffisants pour permettre au locataire d'y dormir, manger et vivre convenablement au regard des exigences de la vie courante.”

by a bailiff. The tenant can terminate the contract when he wants with a one month notice. The landlord can terminate the contract only if he can justify his decision by the fact that he wants to have his dwelling back to use it for a member of his family or if he wants to sell it or if he has good and serious reasons (non respect of his obligation by the tenant). The letter of notice shall give the name of the beneficiary and of his relation with the landlord where applicable. If the tenant is old and with low income, the landlord cannot terminate the contract. The judges can always check the reason of the notice when it comes from the landlord. If the termination is due to the landlord, the tenant only has to pay for the rent and taxes corresponding to the time he stays in the dwelling. If ever the landlord wants to renew the contract and to change some of the provisions he has to warn the tenant three months in advance. The ALUR act also contains a provision concerning the determination of the rent (Article 25-10 of the 1989 Act). To determine the rent, the landlord must refer to the reference rent and to add an increase to take into account the fact that it is a furnished accommodation. These rules are not applicable for furnished dwelling that are in a residence including services such as hotels. The rules concerning the increase are the same as for non-furnished dwellings. An increase can be decided if the landlord buys extra equipments to supplement the content of the dwelling.

The 1989 Act does not apply to what is called in French "*logement foyer*" sheltered dwellings. This notion refers to an institution where people have their main residence and live in community and which offers both furnished and unfurnished private premises (bedroom, mostly) and common areas assigned to life in community (food, laundry...). These contracts are governed by articles L633-1 to L633-4 and R633-1 to R633-9 of the Building and Housing Code, supplemented by the Code civil. Some of the provisions of the 1989 Act are also applicable: articles 1, 2, 6, and 20-1 respectively concerning anti-discrimination issues, technical diagnosis of the house and decent housing.

Some of these houses are reserved for young workers from 16 to 25 years old (sometimes up to 30 years old). Some concerns jobless people, students, elderly, disabled people, migrant workers or poor people.

A written contract must be established. It should include the conditions of admission to the institution, the date and duration, the terms and conditions of termination, the amount of the rent and of the service cost, the amount of the deposit, and the designation of premises (description of the equipment for private use and of the equipment for common use). The tenant who signed the contract is considered to have accepted the condominium rules that should be annexed to the contract. The contract is concluded for a period of one month and automatically renewed at the sole discretion of the tenant. The termination by the manager of the institution can only occur for very specific reasons: if the beneficiary does not respect his/her obligations or if he/she does not respect the condominium rules (serious or repeated failure), if the institution is closed or if the beneficiary ceased to fulfil the condition to access such institution.

The ALUR Act modifies the rules applicable to student houses. Only part of the contract is submitted to the 1989 Act. A new article is created in the Building and housing Code (Article L 631-12). The contracts are for a year and can be renewed if the student fulfils the requirement. Sub-lease is forbidden and the tenant cannot seize the contract to someone else.

The 1989 Act is also not applicable to company housing (in French: “*logement de fonction*”), which refers to dwellings allocated or leased due to the exercise of a function or job. Only articles 3-1 (technical diagnosis) and 20-1 (decent housing) and the first two paragraphs of article 6 and (decent housing) of the 1989 Act are applicable. As a result of the exclusion of the 1989 Act, in case of company housing, the tenant is less protected by the law. Such a situation can be justified by the link between the job or the function and the dwelling. Sometimes, the links are obvious, e.g. for a concierge or a watchman. The applicable law depends also on the nature of the working contract. For civil servants, the applicable rule is defined in a Decree²⁷⁹. If the dwelling is allocated due to absolute necessity of the service (In French “*concession de logement par nécessité absolue de service*”), the civil servant does not have to pay any rent. If the allocation of the dwelling is not absolutely necessary (in French: *convention d’occupation précaire avec astreinte*) but linked to the duty or to on-call service, the rent is half the price of the normal market. In both cases, the beneficiary has to pay the service cost and to have an insurance for the dwelling. The size of the dwelling depends on the size of the family of the beneficiary. The duration of the contract depends on the mission of the beneficiary. There is no lease contract between the beneficiary and the State but an administrative decision that contains all the details (the location of the house, the description of the dwelling, the number and quality of people living inside, the financial conditions). If the beneficiary does not have any administrative decision or if the decision is cancelled or any equivalent situation, the beneficiary can be expelled. The difference between a administrative decision and a contract is that the content of the act is determined by the State or the authority in charge. Moreover, in case of dispute, the Administrative tribunal is competent and not the *Tribunal d’instance* or the *Commission départementale*.

The 1989 Act is also not applicable to seasonal lease (in French: “*location saisonnière*”), which refers to renting a place only for holidays. There is no clear definition, but depends on the touristic season and on the purpose of the lease agreement. The applicable law is the Civil Code (Articles 1709 to 1778 of the Civil Code) and articles 1, 2 and 6 of the 1989 Act concerning decent housing and article 20-1 concerning rehabilitation of non-decent housing.

The 1989 Act does not apply to lease for seasonal workers (in French: “*locations consenties aux travailleurs saisonniers*”). It refers to lease for workers who for example rent dwellings and work at the same time during the ski season in the mountains, or during the beach season in the South of France. The applicable law is the Civil Code (Articles 1709 to 1778 of the Civil Code) and articles 1, 2 and 6 of the 1989 Act

²⁷⁹ Decree 2012-752 of the 9th of May 2012 reforming the regim of concession of dwellings, (In French: “*Décret n° 2012-752 du 9 mai 2012 portant réforme du régime des concessions de logement* »); Decree of the 22th of January 2013 dealing with the concessing of dwelling (in French: “*Arrêté du 22 janvier 2013 relatif aux concessions de logement accordées par nécessité absolue de service et aux conventions d’occupation précaire avec astreinte pris pour l’application des articles R. 2124-72 et R. 4121-3-1 du Code général de la propriété des personnes publiques NOR: BUDE1223843A*”), www.legifrance.gouv.fr.

concerning decent housing and article 20-1 concerning rehabilitation of non-decent housing.

The 1989 Act is also not applicable to what is called in French “*convention d’occupation précaire*”. Such convention refers to contract allowing precarious occupation of a dwelling, which are concluded for a short period of time and for a low rent. Such contracts are considered valid by the judge if some conditions are fulfilled.

First, special circumstances must be gathered to justify the instability of the lease. If there are no such circumstances, the contract is considered by the judges as a lease contract²⁸⁰. If the use of such instable contract is linked to the will of the landlord to avoid the application of the specific law concerning lease on dwelling, judges consider that this law is applicable²⁸¹. Judges also consider that the sole will of the parties is not sufficient²⁸², real exceptional circumstances must exist.

All these circumstances must exist at the time of the signature; otherwise the contract is not a “*convention d’occupation précaire*”²⁸³.

Such circumstances can be recognised due to the transitory situation of the building, e.g. if an expropriation is expected²⁸⁴, during the execution of work on the building²⁸⁵, for temporary relocation during works on the main dwelling of the tenant which was evicted²⁸⁶ or which suffered damages due to bad weather²⁸⁷ or which needed to be rehabilitated²⁸⁸ or finally will of the owner to build later a cafeteria on the plot²⁸⁹. It can also be the case if an owner signs a contract with his future buyer allowing him to live in the dwelling (with a compensation) before the final signature of the sale²⁹⁰.

They can also be recognised due to geographical situation of the building e.g. "Given the exceptional site on the outskirts of the city and given the economic and urban development projects of the municipality"²⁹¹. Such a contract can also be justified by the temporary need/occupation of the dwelling, e.g.: the owner is away for work, offers someone else to live in his dwelling and only ask him to pay a small compensation to cover the service cost²⁹². The extension of the duration does not change the nature of the contract that remains a “*convention d’occupation précaire*”²⁹³, except in the cases mentionned above when the parties try to avoid the application of the 1989 Act. But judges considered that a contract without any duration or expected duration cannot be considered as a “*convention d’occupation précaire*”²⁹⁴.

²⁸⁰ Civ. 3rd, 29 June 1994, n°92-17314.

²⁸¹ Civ. 3rd, 4 March 1987, n°85-14113, in this case the 1982 Act.

²⁸² Civ. 3rd, 19 November 2003, Civ. 3rd, 9 November 2004.

²⁸³ Civ. 3rd, 29 April 2009, n°08-10506.

²⁸⁴ CA Paris 8 January 1980 ; CA Paris 22 June 2005 ; CA Paris 9 April 2008.

²⁸⁵ CA Montpellier 4 February 2009.

²⁸⁶ CA Paris 23 October 2008.

²⁸⁷ CA Paris 7 February 2003.

²⁸⁸ CA Bordeaux 23 November 1998.

²⁸⁹ CA Aix en Provence 23 October 1986.

²⁹⁰ Civ. 3rd, 31 January 2012.

²⁹¹ Civ. 3rd, 16 February 2000.

²⁹² CA Paris 22 May 2007.

²⁹³ Civ. 3rd, 6 November 1991.

²⁹⁴ CA Bordeaux 18 September 1986.

The contract signed by associations who offer temporary houses to people who lost their dwelling are also classified as “*conventions d’occupation précaire*”, even if the duration of the contract is one year and if the price paid is named “rent” in the contract²⁹⁵.

Second, the price of the rent must be modest²⁹⁶. The modesty of the rent helps to classify the contract as a “*convention d’occupation précaire*”²⁹⁷. Nevertheless, the service in kind (construction work in exchange of accommodation) cannot be considered as the payment of a rent and thus is not such a convention²⁹⁸.

The rules applicable to the contract are those of the Civil Code (Articles 1709 to 1778 of the Civil Code). However, the Court of Cassation considered that the agreement does not allow a tenant to require the owner to comply with the obligations of a landlord. In the same case, it also stated that the fee fixed by mutual agreement could be changed legally²⁹⁹. But the landlord³⁰⁰ must ensure a peaceful enjoyment of the premises, except in case of force majeure and, in case of fire, the occupant is presumed responsible (Article 1733 of the Civil Code)³⁰¹. Such a rule can be explained by the fact that the tenant is most of the time responsible for fire. Moreover, to be protected against these risks, the tenant has an obligation to insure the rented premises (article 7, g of the 1989 Act). This insurance covers at least all the risks the tenant is liable for, such as fire or water damages. The tenant can always choose to have an insurance that covers more potential damages. The landlord has a write to include in the contract a provision stating that the contracts terminates if the tenant does not prove he/she has an insurance for the dwelling. On the contrary, the landlord cannot choose the insurance company instead of the tenant.

The ALUR act specifies that the landlord can subscribe an insurance in the name of the tenant if this one did not do so. The conditions shall be detailed in a Decree.

Contrary to the previous cases, sometimes, the application of the 1989 Act is partly extended to contracts that are not supposed to fall under the scope of this law. Parties can decide to apply the 1989 Act even to contracts that are excluded by its article 2. The only exception is the case when imperative rules, which cannot be excluded, apply to these contracts. For example, parties cannot decide to apply the 1989 Act to commercial lease.

Some provisions of the 1989 Act are also applicable for the contracts that fall under the scope of the 1948 Act. These dwellings are those constructed before the 1st of September 1948 and located in town with more than 10 000 inhabitants. These dwellings are subject to a ranking that determines the rent to be paid by the tenant. This mechanism offers low rents and the tenant and his/her family have a right to remain in the premises after the end of the lease. The provisions concerning the price of the rent

²⁹⁵ CA Paris, 5 May 1999.

²⁹⁶ Civ. 3rd 29 June 1994, CA Aix en Provence 20 March 2008.

²⁹⁷ CA Caen 14 April 2005.

²⁹⁸ CA Paris 15 October 1987.

²⁹⁹ Civ. 3rd 6 December 1985.

³⁰⁰ Civ. 3rd 23 January 2008.

³⁰¹ See art. 1733 of the Civil Code : « He is answerable for fire, unless he proves: That the fire happened by a fortuitous event or force majeure, or by a defect of construction, or That the fire was communicated through a neighbouring house.”

and the duration of the contract are governed by the 1948 Act. However, some provisions of the 1989 Act are applicable: e.g. article 6 (obligations of the landlord), article 14 (desertion by the tenant), article 15 paragraph 2 (termination of the contract by the tenant) and article 22-1 (guarantee).

- *Requirements for a valid conclusion of the contract*
 - *Formal requirements*

Article 3 of the 1989 Act states that the contract must be in writing. It could be an authenticated deed “*acte authentique*” (written by a public officer, a notary or a bailiff) or a private deed (in French: “*acte sous seing privé*”). Each party has a right to ask for a written contract³⁰² that fulfils conditions of article 3 of the 1989 Act. If one party refuses to sign a written contract, the lease can be cancelled (in French: “*résiliation*”)³⁰³ and the party who refuses to sign can be condemned to damages³⁰⁴.

If there is only an offer of rent (in French: “*promesse de bail*”), judges considered that the agreement has the same value as a lease if it fulfils the condition of article 1709 of the Civil Code (i.e. a dwelling, a duration, and a rent) and if the dwelling fulfils the condition for a tenant to live in it³⁰⁵. The tenant can then use this offer to ask the landlord to respect his/her obligations.

The ALUR Act, adopted the 24th March 2014, created an information leaflet that shall be joined to the contract, but also a standard contract. The content of these two documents shall be defined later in a decree.

If the parties did not put the contract in writing, the *Cour de cassation*³⁰⁶ stated that the contract was valid, which means that it is binding. But if there is no written contract, the proof of the existence and of the content of the contract can be difficult to give. All means can be used but the only fact that the person lives in the flat is not enough. For example, the rent receipts (in French: “*Quittance de loyer*”) can be used to prove the existence of a lease. The *Cour de cassation* considers that if one of the parties does not respect 1989 Act, it does not mean this law will not be applied to the contract or to the obligation of this party³⁰⁷. Thus, even if there is no written contract, even if none of the parties asked a written contract, the 1989 Act is applicable³⁰⁸.

Moreover, the tenant has a right to ask for a written contract. If the landlord refuses and if the tenant sues him/her, the judgment itself might be considered as the valid tenure contract³⁰⁹. All the information that is supposed to be in the contract will be included in the judgement.

³⁰² Civ. 3rd 29 November 2009, Bull. civ. III, n° 179.

³⁰³ CA Nîmes, 19 December 1996, *Loyers et copr.* 1997, n°160 ; CA Nîmes, 20 September 2001, *Loyers et copr.* 2002 n°59 Obs. Vial-Pedroletti ; see also Civ. 3rd 23 June 1998.

³⁰⁴ CA Paris, 29 March 2007, *Loyers et copr.* 2007, n°147.

³⁰⁵ Civ. 3rd 28 October 2009, *D.* 2009 AJ 2752.

³⁰⁶ Civ. 3rd 7 February 1990 n°88-16225, this decision concerned the application of the 1982 Act applicable before the entry into force of the 1989 Act, but the solution is still valid as there is no provision in the 1989 Act concerning this point.

³⁰⁷ Civ. 3rd 27 January 1999 n°97-12246 ; *RJDA*, 3/1999, n°269 p. 231.

³⁰⁸ CA Paris, 21 January 2003, *Loyers et copropriété* 2003, n°127 obs. Vial-Pedroletti.

³⁰⁹ Civ. 3rd 29 November 2000 n°98-12442, *RJDA* 2/01 n°136 ; *Loyers et copr.* 2001, comm n°170.

Article 3 of the 1989 Act also specifies what the mandatory content of the contract is (see question concerning the content of the contract, p. 100).

In addition, article 4 specifies the provisions that are forbidden in a rent agreement on dwelling because they are considered as unfair ("*clauses abusives*", see p. 96).

An inventory (in French: "*état des lieux*")³¹⁰ must be joined to the contract (article 3 of the 1989 Act). The paragraph concerning this document was modified by the 2010 Act, adopted the 22 of December 2010³¹¹. Such a document is realised both when the tenant enters the dwelling and when he/she leaves. It is realised jointly by the landlord and the tenant or by their representatives (e.g. real estate agency or a specific agency). If a third party is in charge of the realisation of the document, the cost is not directly or indirectly paid by the tenant. If for any reason (e.g. refusal of the tenant or of the landlord to sign the document), the document cannot be written jointly one of the parties can ask for the intervention of a bailiff. The costs, which are fixed by a State Decree, are divided between the tenant and the landlord. Parties are given notice of this procedure at least seven days in advance.

The document describes precisely each room of the dwelling and all the equipment, both fixed and moveable items. For the heating system, the tenant has a right to ask for a change of the inventory during the first month when he/she starts warming the place. If the heating system does not work properly, the tenant can ask for a change of the inventory to mention its malfunction.

The comparison of the content of the document when entering the dwelling and when leaving will have an impact on the amount of the deposit that is given back to the tenant. The amount of the repairs is deducted from the amount of the deposit (see concerning the deposit, p.129).

If no inventory is established, the tenant is considered to have received the dwelling in good conditions (See article 1731 of the Civil Code³¹²). The party who refused to be here for the inventory is not allowed to ask for the application of the article 1731 of the Civil Code.

The ALUR Act specifies that the method and cost for the realisation of the inventory when it is made by a third part or a judicial officer or bailiff shall be determined by a decree. During ten days after the realisation of the inventory, the tenant may ask the inventory to be completed. The ALUR Act also states that the inventory shall mention the meter-reading of the various energies (gas/electricity).

³¹⁰ Radé, *RDI* 1996. 31, Vidal, *Rev. Loyers* 2011. 182 (inventory by a judicial officer). – Laroussarias et Salas, *Rev. bleue juill.-août* 2012. 46.

³¹¹ Act 2010-1609 of the 22th December 2010 (In French: *Loi n°2010-1609 du 22 décembre 2010*), www.legifrance.fr.

³¹² Art. 1731 of the Civil Code: "Where no inventory has been made, the lessee is presumed to have received the premises in a good state of repairs incumbent upon lessees, and must return them in the same state, except for proof to the contrary."

See also: Article 1730 of the Civil Code: "Where an inventory of fixtures has been made between the lessor and the lessee, the latter must return the thing such as he received it, according to that inventory, except for what has perished or has been deteriorated through decay or force majeure".

According to article 3-1 of the 1989 Act, a technical diagnosis must also be joined to the contract. This document, described in detail above (See p.74), is linked to the obligation of the owner to rent a decent dwelling.

Finally, concerning the formal requirement, we can add that electronic means can be used for the transfer of information concerning the contract³¹³ and if the recipient accepts it, it can also be used for specific information concerning the contract or its execution³¹⁴. The French Code Civil has a chapter concerning Contracts in Electronic Form³¹⁵ and considered they have the same value as paper contracts. As long as both parties agree with the process and have both accesses to the relevant information, there are no specific needs linked to the electronic form of the contract.

- *Is there a fee for the conclusion and how does it have to be paid? (e.g. "fee stamp" on the contract etc.)*

There is no fee stamp concerning the conclusion of the contract. The law protects the tenant concerning the payment of fee. Only the costs related to the preparation of the deed should be shared equally between the landlord and the tenant, e.g. if the contract is written by a notary. The costs of research and negotiation obligations are to be paid by the owner (see question concerning the real estate agency, p.79).

- *Registration requirements; legal consequences in the absence of registration*

In the French law, there is no requirement for registration or publication of rental agreement. This can be explained by the idea that the lease agreement does not give any right *in rem* and furthermore to the conception of French law of property. The public registers that exist are linked to the property itself (land register). An owner has a complete right on his property, including the right to rent his/her property. The creation of a registration requirement could be considered as an infringement to this right.

However, the French law specifies that some third parties must be informed of the existence of a lease agreement, e.g. anyone who wants to buy the dwelling or the holder of a mortgagee. The tenant has to be informed by the new owner but his/her contract remains the same, which insures him/her a protection (Article 3 in fine, 1989 Act).

- *Restrictions on choice of tenant - antidiscrimination issues*
 - *EU directives and national law on antidiscrimination*
- *Limitations on freedom of contract through regulation*

The landlord is not allowed to discriminate against people who want to rent his/her flat. The list of criteria is very precise in the law (see also p. 78). Article 1 of the 1989 Act prohibits discrimination based on: name, origin, physical appearance, health reasons,

³¹³ Art. 1369-1 of the Civil Code: "Electronic means may be resorted to in order to render contractual terms or information regarding goods or services available."

³¹⁴ Art. 1369-2 Civil Code: "Information which is requested for the purpose of concluding a contract or that which is addressed during its performance may be transmitted by electronic mail where their addressee has accepted the use of this means."

³¹⁵ Art. 1369-1 to 1369-11 Civil Code.

handicap, family situation, gender, moral thinking, sexual choice, political thoughts, trade union activities, affiliation or non-affiliation (true or unproven) to a race, an religion, a nation or an ethnic group³¹⁶. For example, discrimination is characterized, if the landlord refuses to rent his dwelling to a foreigner because of his name or because of the colour of the person's skin³¹⁷.

It is interesting to note that the age is not included in this list. But, it should be noted that the articles 225-1³¹⁸ and 225-2 of the Criminal Code prohibit, among other discriminations, discrimination based on age for the delivery of goods or services.

The ALUR Act, adopted on the 24th of March 2014, changed article 1 of the 1989 Act to strengthen the protection against discrimination. The list included in article 1 is deleted and a reference to article 225-1 of the Criminal code is included in the 1989 Act. This new provision is directly applicable. The aim of the legislator is to generalise the ban to refuse to rent a dwelling for unfairly biased reasons.

In case of discrimination, it is up to the defendant to prove he did not discriminate the plaintiff. The *Conseil constitutionnel*³¹⁹, who is in charge of checking if laws abide by the French constitution, stated that these rules of proof abide by the Constitution. It stated that the plaintiff still has to give explanation concerning his/her accusation and to prove the reality of the facts it considered discriminating. The landlord will thus be able to answer and to prove these facts were only linked to normal management of his/her estate.

If the landlord is a corporate body (in French: "*personne morale*", association, bank, insurance companies, etc.), he/she can be forced to rent his/her properties in case of requisition. In such a case (see the process explained p.76), the landlord may choose the tenant but he/she is forced to rent because of a lack of available dwellings.

The freedom of the landlord to choose a tenant is also limited in case he/she contracted with the State³²⁰. In exchange for financial help from the State to buy, to build or repairs his/her dwelling, the landlord must choose tenants with low income. In this case also, the landlord has to avoid discrimination. The only limitation is linked to the amount of the income of the tenant.

- *Mandatory provisions in rental contracts, in particular: mandatory minimum requirements of what needs to be stated in a tenancy contract*

According to article 3 of the 1989 Act, in the contract, some provisions are mandatory such as:

³¹⁶ 2002 Act modifies article 1 of the 1989 Act in that sense.

³¹⁷ Crim. 7 June 2005 n°04-87354.

³¹⁸ Art. 225-1 of the Criminal Code.

³¹⁹ Ruling 2001-455 of the 12th January 2002 of the Constitutional Court (In French: *Conseil Constitutionnel*), see <http://www.conseil-constitutionnel.fr/>.

³²⁰ See the various tax incentive mechanisms Duflo (Act n° 2012-1509 of the 29th December 2012 concerning finance for 2013), loi Borloo Populaire, loi Scellier, loi Besson, loi De Robien, loi De Robien Recentré, loi Perissol. (See part I, p. 49).

- the identification of the landlord (the name or the denomination, the address of his/her residence or of his/her headquarters and if there is one, the name and address of his/her representative),
- the effective date of the beginning of the contract. Most of the time, this date corresponds with the day of the signature of the contract,
- the duration of the contract. But as the duration is dictated by article 10 of the 1989 Act, the obligation of writing the duration is soften (Three years, and if the landlord is a company or equivalent, i.e. in French a “*personne morale*”, 6 years). The mention is in fact important when the parties choose to sign a contract for a longer period, or if the landlord can benefit from article 13 of the contract, which allows shorter contract in specific cases (i.e. when a specific event, known in advance and specified in the contract, justifies that the landlord, natural person, rents his/her dwelling for less than three years),
- the description of the dwelling and annexes (number of rooms, accessories and equipment that belong to the landlord), precision concerning the use of the place (e.g. if the contract is a mixed contract -residence/commercial-, see concerning mixed contract p. 101),
- the amount of the rent³²¹ (see question concerning the determination of the rent, p. 118), the payment terms
- and, finally, since 2009³²², the living area has to be mentioned³²³. The 1989 Act does not give precision concerning the calculation, but once should refer to the article R.111-2 of the Building and Housing Code (See decent housing p. 72).

As mentioned above, technical diagnosis (see p. 74) and an inventory (in French: “*état des lieux*”, see p. 92) describing precisely the dwelling must be joined to the lease agreement. Without these documents the lease agreement is null.

According to article 3 of the 1989 Act, some provisions are optional. It means that there is no need to write them in the contract, but once they are included they are mandatory for the parties.

Where applicable, the method to review yearly the amount of the rent should be mention with the amount of the rent. If the contract does not include any provision concerning the increase of the rent, the landlord cannot ask for such an increase. When such a provision is included, the rent can only be increased once a year and the rate is limited by the law (see question concerning the determination of the rent, p. 118 and the increase of the rent, p. 123).

If the landlord asks for a security deposit, the amount must be written in the contract. Since 2008, the maximum the landlord can ask is the equivalent of one month of rent³²⁴.

³²¹ Civ. 3rd 2 January 1972 Bull. Civ. III. N°64.

³²² 2009 Act, n°2009-232, 25 March 2009, art. 78, changing 1989 Act.

³²³ The law does not give precision concerning the calculation, but once should refer to the article R.111-2 of the Building and Housing Code.

³²⁴ Act of the 9th February 2008 concerning purchasing power (in French: “*Loi 9 février 2008 sur le pouvoir d’achat*”).

- *Control of contractual terms (EU directive and national law); consequences of invalidity of contractual terms*

If the contract does not respect the mandatory rules of article 3 of the 1989 Act, the landlord is not allowed to refer to the violation this article. In such a case, the landlord has no right to seek for the cancellation of the contract. On the contrary, the tenant can do so.

Article 3 of the 1989 Act also specifies that each party can ask, any time, the other one to modify the contract so that the contract abides by the law. The change for a valid contract is not automatic and need a voluntary initiative of one of the parties. If there is no change of the content of the contract, the tenant remains protection by his/her faculty to seek for the cancellation. The contract remains valid and the mandatory rules of the 1989 Act apply.

Article 4 of the 1989 Act contains a list of nineteen provisions considered as unfair (in French: “*clauses abusives*”) and that are forbidden in lease agreements on dwellings. If one of these provisions is included in the contract, this provision is assumed unwritten (in French: “*non-écrite*”), which means that this provision is null.

The list of article 4 of the 1989 Act is not limiting, which means that any other abusive from the landlord toward the tenant can be punished by the nullity of the provision. The nullity of the only provision that is abusive allows maintaining the validity of the lease agreement. The lease is still valid; the tenant is still protected by the 1989 Act.

Article 4 of the 1989³²⁵ stated that are null the provisions:

- “a) which requires the tenant to accept visit of the dwellings during public holidays or more than two hours a day during working days, in order to sale or rent the leased premises,
- b) which requires the tenant to insure the dwelling to an insurance company chosen by the landlord,
- c) which requires, for the payment of rent, the automatic debiting on the current bank account of the tenant or which requires the tenant to sign in advance a banker’s draft (in French: “*lettre de change*”) or a promissory note (in French: “*billet à ordre*”),
- d) which requires the tenant to allow the landlord to collect directly the rent or to have it collected directly from his/her salary in the assignable limit,
- e) which organises the collective liability of tenants in case of damage to a common element of the rented premise,
- f) which obliges the tenant to agree in advance to reimburse the leasehold repairs based on an estimate made only by the landlord,
- g) which organises automatic termination of the contract if the tenant does not respect his/her duties for another reason than non-payment of the rent, the charges, the deposit, or for non-compliance with a ruling of a tribunal which has the force of *res judicata* and which records neighbourhood disturbance,

³²⁵ Our translation of the provisions is not literal and contains also explanations, where relevant.

- h) which authorizes the landlord to reduce or remove service stipulated in the contract without any compensation,
- i) which authorizes the landlord to collect fines if the tenant does not respect the terms of the contract or condominium rules,
- j) which prohibits the tenant to practise political, religious, associative or trade union activities,
- k) which requires the tenant to pay for the establishment of the mandatory inventory, except the case the tenant asked a bailiff to make the inventory,
- l) which states that the contract is tacitly renewed for a duration smaller than the legal duration (i.e. three years if the tenant is a natural person, in French "*personne physique*", six years if the landlord is a corporate body in French "*personne morale*");
- m) which prohibits the tenant to seek the liability of the landlord or which exempts the landlord from any kind of liability,
- n) which prohibits the tenant to accommodate people who do not usually live with him/her,
- o) which requires the tenant to pay, when entering the premises, more money than the money for the payment of agency fees (see article 5 of the 1989 Act) or the deposit (article 22 of the 1989 Act),
- p) which requires the tenant to pay the cost to send him/her the rent receipt, or to pay more litigation costs than the ones stated in the procedural law³²⁶,
- q) which states that the tenant is automatically liable for any damage observed in the dwelling;
- r) which prohibits the tenant to claim compensation to the lessor when he/she performs work in the dwelling for more than forty days;
- s) which allows the landlord to terminate automatically the lease agreement by a referee which is a judicial process that cannot be challenged."

The ALUR Act adds new provisions to the list of the article 4. First, article 4 i) is modified to prevent the landlord to collect penalties if the tenant does not respect the contract or condominium rules. Second, article 4 k) is now limited to provision obliging the payment by the tenant of the establishment of the inventory when he lives the dwelling. The duration of the article 4 r) is reduced from 40 days to 21. Finally, an article 4 t) is created. It states that is null the provision "which requires that the tenant, in addition to the rent concerning the occupation of the dwelling, has to sign a contract for the rental of equipment." The new provisions are applicable for the contract signed after its entry into force the 27 March 2014.

○ *Statutory pre-emption rights of the tenant*

If the landlord wants to sell the dwelling, the tenant has a pre-emption right according to article 15 II of the 1989 Act³²⁷. If the landlord wants to sell his property to one of his

³²⁶ See article 700 of the Code of civil procedure that allows the judges, subject to certain conditions, to ask the loser of the trial to pay the judicial cost.

³²⁷ This article also stated that for each notice its content must be copy otherwise, the notice are considered null.

relative (up to the fourth degree), there is no pre-emption right for the tenant. The ALUR Act, adopted the 24th March 2014, reduces the hypothesis of exclusion of the pre-emption right of the tenant. It is only if the landlord wants to sell his property to relatives up to the third degree (and no more up to the fourth), that the tenant does not benefit from the pre-emption right.

If he/she wants to sell his/her dwelling, the landlord can send a notice to the tenant to terminate the contract. This notice can only be sent (registered letter with acknowledgment of receipt or service by a bailiff or hand delivery against receipt) six months before the date of termination of the contract. In this notice, the landlord has an obligation to indicate the price and the condition of the sale, a description of the sale (dwelling and accessories). This notice is considered as an offer of sale to the tenant. In case the landlord does not comply with this obligation, the notice is not valid and the lease agreement is automatically renewed for the same period.

The tenant has two months after the reception of the letter to accept or reject the offer of sale. If the tenant does not reply, he/she is considered to having refused to buy the dwelling. Then, as it is a notice of termination of the contract, the tenant must vacate the premise at the end of the lease. If the tenant accepts the sale, he/she has to inform the owner by a registered letter.

Then, once he/she sends the letter of acceptance, the tenant has two months to sign the deed of sale. If in his/her answer, the tenant states that he/she needs a loan, the period is extended to four months and the acceptance of the sale is only valid when a bank accepts the loan. The lease agreement is extended until the expiration of the completion of the sale. If, after the expiration of this period, the sale has not been signed, the acceptance of the offer is null and void and the tenant is deprived of the right to stay in the dwelling.

If later on, the owner decides to sell the dwelling to a third price on terms or at a better price, the notary or the owner himself/herself has to notify the tenant these conditions and prices. If the landlord does not comply with this rule, the sale to a third part can be declared null. This document is served to the address specified by the tenant to the landlord for that purpose. If the tenant did not give this address to the owner, the notice shall be send at the premises concerned by the lease. This document is considered as an offer of sell to the tenant. This offer is valid for a period of one month of its receipt. Once the tenant accepts the offer, he/she has two months to sign the deed after sending the answer. If he/she mentioned he needs a loan, the period is extended to four months and the acceptance is only valid once he obtained this loan. If, during that period, the sale is not completed, the acceptance is considered as null.

The rules concerning the pre-emption right of the tenant are not applicable in very limited cases, i.e. for acts between relatives up to the fourth degree (which includes for example the children, parents, grandparents, uncles, cousins) or act concerning some specific dwellings³²⁸.

³²⁸ See dwelling mentioned paragraph 2 of the article L111-6-1 of the Building and housing code. Note also that article 15 states that a specific procedure is applicable for the dwelling mentioned at article 11-1 of the 1989 Act. Article 15 also states that the notice to leave is not valid if the notice does not comply with

If the owner wants to sell the dwelling to a third person, without ending the lease contract, the contract continues with the new owner. This one has to give his/her details to the tenant (Article 3 of the 1989 Act) but he/she cannot change the condition of the tenancy contract.

- *Are there provisions to the effect that a mortgagor is not allowed to lease the dwelling (charged by the mortgage) or similar restrictions?*

There is no such provision in the French law. A mortgagor is allowed to lease his/her property.

In many cases, owner contracts a loan to buy a dwelling to rent. In some cases, a mortgage on the building is necessary to guarantee the reimbursement of the loan. If the owner does not reimburse the loan, the dwelling can be seized through the intervention of a bailiff. In French law, to obtain a mortgage to secure a loan the intervention of a notary is necessary and a special tax has to be paid (In French: “*taxe de publicité foncière*”).

The law protects the tenant and he/she cannot be evicted. If the premise is sold to reimburse the mortgage, the new owner can only terminate the contract at its term (see concerning termination of the contract by the landlord, p.147).

- *Contract concluded through estate agents*
 - *What is the usual commission they charge to the landlord and tenant? Are there legal limitations on the commission?*

There is no provision in the current law concerning the estate agency fees contrary to the notary fees.

The determination of the costs is free. Most of the time, commission are fixed by agencies themselves. Thus, the fees vary from an agency to another and can be the object of negotiation between the parties. The agencies have obligation concerning the information of the costs they charged (see question concerning real estate agencies, p. 79). The owner has to be careful when choosing an agency, if the fees are too high the probability to find a tenant is lower.

For the tenant, the fees are usually more or less equivalent of one month of rent excluding service charges. Sometime the fees are directly calculated based on the price of the rent: see for example a group of real estate agencies that explains on its website that their fees are between 12 and 20 % of the annual rent without service cost³²⁹.

In any case, according to article 5 of the 1989 Act, the remuneration of the people who establish the contract, or help to do so, is divided between the tenant and the landlord.

Article 41b of the Act 86-1290 of 23 December 1986 aimed at boosting the rental investment, the homeownership for social housing and the development of the real estate market. It is also not valid if the landlord committed himself/herself to extend the contract according to paragraph A of Section I of Article 10-1 of the 1975 Act, act n°75-1351 of 31 December 1975 on the protection of occupants of premises for residential use.

³²⁹ Prices of the century21 group are explained on their website: <http://www.century21.fr/edito/article/le-point-sur-les-honoraires-dagences/>.

The ALUR Act changes the article 5 concerning the payment of intermediaries. It creates a very precise division of the costs to be paid by the landlord and the one to be paid by the tenant. The landlord has to pay all the costs linked to the fact he decides to rent. The visit of the dwelling by the tenant, the compilation of the file, the writing of the contract, the payment for the inventory shall be divided between the tenant and the landlord. The part paid by the tenant shall not be higher than the one paid by the landlord. These costs are limited and a decree shall be adopted to fix the upper limit. These new rules will be applicable only after the adoption of the decrees.

Finally, for people who are candidates to obtain a social housing (*HLM* i.e. in French: “*Habitation à loyer modéré*”), no fees are requested for the candidacy or when signing the lease.

6.4 Contents of tenancy contracts

- *Description of dwelling; indication of the habitable surface (and consequences in case of the provision of wrong data)*

Article 3 of the 1989 Act obliges the landlord or his/her representative to put a description of the dwelling in the contract. All the elements rented should be mentioned. Since article 2 of the 1989 Act states that the 1989 Act is also applicable to accessory/secondary rooms garage gardens parking place and other rooms rented with the main dwelling by the same landlord (in French: “*garages, places de stationnement, jardins et autres locaux, loués accessoirement au local principal par le même bailleur*”), if relevant, these annexes have to be described in the lease agreement.

The surface of the living area must also be specified. The method of calculation of the size of the dwelling is specified in paragraph 2 and 3 of article R111-2 of the Building and housing Code. Paragraph 2 of this article states that the living area is the size of the ground minus the size of the walls, partitions, stairs and stairwells, ducts, doorways and windows frame. The volume of the living space is the total of the living areas multiplied by the ceiling heights. Paragraph 3 explains that some areas are not taken into account for the calculation the attic, the cellars, the basements, the sheds, the garages, the terraces, the loggias, the balconies, the outdoor dryers, the verandas, the volumes protected by a glass³³⁰, the common areas and other annexes of the house housing, and the area of the premises of a ceiling height that is less than 1.80 meter.

These obligations are linked to the landlord's duty to rent a decent housing which minimum size is 9 square meters with a ceiling height of at least 2.2 meters and a volume of 20 cubic meter (see the question concerning decent housing, p. 72).

If the parties do not comply with the obligation concerning the description of the dwelling, article 3 of the 1989 Act states that each party can ask the other one to comply with the provision of this article.

If the contract does not contain the mandatory description of the dwelling, it is not null. The idea is to avoid one party, especially the landlord, to refuse to abide by this article just to avoid the protection the 1989 Act offers to the tenant.

³³⁰ Volume that are mentioned in article R111-10 of the Building and housing Code.

Concerning the size of the dwelling, the ALUR Act, adopted the 24th March 2014, specifies that if the habitable area of the premise, is smaller by more than 1/20 of the area mentioned in the contract, the rent shall be proportionally reduced. This rule is directly applicable for all the new contracts signed after its entry into force the 27th March 2014, but not for contract signed before this date.

All the documents that have to be joined to the lease contract, the inventory (in French: “*état des lieux*”) and the technical diagnosis, are very important to determine precisely the object and the conditions of the rent.

As mentioned above, if the inventory is not made, the premise is supposed to have been delivered to the tenant in good condition (See concerning p. 92). It means that, at the end of the contract, the tenant can be responsible for the damages made before he/she started to live in the premise (Article 1731 of the Civil Code). If the landlord does not want to comply with its obligation of making an inventory, the tenant can ask a bailiff to do it. The cost is fixed by the law and divided equally between the tenant and the landlord (Article 3 of the 1989 Act). If the tenant refuses to make an inventory, the same option is offered to the landlord, but the tenant has no interest in not having an inventory. The party who refuses to make the inventory cannot benefit from the rule of article 1731 of the Civil Code. It means that if the landlord refuses to comply with his/her obligation, he/she cannot pretend that the dwelling was delivered to the tenant in good conditions, but he/she has to give proof of it.

If the technical diagnosis that are mandatory are not linked to the contract, the lease is considered null (See this question p. 74).

- *Residence contracts and mixed (residence/commercial) contracts*
- *Allowed uses of the rented dwelling and their limits*
 - *In particular: to what extent are mixed (residence/commercial) contracts lawful and usual (e.g. having a shop, a legal office or a doctor's studio in the dwelling)*

Mixed contracts are allowed by French law and governed by the same law as contracts concerning only habitation, i.e. the 1989 Act. Article 2 of the 1989 Act states that it is applicable to the rent of premises used as a main residence or to mixed contract (residence/commercial).

Professionals can also choose for the lease of their working place a commercial lease (for craftsman or shopkeeper) or a professional lease (for self-employed people) (See table 6.1).

The division of the place, among the room dedicated to work and room dedicated to the residence of the tenant is supposed to be mentioned in the contract. However, the judges consider that the contract is not null if the tenant does not respect the division specified in the contract³³¹.

The tenant of a mixed contract is not obliged to live actually in the rented place. The fact that the tenant does not live in the dwelling is not a reason to terminate the contract. But if he/she does not live actually in the rented place he/she cannot ask for the right to renewal³³².

³³¹ Civ. 3rd 23 November 1993 n°92-12742.

³³² Ass. Plén. 02 February 1996 n° 91-21373; *adde* Civ. 3rd December 1998, n°96-21265.

The obligation of the parties, tenant and landlord are the same in a mixed contract that the ones in a lease only for a dwelling. E.g. the obligation of a decent housing is still valid if it is a mixed contract (residence/commercial)³³³.

If the premise is located in a building, the condominium rules can also forbid the use of a premise for professional use. In such a case, the rent contracts, which can be concluded between tenants and landlords, can only be residence contracts.

Table 6.1 Applicable laws

	Commercial Lease	Professional Lease	Mixed contract (residence/commercial)
Applicable Law	From Articles L145-1 of the Commercial Code Articles R137-1 to R137-3 of the Building and Housing Code Article L125-9 of the Environment Code	Article 57 A of the 1986 Act ³³⁴	1989 Act
Conditions	Hand-crafted or commercial activities	other activities than commercial, hand-crafted, industrial or agricultural Mainly self-employed people	Residence of the tenant and professional activity
Form	Freedom of the parties	Written contract	Written contract (see article 3 for the content, p. 100)
Duration	Minimum of 9 years	Minimum of 6 years	3 years (if the landlord is a natural person) 6 years (if the landlord is a corporate body)
Rent	Freedom of the parties Possible increase	Freedom of the parties Possible increase	Freedom of the parties or regulated rent depending on the

³³³ Civ. 3rd 14 October 2009, Bull. Civ. III n° 220.

³³⁴ Act 86-1290 of the 23th December 1986 designed to encourage investment in real estate to rent, access to home ownership and increase of real estate offer (in French: "Loi n° 86-1290 du 23 décembre 1986 tendant à favoriser l'investissement locatif, l'accession à la propriété de logements sociaux et le développement de l'offre foncière").

	every three years depending on specific rate	every year depending on a specific rate	location of the dwelling Possible increase every year depending on specific rate
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- *Parties to a tenancy contract*
 - *Landlord: who can lawfully be a landlord?*

Everybody who owns a dwelling can decide to rent it and thus be a landlord. The article 10 of the 1989 Act states that corporate bodies (i.e. in French “*personne morale*”) as well as natural person (in French: “*personne physique*”) can lawfully be a landlord.

However, people that are considered unable to take care of their own interests are not able to make all the decisions concerning the dwelling they own. It is the case for minors and for adults under protection. In France, three regimes exist for adults: the “*sauvegarde de justice*”, the “*curatelle*” and the “*tutelle*”.

Prior explaining these regimes, it is first necessary to explain two concepts of the French law. The French law makes a distinction among what is called in French “*actes de disposition*” and “*actes d’administration*”³³⁵.

An “*acte d’administration*” refers to acts concerning the use or the management of an object (which can be a building). E.g. the decision to have works made on the building to repair it is considered as an “*acte d’administration*”. Such acts are considered as less important than the “*actes de disposition*”.

The expression “*acte de disposition*” refers to an action that changes the asset of one person. E.g. the sale of the building is considered as an “*acte de disposition*”.

As far as the rent of the place where a person under protection is concerned, the sale, the conclusion or the termination of a lease agreement is considered as an “*acte de disposition*”.

For buildings, that belong to the protected person but that are not the place where she/he lives, normally, the conclusion of a lease agreement for less than nine years is considered as an “*acte d’administration*”. But the 1989 Act organizes a right for the tenant to obtain automatically the renewal of the contract, except if the landlord fulfils specific conditions to refuse the renewal. As it is not possible to determine the duration of the lease when it is signed due to the possibility of renewal, the rent of a dwelling under the 1989 Act is considered as an “*acte de disposition*”. On the contrary, the termination of a lease agreement is considered as an “*acte d’administration*”.

Concerning the various regimes of protection, the following three regimes can be distinguished.

The regime called “*sauvegarde de justice*”³³⁶ is the one with the lowest protection. Someone is nominated to represent the beneficiary only for specific acts mentioned by

³³⁵ See the definition in the Decree n°2008-1484 of 22th December 2008 concerning management act for people protected buy a *curatelle* or a *tutelle*, in French: “*Décret n° 2008-1484 du 22 décembre 2008 relatif aux actes de gestion du patrimoine des personnes placées en curatelle ou en tutelle, et pris en application des articles 452, 496 et 502 du Code Civil*” and the list provided in the annex if this decree. See also, article 426 paragraph 3 of the Civil Code concerning people under protection (minor and adults under legal protection).

the judges in the decision that organises the protection. This protection is valid for a maximum of two years. After this time, if a protection is still needed a stronger regime is used, otherwise, the person can act again without protection. Concerning the fact of being a landlord by renting one of the properties the beneficiary owns, it depends on the content of the judge's decision.

The second one is the "*curatelle*"³³⁷. For a simple "*curatelle*", the beneficiary is allowed to conclude the "*actes d'administration*" on his/her own, but has to conclude the "*actes de disposition*" with her/his representative. In other case, as for the "*sauvegarde de justice*", the judge can decide which act the person is or not allowed to do by herself/himself. Such protection lasts for a maximum of five years.

The last one and the stronger one is the "*tutelle*"³³⁸. The person protected is only able to make contracts concerning his/her daily life. The representative of the person is allowed to make decision concerning the "*actes d'administration*". The "*actes de disposition*" are decided by the judges or a council of the family called "*Conseil de famille*".

Finally, in specific cases a minor can be protected by a mechanism of "*tutelle*"³³⁹, e.g. if he loses his/her parents. The representative of the minor is allowed to make decisions concerning the "*actes d'administration*" but need the agreements of the family council, of the judge and of a secondary tutor (called "*tuteur subrogé*" and obligatory nominated by the family council) are necessary for "*actes de disposition*".

Other specific questions are raised when the owner does not have the full ownership of a dwelling.

First, if someone has the usufruct of a building, article 595 of the Civil Code gives him/her the right to be landlord as he/she is supposed to have the *fructus* from the thing.

Second, in case of joint ownership, since the 2006 Act³⁴⁰, the agreement of all the owners is no more needed to rent a dwelling. The conclusion or the renewal of the contract can be decided by the owner(s) who have two third of the joint dwelling³⁴¹.

Third, if the landlord is married³⁴² and if the dwelling, object of the rent belongs to the community of the spouses (i.e. in French: "*communauté légale entre les époux*"), each spouse can conclude a lease but for less than 9 years³⁴³. If one of the spouses

³³⁶ This regime is organised by articles 433 to 439 of the Civil Code. The proceeding is described at articles 1211 to 1231 and 1248 to 1252-1 and finally article 1256 of the Code of Civil Procedure, but also at articles R217-1 and R224-2 of the Code of Criminal Procedure.

³³⁷ This regime is organised by articles 425 to 432 and 440 of the Civil Code. The proceeding is described at articles 1220 to 1257 of the Code of Civil Procedure (with some exceptions) and at articles R217-1 and R224-2 of the Code of Criminal Procedure.

³³⁸ This regime is organised by the same articles as for the "*curatelle*": articles 425 to 432 and 440 of the Civil Code. The proceeding is described at articles 1220 to 1257 of the Code of Civil Procedure (with some exceptions) and at articles R217-1 and R224-2 of the Code of Criminal Procedure.

³³⁹ This regime is organized by Articles 390 à 413 of the Civil Code and Articles 1211 to 1236 and article 1253 to 1254 of the Code of Civil Procedure.

³⁴⁰ Act n°2006-728 of the 23th of June 2006.

³⁴¹ Art. 815-3 of the Civil Code, see also art. 815-5 of the same Code.

³⁴² According to the French law, homosexual and heterosexual married couples are submitted to the same regime.

³⁴³ Art. 1421, al. 1 and Art. 1425 of the Civil Code.

refuses to rent their properties, the other one can bring the dispute before the judges. The “*théorie de l'apparence*”, i.e. literally translated appearance theory, is not applicable³⁴⁴. The judges to protect the third party who is in good faith elaborated this theory. If this third party is not aware that the person she/he contracted with does not have the capacity or the power or the mandate to contract, the contract is valid. In the case of a lease agreement signed by only one spouse, the judges considered that that it is more important to protect the unity of the marriage. It means that the tenant is not protected at all and the contract is cancelled, even if the tenant acted in good faith, i.e. without knowing that the landlord's spouse did not want to rent the building. One of the spouses cannot decide on his/her own to rent a property that belongs to both.

Even if this question will be dealt later, the hypothesis of subletting should be mentioned here. In principle, article 8 of the 1989 Act forbids subletting. But if the landlord gives his/her agreement, the tenant can sublet a part of the dwelling. The owner is still the main landlord but the subtenant signs a contract with the first tenant (Concerning subletting see p.112).

- *Does a change of the landlord through inheritance, sale or public auction affect the position of the tenant?*

There is no provision in the 1989 Act, thus the general rules of the Civil Code are applicable. Article 1742 of the Civil Code states that “A contract of lease is not terminated by the death of the lessor or by that of the lessee”.

Therefore, when the landlord dies, the contract is transmitted to his/her heirs and is not interrupted. The new owner cannot change the contents of the contract. He/she only has the possibility to terminate it in the same conditions of the previous landlord (See conditions of termination of the contract, p.146). Article 3 of the 1989 Act stipulates that the new owner has to transmit to the tenant his/her name or denomination and address of his/her domicile or head office and, if relevant, those of his/her representative.

One other case has to be mentioned. If the owner of a dwelling decides to sell his/her properties and if the sell is cancelled, the lease agreement that was signed by the acquirer must be honoured by the seller in application of the article 1673 paragraph 2 of the Civil Code.

Finally, when a mortgage lender repossesses the house because of the default of the landlord, the solution is the same. The tenant cannot be evicted and the contract shall be terminated only at its term and according to limited conditions (See conditions of termination of the contract, p.146).

The idea of the law is to protect the position of the tenant in case of change of the landlord. Thus the contract cannot be terminated only because of a change of landlord.

³⁴⁴ Civ. 1st 24 March 1981, Bull. Civ. I n°99.

The contract is transmitted to the new landlord and is binding for him/her following the same conditions.

- *Tenant:*
- *Who can lawfully be a tenant?*

The conclusion of a lease is considered as an “*actes d’administration*” (See the definition p.103). People who are able to be tenant are the ones who have the capacity to make such acts.

The people protected by a “*curatelle*” or a “*tutelle*” and the minors (see information concerning the various regimes p.103) are not able to sign lease agreement.

The only people who can be tenant under the regime of the 1989 Act are natural person (in French: “*personne physique*”). A corporate body (in French: “*personne morale*”) cannot be tenant³⁴⁵. The solution was identical under the regime of the 1982 Act and 1986 Act³⁴⁶.

The solution is logical because the 1989 Act is only applicable on the lease of dwellings and it will clear that corporate bodies do not need a dwelling. In case of mixed contract, even if a part of the dwelling is devoted to a professional activity, the tenant is a natural person and is supposed to live in a part of the dwelling (See mixed contract p. 101). However, if the contract does not fall under the scope of these imperative rules, parties can still choose to apply the 1989 Act.

There are specific conditions for tenant to access social housing called in French *HLM* for “*Habitation à loyer modéré*”³⁴⁷.

The first condition concerns the financial means. The incomes of the candidate to such a dwelling shall be situated in a range fixed by the government. It means that the *HLM* are only accessible for people with a minimum income and not too the poorest people.

Currently for a person living alone should earn per year between 12.662 € and 29.924 € in Paris and its suburbs and between 11.006 € and 26.016 € in another region. For a family of four people or one person with two people dependant on him/her, the incomes per year should be between 29.618 € and 69.998 € in Paris and municipalities

³⁴⁵ Civ. 3rd 29 May 1995, n°93-12789 ; CA Paris 16th chamber, sect. B 14 June 2007 n°06/14018 ; Civ. 3rd 18 May 2010, n°09-13323.

³⁴⁶ Civ 3rd, 12 January 1994 n°91-22055.

³⁴⁷ These lease are governed by articles L441 to L441-2-6 and articles R441-1 à R441-12 of the Building and Housing Code, by Decree of the 28th of December 2012 concerning the maximum income to beneficiate of the legislation on HLM and on new state aids (in French: “*Arrêté du 28 décembre 2012 relatif aux plafonds de ressources des bénéficiaires de la législation sur les HLM et des nouvelles aides de l’État*”), Decree of 1 February 2013 establishing the list of residence permits referred to in Article 1 of R. 441-1 of the Building and Housing Code, (in French: “*Arrêté du 1er février 2013 fixant la liste des titres de séjour prévue au 1° de l’article R. 441-1 du code de la construction et de l’habitation*”), and by Decree of 14 June 2010 on the application form for social rental housing and supporting documents provided for investigation concerning the application for a social house (in French: “*Arrêté du 14 juin 2010 relatif au formulaire de demande de logement locatif social et aux pièces justificatives fournies pour l’instruction de la demande de logement locatif social*”).

adjacent, between 27.245 € and 64.396 € in Paris' suburbs and between 21.457 € and 50.440 € in another region³⁴⁸. The resources that are taken into account are the one declared to the tax authorities two years before the candidacy or the amount declared the previous year if the resources of the family decreased of more than 10% between these two years. The reduction can be proved by any means except by a sworn statement. As an exception, only the resources of the candidate are taken into account if he/she is divorcing. A statement from the judge certifying no-conciliation between the spouses was reached or by a statement explaining the urgent measures. An equivalent exception applies for the partner of a civil partnership (in French: *PACS*, i.e. *Pacte civil de solidarité*) whose separation was declared at the court proceedings. Finally, an exception is also made for the victim of violence within the couple, proven by the record of a complaint registered by the police or the judges.

The second condition is a condition of nationality or of legal residence³⁴⁹. The HLM are only available for French people or for foreigners in possession of a valid residence permit on the French territory.

The HLM are in priority allocated to people with disabilities or to families with a dependent person with disabilities, to people whose application is urgent (i.e. specific issues finding a dwelling for financial reasons, people living in an indecent housing, people evicted or threatened to eviction), to people living temporarily in an institution or in a transitional housing, and to people justifying violence in their relationship (married, civil partners, unmarried).

People who want to obtain a social dwelling have to fill in a candidacy. Only one candidacy shall be made for all the requests concerning the same administrative entity (in French: "*département*").

The first step of the process is a pre-registration. The applicant shall send the document required (an official form of demand³⁵⁰, a copy of an identity card or equivalent, a document certifying the legality of the stay in France, a copy of the tax document with mention of the income on which the request is based on). The request is given to specific services that are enable to receive such a request. Then, it is registered, the candidate is given a registration number and a certificate of registration and a list of the document that the candidate shall produce later on in the process.

The second step is the inscription itself. The candidate shall produce the official form of demand plus the document mentioned in the previous stage of the process with his/her registration number. The request is given to specific services that are enable to receive such a request. A special committee following the priority list mentioned above makes the decision. The waiting period can vary considerably from one department to another depending on the stock of dwelling and the number of requests. Once the candidate is allocated a dwelling, he/she has a minimum of ten days to accept or to refuse. If he/she refuses, he/she has very little chance to receive a better offer, as there

³⁴⁸ Decree of the 28th of December 2012 concerning the maximum income to benefitate of the legislation on HLM and on new state aids (in French: "*Arrêté du 28 décembre 2012 relatif aux plafonds de ressources des bénéficiaires de la législation sur les HLM et des nouvelles aides de l'État*").

³⁴⁹ Decree of 1 February 2013 establishing the list of residence permits referred to in Article 1 of R. 441-1 of the Building and Housing Code, (in French: "*Arrêté du 1er février 2013 fixant la liste des titres de séjour prévue au 1° de l'article R. 441-1 du code de la construction et de l'habitation*").

³⁵⁰ This document is called "*cerfa n°14069*01*".

are numerous candidates on the waiting list. If the offer is totally inappropriate, the candidate can challenge the decision in front of the “*Commission de médiation*” or uses the mechanism created by the DALO Act (see p. 67). If the candidacy is rejected, the candidate receives a letter with the decision. He/she cannot challenge the decision. If after a certain time fixed in each department by the Prefect, the candidate does not have any answer he/she can apply to the “*Commission de médiation*” to claim for his/her right to a social dwelling.

The application for a social housing that is not satisfied must be renewed every year, eventually through a dedicated website. Otherwise, the request is automatically cancelled. Once the candidate is allocated a dwelling, his/her request is removed. It is also the case if the candidate sends a letter to explain he/she does no more need a social house.

- Which persons are allowed to move in an apartment together with the tenant (spouse, children etc)?

There is no provision in the 1989 Act or in the Civil Code concerning the people that are allowed to move in with the tenant. The situation is slightly different if the person is or not a member of the family of the tenant or not.

If the person who moved in with the tenant is a member of his/her family, the Right to respect for private and family life as protected by the article 8 of the European Convention on Human rights can be used. Therefore, the landlord has no right to prevent the family of the tenant to move in the flat with the tenant.

The French *Cour de cassation* checks if article 8-1 of the ECHR is respected. For example, the landlord is not allowed to forbid the tenant to have his family in his home³⁵¹.

If the tenant is married, article 1751 of the Civil Code³⁵² states that the spouses are co-holder of the lease agreement. It means that both spouses have to respect the duties of a tenant and the landlord has to fulfil his/her obligations toward both of them. In such a case, it is obvious that the spouses have a right to live in the rented dwelling even if only one of them signed the rent agreement. The co-ownership of the lease agreement is maintained until the divorce of the couple³⁵³, even after one of them leave the dwelling, the landlord is entitled to ask him to pay the rent³⁵⁴.

The solution is different when the tenant is linked to someone else by a partnership (in French: *PACS*, i.e. *Pacte civil de solidarité*). They are not co-owner of the lease agreement. According to article 515-4 of the Civil Code, his/her partner is only

³⁵¹ Civ. 3rd 6 March 1996 Bull. Civ. III. n°60; Civ. 3rd 22 March 2006 Bull. Civ. III n°73.

³⁵² Art. 1751 Civil Code: “The right to a lease of premises, without professional or commercial character, which is actually used for the dwelling of two spouses and even where the lease was concluded before the marriage, is, whatever their matrimonial regime may be and notwithstanding any agreement to the contrary, considered to belong to both spouses.

In case of divorce or judicial separation, that right may be allotted by the court seized of the application for divorce or judicial separation, on account of the social and family interests concerned, to one of the spouses, subject to the rights to reimbursement or indemnity for the benefit of the other spouse.

In case of death of one of the spouses, the surviving spouse co-lessee has an exclusive right on it, except where he or she expressly renounces it.”

³⁵³ Civ. 3rd 31 May 2006, Bull. Civ. III, n°135.

³⁵⁴ Civ. 3rd 27 May 1998, Bull., III, n° 109 ; Civ. 3rd 2 February 2000, Bull., III, n° 18.

jointly liable for the payment of the daily life needs, except for costs that are obviously too high. It means that the partner may have to pay the rent, if this one is not obviously too high considering their income.

The situation of partners and spouses is similar if the tenant did not inform the landlord that he/she is married or in a partnership. According to article 9-1 of 1989 Act, in such a case, the document served to the tenant is also valid for the partner or spouse. This one is liable for the non-execution of the obligations of the tenant without being personally served. This provision intends to protect the landlord as in that case the tenant did not give him/her the information needed. E.g. If the landlord wants to give notice to the parties, he/she needs to serve the notice to all of them, but if the landlord is not aware of the fact that the tenant is married, he/she will not give him notice. Thus, it is fair to consider that if information is hidden from him/her, the service on the sole tenant is valid.

In case, a couple is not married nor linked by a partnership, they can both live in the same dwelling but the person who did not sign the contract is not linked to the landlord, i.e. he/she is not protected by the content of the 1989 Act and on the contrary he/she has no obligation to pay the rent if the tenant does not.

If the person who moved in with the tenant is one of his/her friend, this situation can also fall under the scope of the article 8 of the European Convention on Human rights as the tenant has a right family life. The moving in of a friend can be considered as belonging to the family life of the tenant, and thus protected for the same reason as the moving in of a family member (spouse or child).

The only provision in the 1989 Act concerning the right to invite people can be found with the article concerning unfair provisions (see concerning unfair provision, p.96). Article 4,n) of the 1989 Act states that a provision preventing the tenant from accommodating people that are not living usually living with him/her is null. This article is not applicable when someone wants to move in with the tenant but it reveals the wish of the legislator to protect the privacy of the tenant. However, there are two limits to the possibility of the tenant to have someone moving in with him. First, the tenant has to respect his/her obligations, especially his/her obligation of a peaceful enjoyment of the dwelling (article 7b of the 1989 Act). Second, the tenant is not allowed to sublet a part of the dwelling, except if he/she obtains the authorisation of the landlord, (article 8 of the 1989 Act, see the answer of the question concerning subletting p.112).

- *Changes of parties: in case of divorce (and equivalents such as separation of non-married and same sex couples); apartments shared among students (in particular: may a student moving out be replaced by motion of the other students); death of tenant*

To answer this question, the term tenant refers only to the person who signed the lease agreement. Several situations have to be distinguished: the divorce of the tenant, the separation from his/her partner or from the person he/she lives with, the situation of students sharing a flat and the death of the tenant.

The case of the death of the tenant³⁵⁵ or if he/she abandons the dwelling, article 14 of the 1989 Act organised the continuation of the contract (see table 6.2). In such a case, the content of the contract is not changed people who benefit from the continuation benefits from the same conditions. E.g. they pay the same rent or they can terminate the contract in the same conditions (See termination of the contract, p. 146).

Table 6.2 Article 14 of the 1989 Act

Article 14 of the 1989 Act	If the tenant abandons the dwelling (in French: “ <i>abandon de domicile</i> ”)	If the tenant dies
The contract continues without any condition in the benefit of	-his/her spouse ³⁵⁶ -his/her partner	-his/her spouse -his/her partner
The contract continues if the person was living with the tenant for at least a year at the date of the desertion in the benefit of	-his/her descendant -the person he/she lives with -his/her forbears -people dependant on him/her	-his/her descendant -the person he/she lives with -his/her forbears -people dependant on him/her

The situation is different if the tenant just wants to move out of the dwelling, if the tenant is married and when she/he divorces. The spouse is considered to be the co-owner of the contract. In case of a divorce, the judge can decide who will keep the dwelling. As they are co-owner of the lease, there is no real change of parties. The one who leaves the flat will no more be considered as a tenant once the divorced is granted. But, he/she is still liable of all the obligations linked to the lease between the time he/she left the premise and the time the divorce is granted³⁵⁷.

In case the tenant is linked by a partnership (in French: *PACS*, i.e. *Pacte civil de solidarité*), and the partners are not co-tenants, if the partner who signed the contract wants to leave the other one is also supposed to leave. If the one who did not sign the contract leaves, he/she might be asked to pay the rent until their partnership is over as they are jointly liable (article 515-4 of the Civil Code).

If the tenant lives together with someone without any legal link, his/her mate is supposed to leave the place if the owner of the contract decides to leave. There is no obligation for the payment of the rent if the mate of the tenant as there is no legal link among them.

Other people who might live with the tenant (his/her descendant, his/her forbears or people dependant on him/her) do not have any right to obtain the continuation of the use of the dwelling if the tenant wants to move out.

³⁵⁵ B. Vial-Pédroletti, “*Décès du locataire : transfert du bail individuel ou groupé ?*”, *Loyers et copr.* 2013 p. 17; B. Vial-Pédroletti, “*La protection spécifique du conjoint survivant en cas de décès du locataire* », *JCP N Semaine Juridique*, 36, p. 31.

³⁵⁶ Rouquette-Térouanne C., “Transfert du bail au conjoint survivant”, *Administer*, p. 51.

³⁵⁷ As already mentioned above, see Civ. 3rd 31 May 2006, Bull. Civ. III, n°135; Civ. 3rd 27 May 1998, Bull., III, n° 109 ; Civ. 3rd 2 February 2000, Bull., III, n° 18.

A specific option offered by article 9 of the 1989 Act must be mentioned: the exchange of dwellings.

When two tenants live in dwellings that both belong to the same landlord and also are located in the same building complex, they are entitled to exchange if the following conditions are fulfilled:

1. One of the families involved must have at least three children.
2. The consequence of the exchange must be to increase the size of the dwelling of the larger family.

This rule cannot be applied for lease signed under the regime of the 1948 Act.

In the current contracts, each tenant replaces automatically the other one for the rest of the duration of the lease and cannot be considered as a new entrant. Each contract goes on with the same conditions but with an exchange of tenants.

Concerning the change of tenants, the specific situation of flat-sharing³⁵⁸ must be explained. There was no specific provision in the French law concerning flat-sharing before the ALUR act of the 24th March 2014.

There are two possibilities:

1. The landlord signs one contract with all the tenants all at once.
2. The landlord signs as many contracts as there are tenants.

If the landlord signs one contract with all the tenants, the tenants know each other and decide to live together, e.g. a group of friends who are students in the same city. They are linked to the landlord by the same contract. It means that as long as all the tenants do not terminate the contract, they are all liable for the payment of the rent. Even after they leave the dwelling. They are also all responsible for the damages that can occur and that can affect the deposit. If one of the tenants wants to leave, he/she has to give notice to the landlord. The tenants that remain are supposed to pay the full rent, including the part previously paid by the one who leaves. To avoid such a situation, they may want to find another tenant. They can ask the landlord for an additional clause to their contract (in French: “*avenant*”) to change the name of the tenants. They can also sublet a part of the flat, but only if they obtain the agreement of the landlord concerning the principle and the price of rent (article 8 of the 1989 Act).

If the landlord signs as many contracts as there are tenants, it is up to the landlord to decide who will be tenants. As he/she has duties towards the tenants already living in the dwelling, the landlord can be advised to ask their opinions before finding a new tenant. Among his/her duties, there are the respect of the “*right to respect for his private and family life, his home and his correspondence*” protected by article 8 of the European Convention on Human Rights and the right to benefit from a peaceful enjoyment of the rental object (article 6 b) of the 1989 Act). The *Cour de cassation*³⁵⁹ considered that the landlord could be responsible for the acts of some roommates, even

³⁵⁸ See Cornette F., “Flat-sharing: issues arising under French law”, *Review of article Northside Irish Community Development Law Journal*, to be published, Vial-Pédroletti B., “Congé par un colocataire: incidence sur le titre locatif de l'autre locataire”, *Loyers et copr.* 2013, p. 9.

³⁵⁹ Civ. 3rd 16 March 1994, Bull. Civ. III n°189.

if he/she does not live in the dwelling. In this case, the tenants are not linked to each other and are free to leave according to the conditions of their own contracts. The landlord can be for example responsible for the noise of one of the tenants or for the misbehaviour of one of them.

Finally, the tenant is in principle not allowed to give or sell his/her contract to a third person as specified by article 8 of the 1989 Act. He/she can obtain the agreement of the landlord to do so. A tenant does not have any interest to do so. The best is to terminate the contract if he/she wants to leave (see concerning termination of the contract, p.146.)

The ALUR Act included a new provision concerning flat sharing in the 1989 Act, article 8-1.

This new provision gives a definition of the flat-sharing. It corresponds to the rent of one dwelling to several people either by the signature of one contract for all of them, or by the signature of several contracts. The flat-sharing contracts are now submitted to the application of the 1989 Act. The details will be given in a decree. One of the main goal was to limit the effect of the joint liability among the tenants.

- *Subletting: Under what conditions is subletting allowed? Is subletting being abused e.g. with the aim of circumventing the legal protection of tenants (when the tenant is offered not an ordinary lease contract but a sublease contract only)?*

According to article 8 of the 1989, subletting is in principle not allowed. However, the landlord can give his/her approval to the tenant. In such a case he/she must agree on the fact that the tenant sublets his/her dwelling but also on the price of the rent. The law also specifies that the price of the rent per square meter of living space subleased shall not exceed the price paid by the main tenant.

If the main contract terminates, the sub-tenant has no rights toward the landlord. E.g. the sub-tenant cannot obtain an extension of the contract.

Finally, this article states that the 1989 Act is not applicable to the subletting contract. Thus the provisions of the Code Civil apply (Articles 1709 to 1778 of the Civil Code). The parties, tenant and subtenant, can decide that some provisions of the 1989 Act are applicable, but the tenant can never offer the same protection to the subtenant as a real landlord as he/she is not the owner of the dwelling.

Then, many questions are not answered by the French law concerning the subletting. For example, the organisation of the life in the rented dwelling or the difference if the landlord is also living in the dwelling.

- *Is it possible, and if yes under what conditions, to conclude a contract with a multiplicity of tenants (e.g. group of students)?*

The French law does not forbid the conclusion of a contract with more than one tenant. But there is no provision concerning that situation and the classification of such a contract is not clear. The situation is the same as the one explains above about flat-sharing (see, p.111)

At first, in an old case concerning the lease of a dwelling, the French *Cour de cassation*³⁶⁰ considered that article 1709 of the Civil Code³⁶¹, that defines what a lease agreement is, does not require the “exclusive” enjoyment of the object of the rent by the tenant. It added that the contract must be considered as a lease agreement even if the landlord reserved for himself/herself the joint-use of a part of the premises.

But, in 2006, the third Chamber of the *Cour de cassation*³⁶² decided that a lease agreement implies full enjoyment of the object of the rent. In this case, a thalassotherapy centre allowed, in return of payment, an aqua gym coach to use their swimming pool and the lockers rooms. When the centre wanted to terminate this agreement, the coach asked the judges to consider the contract as a commercial lease. But the *Cour de cassation* stated: “in the absence of an exclusive right to use the room, the agreement among the parties could not be characterized as a lease”. Even if this case did not deal with renting a dwelling, the solution should be extended to all type of lease contracts as long as the general provisions of the Civil Code are applicable to all of them. Moreover, the French Court did not make any remarks reducing the scope of this solution, e.g. she did not reduce the scope only for commercial leases.

The conclusion of a contract between one landlord and several tenants is thus possible, but it is not clear what the conditions required are. If the contract deals with the rent of the main dwelling of the tenants, the 1989 Act shall apply.

- *Duration of contract*
 - *Open-ended vs. limited in time contracts*
 - *For limited in time contracts: is there a mandatory minimum or maximum duration?*
 - *Other agreements legal regulations on duration and their validity: periodic tenancies (“chain contracts”, i.e. several contracts limited in time among the same parties concluded one after the other)*

The second part of the question concerning other legal agreement is not relevant for the French law. The tenant has the right to obtain the renewal of his/her contract, thus there is no situation of several contracts concluded one after the other. In all the cases, if the contract is renewed its content is not changed, except agreement on the increase of the rent in limited cases (see duration of the contracts p. 147). Exceptionally, a contract can be concluded for a limited period of time. The limitation of the duration can only be justified by the realisation of an event. If this event does not occur, the contract is renewed at the same conditions for a normal length (3 or 6 years).

French law prohibits open-ended contracts as they are seen as contrary to property rights (Article 1709 of the Civil Code). It can be explained by the following idea: if the landlord rents his/her goods for an indefinite period of time, he/she is not able to foresee when the property will be available again and the duration of the contract may depend

³⁶⁰ Soc. 29 June 1960, Bull. Civ. V n°698.

³⁶¹ Art. 1709 of the Civil Code: “The hiring of things is a contract by which one of the parties binds himself to have the other enjoy a thing during a certain time, and at a charge of a certain price which the latter binds himself to pay him.”

³⁶² Civ. 3rd 11 January 2006, n°04-19736.

only on the tenant. In such a case, the liberty of the owner to use his/her property as he/she may wish is altered. For that reason, contracts shall have a term. In such a case, other than the rent of a dwelling, the duration can be very long. The typical example is a rural agreement called emphyteutic lease (In French: “*bail emphytéotique*”). Such contracts can last from eighteen years up to ninety-nine years. Some provisions of the Rural and Sea Fishing Code govern them³⁶³ but they do not concern the lease of a dwelling. For the lease of dwellings, the duration is always limited, even if for the tenant, a right to renewal exists (see duration of the contracts p. 147).

Concerning the lease of a dwelling, the 1989 Act specifies two different durations depending on the situation of the landlord. The duration specified by the law are mandatory.

If the landlord is a corporate body (In French: “*personne morale*”) article 6 states that the duration of the contract is six years. If the landlord is natural person (in French “*personne physique*”) the duration of the contract is three years.

Article 10 of the 1989 Act organises an automatic right to renewal³⁶⁴. The contract is renewed for the same duration as the first time, and it can be indefinitely renewed when it arrives to its term, i.e. it can be renewed an indefinite number of times. There are only few reasons that allow the landlord to terminate the contract at the end of the lease (See termination of the contract p. 146).

In some limited cases, the landlord is allowed to offer a lease for less than three years according to article 11 of the 1989 Act. The landlord shall prove that a specific event justifies that he/she takes back the dwelling for personal or professional reasons. The duration of such a contract is at least one year. The reason why the landlord has to tack back his/her dwelling shall be specified in the contract. Judges considered that the reasons given must be accurate.

The sole mention of the installation of children (i.e. a child who moves in alone for the first time)³⁶⁵, the desire to sell the dwelling³⁶⁶, the change of professional situation of the lessor or of his/her children³⁶⁷ or the need to move to Paris³⁶⁸ without any more information are not sufficient to justify a short term lease. On the contrary, the return of the landlord to France³⁶⁹ or the end of a joint ownership³⁷⁰ are considered to be valid reasons.

Two months before the completion of the event mentioned in the contract, the landlord has to give notice to the tenant to confirm that the event will take place. In that

³⁶³ Art. L451-1 to L451-14 of the Rural and Sea Fishing Code.

³⁶⁴ Vial-Pédroletti B., “ Tacite reconduction: durée du bail tacitement reconduit”, *Loyers et copr.* 2013 p. 22.

³⁶⁵ CA Paris 19 February 1991: *D.* 1993 somm 173 obs. Bihr.; CA Paris 2 March 1993 *loy et copr.* 1993 n°203.

³⁶⁶ CA Bordeaux 29 June 1995 *Loy et copr* 1996 n°53; CA Montpellier 12 June 2001 *loy et copro* 2002 n°113; obs Vial-Pedroletti, CA Toulouse, 29 March 2011 *AJDI* 2011 p. 788.

³⁶⁷ CA Paris, 22 March 1996 *loy et copro* 1996 n°246.

³⁶⁸ Civ. 3rd 14 December 1994 *bull. Civ. III* n° 211; CA Paris 26 May 1992, *loy et copr* 1992 n°321.

³⁶⁹ CA Paris, 17 April 1991 *loy et copro* 1991 n°322.

³⁷⁰ TI Paris, 1st March 1999, *Revue loyers* 1999, obs. Gelinet.

case, the tenant shall leave at the term mentioned in the contract. If the event does not occur, the contract is considered to last three years. If the completion of the event is only delayed, the landlord has the option to postpone the termination of the contract. This option is only offered once to the landlord. If this short term contract is offered to the tenant after the renewal of a first contract, the price of the rent cannot be increased more than the normal yearly increase, i.e. increase based on a benchmark rents published by the National Institute of Statistics and Economic Studies (In French: “*Institut National de la statistique et des études économiques*” i.e. *INSEE*) each quarter, which corresponds to the average of the evolution of prices excluding tobacco and rents consumption over the last twelve months.

If the tenant lives in a social housing HLM (in French: “*Habitation à loyers modérés*”), he/she benefits from the right to stay indefinitely in the premise. The landlord can only terminate the contract for specific reasons (See termination of the contract, p. 146.)

The 1948 Act is today only applicable to contract concluded before the 1982 Act (first Act to replace the 1948 Act) and for buildings which construction permit was delivered before 1948. Little by little leases adopted under the 1948 Act are disappearing, as it is no more possible to conclude lease agreements that fall under the scope of this regime. Even if the 1948 Act remains only applicable for few dwellings, we should mention this regime concerning the duration of the contract. The specificity of the regime is that after the first contract (of a minimum of six years), the tenant has a right to stay in the dwelling (in French: “*maintien dans les lieux*”). It is not considered as a continuation of the contract. The contract ends at its term but the tenant and his/her family go on living in the dwelling at the same conditions. The tenant loses the benefit of this right e.g. if she/he was evicted (see the conditions and procedure p.150), if he/she does not live in the dwelling for more than eight months or if he/she has more than one place to live in. (See for the complete list at article 10 of the 1989 Act).

- *Rent payment*

Article 1728-2 of the Civil Code³⁷¹ states that one of the two obligations of the tenant is to pay the rent. This obligation is in fact the main one of the tenant. The tenant has to pay the rent but also accessories and service charges.

Normally, the tenant is the only one responsible for the payment of the rent. However, in some case, the landlord can ask the payment by someone else than the one who signed the contract.

If there is a guarantor, i.e. the person who commits himself/herself to pay the rent of the tenant does not, the landlord can ask him/her to pay.

The landlord can also ask payment by the insurance company that covers this risk if the landlord subscribes to the mechanism called “*garantie des risques locatifs*” (See this question, p.121).

³⁷¹ Art. 1728 paragraph 2 of the Civil Code: “A lessee is bound to two main obligations: (...)2° To pay the rent at the agreed times.”

The law also organises a guarantee on the furniture that the dwelling contains (See the specific question p.122).

The protection of the landlord can also be linked to the situation of the tenant.

If the tenant is married, due to article 1751 of the Civil Code³⁷², his wife/her husband is considered co-owner of the contract. The spouses are thus both responsible for the payment of the rent.

In case of civil partnership (i.e. PACS, *Pacte civil de solidarité*), the partners are not co-owner of the contract but they are jointly liable for debts concerning daily life expenses as long as they are not manifestly excessive (Article 515-4 paragraph 2 Civil Code). The rent can of course be considered as a daily life expense, thus the only thing to check is if it can be considered as obviously excessive.

If the lease is signed by more than one tenant, e.g. in case of flat-sharing or for a couple cohabiting, generally, in the contract there is a provision stating that all the tenants are jointly liable for the payment of the rent, which means that each tenant has to pay the full rent if his/her co-tenant does not pay. If the tenant lives with other people who did not sign the lease agreement, the landlord cannot ask these people to pay the rent.

In a recent statement, the French *Cour de cassation* said that there is no joint liability between the tenants if there is no provision in the contract stating so³⁷³.

There are only very few cases in which the tenant may not pay the rent, e.g. if he cannot live in the dwelling because it is indecent. (On that topic see question concerning the exercise of set off and retention rights by the tenant, p. 120).

The ALUR Act introduces a new provision in the civil code, the article 1751-1. This new provision applies to tenants linked by a civil partnership, i.e. PACS. For the contracts signed after the 27th of March 2014, partners are considered as co-owner of the lease contract, but only if the partners ask for it. If the PACS is terminated, the contract can be transferred to the other partner if the partners go to court and the judges decide so.

Concerning the means of payment, the parties can decide how the rent will be paid, in advance, regularly, in one time. But, article 7 a) of the 1989 states that the tenant is

³⁷² Art. 1751 of the Civil Code: "The right to a lease of premises, without professional or commercial character, which is actually used for the dwelling of two spouses and even where the lease was concluded before the marriage, is, whatever their matrimonial regime may be and notwithstanding any agreement to the contrary, considered to belong to both spouses.

In case of divorce or judicial separation, that right may be allotted by the court seized of the application for divorce or judicial separation, on account of the social and family interests concerned, to one of the spouses, subject to the rights to reimbursement or indemnity for the benefit of the other spouse.

In case of death of one of the spouses, the surviving spouse co-lessee has an exclusive right on it, except where he or she expressly renounces it."

³⁷³ Com. 30 October 2012 (Reference to be included further when the number of publications is known)

<http://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000028147379&fastReqId=1737901183&fastPos=3>.

entitled to ask for a monthly payment of the rent. The tenant can pay by any means he/she wants: cash (up to 3000 euros³⁷⁴), transfer and cheque.

Article 4 of the 1989 Act concerning unfair provisions (in French: “*clauses abusives*”) limited the right of the landlord concerning the payment. Article 4 c and d states that are null a provision “c) which requires, for the payment of rent, the automatic debiting on the current bank account of the tenant or which require the tenant to sign in advance a banker’s draft (in French: “*lettre de change*”) or a promissory note (in French: “*billet à ordre*”), d) which requires the tenant to allow the landlord to collect directly the rent or to have it collected directly from his/her salary in the assignable limit”.

In theory, the rent is supposed to be paid at the domicile of the debtor (Article 1247 al. 3 Civil code). With the transfer or the cheque, this rule can appear of no interest. But the place where the payment is presumed to be made can be important to determine what is the relevant tribunal in case of a dispute concerning the payment. In the lease contract, the parties can decide that the rent is payable to the domicile of the landlord. The interest for the landlord is that he/she does not need to give the tenant a notice to record any delay.

The non-payment of the rent by the tenant can be considered as a legitimate and valid reason for the landlord to terminate the contract when it arrives to its term (See termination of the contract p.146). When the tenant does not pay, the landlord has five years to claim for the payment (article 2224 of the Civil Code). It is not clear if the prescription is only two years when the tenant can be considered to be a consumer (Article L137-2 of the Consumer Code). The tenant might be considered as a consumer if the landlord is a professional and not a natural person (in French “*personne physique*”).

Concerning the rent, the regime of the 1948 Act shall also be mentioned, as it is one of its specificities. The aim of the 1948 Act was to provide to tenants dwellings with low rent.

The rent is determined based on the rental value of the dwelling. This value is calculated by the multiplication of the corrected surface (i.e. real surface tempered by the condition of the place) to the price per square meter that correspond to the category of dwelling. This prices per square meter are determined by a decree, the last one³⁷⁵ was adopted the 26 of September 2013.

Finally, concerning the payment of the rent, if the tenant asks it, the landlord has an obligation to give to the tenant a rent receipt explaining in details the amount of the rent, of the service cost (Article 21 of the 1989 Act). The ALUR Act specifies that the delivery

³⁷⁴ Art. L112-6 of the Monetary and Financial Code states that payment in cash are limited a certain amount that is pointed out in the article D112-3 of the Monetary and Financial Code: 3000 eur.

³⁷⁵ Decree No. 2013-863 of the 26th of September 2013 amending the Decree No. 48-1881 of the 10th of December 1948 laying down the basic price per square meter for premise used for housing or for professional use, (in French: “*Décret n°2013-863 du 26 septembre 2013 modifiant le décret n° 48-1881 du 10 décembre 1948 déterminant les prix de base au mètre carré des locaux d'habitation ou à usage professionnel*”).

of the rent receipt is free and that they can be send by electronic means with the agreement of the tenant.

- *In general: freedom of contract vs. rent control*
- *Rent control: how is it legally framed; when does it apply; who carries it out; what are the consequences when the parties agree on an excessive rent*

As mentioned above (See p.100), the indication of the rent in the contract is mandatory (article 3 of the 1989 Act).

In principle, the rent is freely determined by the parties to the contract (article 17 of the 1989 Act).

When the dwelling is a HLM the determination of the price is different. The price is determined based on a price per square meter (decided by the organisation) multiplied by the size. The size of the dwelling is calculated taking into account several elements such as the dilapidation of the dwelling³⁷⁶.

Parties may also decide that a part of the payment will be realised in kind (on that point see the specific question, p. 122).

In some cases, the law regulates the determination of the rent. Article 18 of the 1989 Act organizes a special regime for some areas where the price of the rent is regulated. It is the case for municipalities where the number of people looking for a dwelling to rent is a lot higher than the number of dwelling offered.

The list of concerned municipalities is fixed by Decree, the last one was adopted the 30 July 2013³⁷⁷ (See table 6.3).

In practice, are concerned the cities of the thirty-eight conurbations with more than 50,000 inhabitants located in France (for twenty seven of them) and overseas (eleven of them). It means that approximately 40% of the French population is concerned by the rent regulation.

Table 6.3 Conurbation

Conurbations in France	Conurbations overseas
Amiens, Annecy, Annemasse, Arles, Beauvais, Bordeaux, Caen, Creil, Douai / Lens, Forbach, Fréjus, Grenoble, La Rochelle, Le Havre, Lille, Lyon, Marseille / Aix-en-Provence, Meaux, Menton, Montpellier, Nantes, Nice, Paris, Rennes, Strasbourg, Toulon and Toulouse	Basse-Terre, Cayenne, Fort-de-France, Le Robert, Mamoudzou, Pointe-à-Pitre/Les Abymes, Saint-André, Saint-Denis, Saint-Louis, Saint-Paul and Saint-Pierre.

³⁷⁶ Art. L442-1 to L442-12 of the Building and Housing Code.

³⁷⁷ See the list of municipalities in the annex of the Decree 2013-689 of the 30th of July 2013 on the development of certain rents in the context of a new lease or lease renewal, made under section 18 of Act No. 89-462 6 July 1989, (in French: "Décret n° 2013-689 du 30 juillet 2013 relatif à l'évolution de certains loyers dans le cadre d'une nouvelle location ou d'un renouvellement de bail, pris en application de l'article 18 de la loi n° 89-462 du 6 juillet 1989").

In these areas, when a new lease agreement is signed, if the landlord did not make any improvement in the dwelling, the last rent, paid by the previous tenant can only be increased based on a fixed rate, benchmark index for rent (In French: “*IRL*” for “*Indice de reference des loyers*”). The benchmark index for rent is explained with the increase of the rent (see rent increase p.123).

If some improvements were made in the dwelling, the landlord can increase the rent compared to the one paid by the previous tenant of 15% of the amount (including taxes) of the work realised. The condition is that the total amount of the work corresponds to at least half of the price of the rent (without service cost) for the last year.

If the rent paid by the previous tenant was undervalued, the increase shall not exceed one of these two limits. It shall not exceed either half of the difference between the average of the rent for equivalent dwelling in the neighbourhood and the last rent of the dwelling. Or, it shall not exceed an increase of the annual rent equal to 15% of the amount of work (all taxes included) if the cost of these works is at least half of the rent (excluding charges) of the last year.

The ALUR Act modifies the determination of the rent. In some areas, a decree will fix yearly the maximum increase of the rent for empty dwellings and for the renewal of the contract.

This act also creates an “observatory of rents” in French *observatoire des loyers*. The mission of this organism will be to collect information concerning rent. The information will be available for people and will be used to determine reference.

Moreover, each Prefect will have to determine a reference rent and a reference for a maximum and a minimum rent.

In the areas where the demand is high and the offer is low, the tenant can ask for a lower rent if the rent is higher than the reference. In these areas, a decree will determine every year the maximum rent for empty dwellings and in case of renewal of the contract. These areas will be determined by a decree.

Decrees need to be adopted for the details.

For the increase of the rent, the landlord will have to ask for the application of the provision. The application of the provision is no more automatic. The new contracts can include a provision stipulating that the rent will be increase when works will be realised in the dwelling. These rules are automatically applicable.

- *Maturity (fixed payment date); consequences in case of delayed payment*

There is no provision in the law concerning a delayed payment. If there is no provision in the contract, the only solution for the landlord is to go to the *Commission départementale de conciliation* or to the judges (*Tribunal d'Instance*), which are competent to solve issues between landlords and tenants (see concerning the competency of the tribunal, p. 69). The landlord can claim for the payment during five years (article 2224 of the Civil Code).

Except if there is a specific provision in the contract, the landlord cannot evict the tenant if he/she pays the rent with delays. The eviction of the tenant is only possible in limited cases (see eviction p. 150).

Article 24 of the 1989 allows the party to introduce in the contract a provision stating that if the tenant does not pay the rent, he/she can be evicted, before going to court. Such a provision can only contain three reasons for the landlord to terminate the contract: if the tenant does not pay the rent or the charges, if the tenant does not subscribe the mandatory insurance or if the tenant does not pay the deposit. The landlord must follow a specific procedure. First a notice of payment must be sent to the tenant. If after two months, the tenant does not pay, the landlord can go to court. The ALUR Act changes article 24 of the 1989 Act and states that that a specific commission shall be inform of the procedure (in French: “*Commission de coordination des actions de préventions des expulsions locations*”). If the landlord is a corporate body, it must first contact this commission.

The landlord is also allowed to include in the contract a provision called in French “*clause pénale*” which determines the penalty of the tenant if he/she does not pay in due time. If the amount of the penalty is too high, the judges have the opportunity to reduce it³⁷⁸.

If such a provision is contained in the contract, the landlord is entitled to ask for the extra-amount as soon as the tenant is late to pay his/her rent.

However, according to article 4 i) of the 1989 Act, the landlord is not allowed to include fine in the contract that would be payable by the tenant if he does not respect the content of the contract or of the condominium rules. The penalty clause differs from a fine.

- *May the tenant exercise set off and retention rights over the rent payment? (i.e. the tenant withholding the rent or parts of it when the landlord does not respect his contractual duties, e.g. does not repair a defect)*

In very few cases, the tenant is allowed not to pay the rent. As the payment of the rent is the main obligation of the tenant, the judges are very severe concerning the interpretation of the cases in which the tenant is allowed not to pay the rent.

The French law authorizes one party to a contract not to execute her/his obligation if the other one does not respect his/her obligations, it is called “*exception d’inexécution*”. If the landlord fails to fulfil his/her obligation, the tenant can consider refusing to pay based on this “*exception d’inexécution*”. But most of the time, judges refuse the tenant to use such rule. The idea is to avoid abuses from the tenant who otherwise may decide not to pay the rent each time the landlord does not respond to his/her wishes.

The tenant can only refuse to pay if he cannot use the rental object at all, if he cannot live in the dwelling. For example, the *Cour de cassation*³⁷⁹ decided the tenant can refuse to pay the rent for a place that cannot be heated up because the fire place cannot be used due to a risk of poisoning.

³⁷⁸ For a reduction of the amount: CA Paris 28 June 1994, *Loyer et copr.* 1994 n°464; CA Paris, 26 June 2008 *AJDI* 2008 p. 932; CA Angers 12 April 2011 *AJDI* 2012 p. 108.

For a refusal to reduce the amount: Civ. 3rd 27 November 2007 *Rev. Loyer* 2008 p. 100; CA Paris, 22 September 2004 *AJDI* 2005 p. 25.

³⁷⁹ Soc. 10 April 1959, Bull. Civ. IV n°450, *D.* 1960 p. 61.

- May claims from rental agreements be assigned to third parties (i.e. may the landlord assign his rent claim to a bank?)

The French law organises a mechanism of voluntary assignment (in French: “*cession de créance*”³⁸⁰). This operation gathers three people. In the case of an assignment of the rent claim, the landlord sells or gives his/her claim on the debtor to a third part to the lease agreement, the transferee. The idea is that the debtor pays his/her debt to the transferee and no more to the original landlord.

In the French law, the principle is that a contract has effects only towards the parties who signed it. Thus, in the case of voluntary assignment, it is necessary that the contract has effect on the debtor. To produce such effects, article 1690 of the Civil Code offers two solutions. First, the one who transfers his/her claim, i.e. in this case the landlord, shall inform the debtor through a process of service. Second, the debtor can accept the transfer in an authenticated deed. If the tenant pays his/her claim being served, the payment to the landlord is valid (Article 1691 of the Civil Code). The landlord can assign his/her claim to a bank if the tenant accepts it or if he/she gives notice to the tenant.

According to article 1692 of the Civil Code, the claim is transferred with all its accessories, including the securities such as the guarantee. Thus, the new owner of the claim can ask the payment to the tenant and, if he/she does not pay, to his/her guarantor when there is one.

The landlord can ask, if he/she wants to, the tenant to find someone to act as a guarantor³⁸¹ for the payment of the rent but only in specific cases. The landlord is not allowed to ask for a guarantor if he/she subscribes a special insurance that can be private or be the “*garantie des risques locatifs*”, guarantee against rental risks, except if the tenant is a student or an apprentice.

As for the *avance loca-pass*, a system of *garantie loca-pass* exists. But it only benefits to people whose landlord is a corporate body. The maximum guaranteed is 2000 euros per month (excluded housing allowance) for a maximum of nine months. If the tenant does not pay the rent, the *Garantie loca-pass* will pay the landlord and then the tenant will have three years to reimburse the special fund.

This guarantee is an insurance paid by the landlord and he/she can only subscribe if he/she is a natural person (in French: “*personne physique*”), if the tenant does not pay more a rent of more than 50% of his/her income, if it is his/her main home and if the rent is less than 2000 euros/month when the contract is signed.

The ALUR act specifies that the list of documents that can be asked to the guarantor will be determined by a Decree. It also states a ascendant or a descendant of the tenant cannot be forced to sign the lease. Forcing them to sign the lease could have been used so that they are jointly liable for the payment of the lease. If the contract does not respect these rules, administrative fines will be created by decree.

³⁸⁰ Art. 1689 to 1701 of the Civil Code.

³⁸¹ B. Vial-Pédrolletti, “Cautionnement : étendue de l’engagement de caution”, *Loyers et copr.*, p. 17.

If the tenant does not pay the rent or if there are any damages in the dwelling, the insurance will reimburse the landlord. The association (APAGL, which means in French “*association pour l'accès aux garanties locatives*”) will organise the reimbursement of the rent by the tenant to the insurance company that paid the landlord.

The guarantor is supposed to pay for the tenant when this one does not pay the rent, the charges but also repairs in the dwelling.

The conditions of the lease agreement, especially the conditions of payment are not changed when the rental agreement is assigned to a third part.

One of the main hypotheses of assignment of the rent is the sale of the premise. If the landlord sells the premise and if the tenant stays in the dwelling, the selling act includes a transfer of the claim on rent.

- *May a rent payment be replaced by a performance in kind (e.g. reparation, renovation)? Does the tenant have a statutory right to this effect? Could a lien of the “tenant-contractor” create problems in that case? (a lien is a statutory right of a contractor to ensure his being paid for his performances, e.g. improvements to the house, e.g. § 648 BGB)*

Parties can decide that a part of the rent will be paid in kind. If so, the judges check if the will of the parties when they signed the contract is respected. E.g. in one case, the parties decided that the tenant will pay a part of the rent in money and that for the rest he will take care of the landlord. When the landlord died, his heirs wanted to raise the rent but the *Cour de cassation*³⁸² ruled it was not possible, as it was not planned in the contract.

The price of the rent can also be reduced if the tenant makes works in the dwelling. Article 6 a) of the 1989 Act states that the parties may agree that the tenant will perform some works in the dwelling and that a provision of the contract will fix the compensation. The compensation can be a reduction of the rent for a limited period of time. The duration of the reduction should be mentioned in the contract as well as the condition of compensation if the tenant leaves the dwelling earlier than expected.

There is no right for the tenant to obtain a payment in kind. Such a payment is only possible if an agreement is reached between the tenant and the landlord. The tenant has no right to claim for compensation if she/he performed improvements in the dwelling without the agreement of the landlord. She/he may be obliged to restore the dwelling as it was at the date of the inventory (See the inventory p. 92 and repairs by the tenant p.134).

- *Does the landlord have a lien on the tenant's (movable) property in the house (Vermieterpfandrecht as in § 562 BGB, which functions as a guarantee for the payment of the rent by the tenant)? If yes, what is the scope of this right? How is it enforced?*

The law itself offers a sort of guarantee to the landlord. Article 2332 of the Civil Code states that the tenant has to furnish the flat so that the landlord can seize the contents if the tenant does not pay the rent or other charges. But this hypothesis is more

³⁸² Civ. 3rd 18 March 2009 Bull. Civ. III n°64.

complicated for the landlord than to ask a third party to pay the rent as he/she has to start a judicial proceeding. In fact if the landlord decide to ask the guarantor to pay in the name of the tenant, the procedure will be easier for him than to seize his/her furniture to sell them.

The lien of the landlord concerns all the movables in the house, including movables that do not belong to the tenant, except if it is possible to prove that the landlord was aware of the origin of these movables when they were put in the dwelling³⁸³. If the landlord is informed later about the rightful ownership, he/she still benefits from the lien³⁸⁴. The landlord is not supposed to check who the real owner of the furniture in the premise is³⁸⁵.

- *Clauses on rent increase*
 - *Open-ended vs. limited in time contracts*
 - *Automatic increase clauses (e.g. 3% per year)*
 - *Index-oriented increase clauses*

The revision of the rent is only possible if there is a provision in the contract organising the increase of the rent³⁸⁶. If there is no provision, the rent stays unchanged for the complete duration of the contract.

Even if the lease contract contains such a provision, no matter if the dwelling is or not located in an area where there is or not rent regulation the conditions to increase the rent are limited:

- The rent can only be increased once a year,
- The increase is based on a benchmark index for rent (In French: “*IRL*” for “*Indice de reference des loyers*”).

According to article 17 d) of the 1989 Act, to calculate the increase of the rent the landlord needs:

- the amount of the current rent,
- the last value of the benchmark index for rents for the reference quarter mentioned in the contract, and
- the value of the benchmark for rents for the same quarter of the previous year.

If the lease does not mention what the quarter of reference is, the last benchmark index for rents known when the lease started serves as a reference.

³⁸³ Civ. 1st, 12 May 1969, *D.* 1970. 43, note Malinvaud ; Civ. 3rd, 24 June 2009 Bull. Civ. III, no 154; *D.* 2009. *AJ* 1888, obs. Prigent; *JCP* 2009. 492, no 21, obs. Delebecque; *Gaz. Pal.* 2009. 3073, note Barbier; *AJDI* 2010. 127, obs. Zalewski ; *RD Banc. fin.* 2009, no 161, obs. Legeais; *ibid.* no 169, obs. Piedelièvre; *RLDC* 2009/63, no 3537, obs. Marraud des Grottes (privilège du bailleur primant une clause de réserve de propriété) ; Com. 16 November 2010, Bull. Civ. IV, no 178; *D.* 2010. *Actu.* 2828 ; *JCP* 2011, no 226, § 21, obs. Delebecque; *AJDI* 2011. 356, obs. Damas ; *RLDC* 2011/78, no 4093, obs. Marraud des Grottes (*idem*).

³⁸⁴ Civ. 3rd, 4 February 1976: Bull. Civ. III, no 47.

³⁸⁵ CA Orléans, 9 March 1978: *JCP N* 1980. II. 256.

³⁸⁶ Art. 3 of the 1989 Act, Civ. 3rd 4 October 1995, dealing with the 1986 Act but the same article is also in the 1989 Act.

The calculation of the new rent is the following operation:

$$\frac{(\text{current rent} \times \text{benchmark rents for the reference quarter})}{\text{value of benchmark for rents for the same quarter of the previous year}} = \text{New rent.}$$

If there is such a provision in the lease agreement, the landlord who did not ask for an increase of the rent will have the right to ask retrospectively for an increase for the five previous years based on the previous benchmark index for rents.

According to article 17 e) of the 1989 Act, the rent may be increased during the lease in case the landlord performs improvement works in the dwelling and if both parties agreed on it when signing the contract. They can also add an annex contract to the lease. Parties must agree on the improvement to be made and on the amount of increase of the rent applicable after completion of the works.

The rent can also be increased at the end of the contract when it is renewed (Article 17 c) of the 1989 Act).

If the contract is renewed automatically without any intervention of the tenant or of the landlord, the only possible increase is the same as the increase during the contract and at the same condition (provision in the contract, calculation as mentioned above and increase only once a year).

If there is no provision concerning an increase of the rent in the contract, the rent can only be increased if it was obviously under-estimated (Article 17 c) of the 1989 Act). In such a case, the landlord may suggest a new rent determined in consideration of the rent offered in the neighborhood for comparable dwellings (Article 19 of the 1989 Act).

The undervaluation of the rent is justified by comparison with so-called "reference rents" that correspond to rents in the neighborhood. These dwellings of reference must be located either in the same group of buildings, or in another group of buildings with similar characteristics and located in the same geographical area.

This proposal should be made at least six months before the term of the initial contract. The offer should be served by a bailiff or sent by registered letter. If the landlord makes such an offer to the tenant to renew the lease with a revalued lease, he/she is not allowed to give notice for the same lease. The idea is to prevent the landlord to force the tenant to accept the increase, fearing that otherwise he/she would have to leave.

In his/her offer, the landlord has to give at least three "reference rents", six for cities that belong to a conurbation of more than one million inhabitants and that are listed in a Decree³⁸⁷. At least two thirds of the "reference rents" given to the tenant shall concern dwellings whose tenants moved in at least three years ago. Each reference mention shall give precise details to the tenant so that he/she can compare with his/her

³⁸⁷ The last one is the Decree 2013-689 of 30 July 2013 on the development of certain rents, (In French: "*Décret n°2013-689 du 30 juillet 2013 relatif à l'évolution de certains loyers*").

dwelling: construction date, rent without service cost, equipment of the dwelling, name of the street, floor of the dwelling, existence of a lift, etc³⁸⁸.

The offer made by the landlord to the tenant must contain the full text of article 17 c) of the 1989 Act, the price of the new rent and the list of reference. If this is missing, the offer is null.

The tenant shall answer within two months. He/she can accept or refuse the increase. If he/she accepts, a new contract is established with the new rent. If he/she does not answer, he/she is considered as refusing the increase. If he/she refuses or does not answer, within four months before the term of the contract, the landlord or the tenant can bring the dispute before the *Commission départementale de conciliation* to reach an agreement. If there is no agreement, the *Tribunal d'Instance* can be in charge of the resolution of the case. The judge will fix the rent. If parties do not go to court and if there is no agreement between the parties, the contract is renewed at the same conditions as the first one, i.e. without any increase of the rent.

According to article 18 of the 1989 Act, supplemented by a Decree adopted in 2013³⁸⁹, in some cities where increase of rent were considered too high, this increase is limited for leases renewed during the 12 months from 1 August 2013 to 31 July 2014. It shall not exceed the higher of the following limits:

- half of the difference between the rent that would be the neighborhood rents for comparable housing and the rent applied to the last tenant before the renewal of the lease contract;
- an increase of the annual rent equal to 15% of the cost of improvements made by the landlord since the last renewal of the lease. The cost of the works shall in this case be at least equal to the last year of rent (without service cost).

As for the calculation of the rent, the regime of the 1948 Act for the increase of the rent is different than the regime of the 1989 Act.

The revaluation of the rent intervenes yearly at the 1st of July. The amount is fixed by Decree. If the Decree is adopted after the 1st of July, the increase can be reevaluated retrospectively. The last Decree was adopted the 26th of September 2013³⁹⁰.

³⁸⁸ The element the reference shall contain are the followings: the name of the street and ten numbers where the building is located, the quality and period of construction of the building, the floor of the house and the possible presence of an elevator, the habitable surface of the dwelling and the number of habitable rooms, the existence of any annexes, the equipment, including the presence of running water, indoor toilet, with bathroom, heating, the construction period of the building, an indication that the tenant is in place for at least 3 years, the monthly rent excluding service costs actually charged.

³⁸⁹ Decree 2013-689 of the 30th of July 2013 on the development of certain rents in the context of a new lease or lease renewal, made under section 18 of Act No. 89-462 6 July 1989, (in French: "*Décret n° 2013-689 du 30 juillet 2013 relatif à l'évolution de certains loyers dans le cadre d'une nouvelle location ou d'un renouvellement de bail, pris en application de l'article 18 de la loi n° 89-462 du 6 juillet 1989*").

³⁹⁰ See Decree No. 2013-863 of the 26th of September 2013 amending the Decree No. 48-1881 of the 10th of December 1948 laying down the basic price per square meter for premise used for housing or for professional use, (in French: "*Décret n°2013-863 du 26 septembre 2013 modifiant le décret n° 48-1881 du 10 décembre 1948 déterminant les prix de base au mètre carré des locaux d'habitation ou à usage professionnel*").

Since the 1st of July 2013, the maximum rate is 1.54%. Such index does not take into account the location of the building or the category of dwelling. The rent of the dwellings rented in application of the 1948 Act and which does not fulfil the condition of decency cannot be increased.

For lease agreement falling under the scope of the 1948 Act, the rent can also be increased if the elements used as the basis for the determination of the rent are changed. It is the case if the owner performs works in the building. The landlord shall send information to the tenant who has two months to contest. If the parties disagree, they can go to court (*Tribunal d'Instance*).

- *Utilities*
 - *the usual kinds of utilities (e.g. basic utilities like the supply of water, gas and electricity vs. additional utilities, i.e. services such as waste collection) and their legal regulation*
 - *Responsibility of and distribution among the parties:*
 - *Does the landlord or the tenant have to conclude the contracts of supply?*
 - *Which utilities may be charged from the tenant?*
 - *What is the standing practice?*
 - *How may the increase of prices for utilities be carried out lawfully?*
 - *Is a disruption of supply by the external provider or the landlord possible, in particular if the tenant does not pay the rent?*

The division of the cost between the tenant and the landlord is organized by a Decree adopted the 26th August 1987³⁹¹ (See table 6.4). The list of charges is limited and fixed by this decree. Expenses, which are not mentioned in this text, shall be paid by the owner and cannot be charged to the tenant.

Table 6.4 Cost to be paid by the tenant

	Costs that shall be paid by the tenant
Lifts and hoists	<ul style="list-style-type: none"> • electricity expenses • operating expenses (periodic inspection, cleaning, biannual review of the cables, technical maintenance visits, administrative cost by the enterprise in charge of the maintenance, technical repairs.) • expenses for providing products or small maintenance equipment (rags, grease and necessary oils, cabin lighting lamps) expenses relating to minor repairs of the cubicle (change buttons sending door hinges), of the bearings (closes doors mechanical, electric or pneumatic), and fuses

³⁹¹ See Decree n°87-713 of the 26th August 1987 establishing the list of recoverable costs, (in French: "Décret n°87-712 du 26 août 1987 pris en application de l'article 7 de la loi n° 86-1290 du 23 décembre 1986 tendant à favoriser l'investissement locatif, l'accession à la propriété de logements sociaux et le développement de l'offre foncière et relatif aux réparations locatives")

Cold water, hot water and central heating	<ul style="list-style-type: none"> • expenditure related to cold and hot water of all the occupants of the dwelling; • expenditure related to water for routine maintenance of common areas, including purification plants ; • expenditure related to water for routine maintenance of outdoor spaces ; • expenditure related to goods required for the operation, the maintenance and the water treatment ; • expenditure related to energy supply whatever its nature ; • expenses related to the operation of general and individual meters and to the maintenance of fume; <p>expenditures for repairing leaks on joints</p>
Individual installations	<ul style="list-style-type: none"> • heating • hot water production <p>distribution of water in the units (control of the connections, flow rate and temperature, repairs service , replacement joints, flushes)</p>
Common areas for one building or several buildings.	<ul style="list-style-type: none"> • expenditure for the electricity • expenditure for the provision of cleaning products (brooms and bags needed for waste), fumigation and disinfection products ; • expenses for the maintenance of the timer (light or door), carpets, rubbish chutes ; • expenditure on the repair or the maintenance of cleanliness devices such as the vacuum cleaner; <p>expenses related to the cost of maintenance personnel.</p>
Outdoor spaces	<ul style="list-style-type: none"> • operating and maintenance expenses of the access routes, • operating and maintenance of the parking areas, <p>operating and maintenance of the green areas and playground equipment for children.</p>
Taxes	<ul style="list-style-type: none"> • tax or fee for garbage collection • sweeping tax <p>sanitation tax</p>

Once identified the charges the tenant has to pay, remains the question of the division of the charges among the people living in the same building. Even if, from the tenant's point of view, the expense should be the same no matter who owns the building, the situation is different if the building belongs to one owner only or to several people (co-ownership). This difference could be explained by the existence of specific rules concerning co-ownership.

When the unit is located in a building in co-ownership, the law precisely divides the distribution of the expenses. According to the law, the lot is divided in fiction divided in a thousand of pieces. Each owner owns a number of pieces related to the size of

his/her dwelling and other elements such as the floor of his/her dwelling. The charges (common facilities and service) will be divided for each flat according to the number of thousandth. The tenant has to pay these charges for the premise he/she rents.

If the dwelling is not located in a building owned by several people, the law does not give any criteria for the division of the charges. It is the case if a building, divided into several flats, belongs to one person. All modes of distribution can be used. The division can be made depending of the size of the dwelling or on the number of rooms.

To justify the amount of the charges, a statement of charges is sent to the tenant one month prior to the annual adjustment. The statement shall indicate the different categories of expenditure, which the charges are related to and, where relevant, the amount consumed, for example, water and energy.

If the dwelling is located in a co-owned building, the statement shall specify how the charges are distributed between tenants.

The tenant has a right to ask some clarification to the landlord.

The means to pay the expense vary.

The landlord can ask the tenant to pay advances of the charge regularly, e.g. monthly or quarterly and regularization shall be done every year to adjust the payment to the real expenditure.

The landlord can also ask the tenant to reimburse him/her the expenses he/she made and which are included in the list of charge the tenant has to pay. The landlord has to prove to the tenant the expenses he/she made. The landlord or the manager of the building must keep the bills at the disposal of the tenant during one month after sending him/her the statement.

If the tenant has trouble paying the expenses, he/she can ask the landlord for a delay.

Every year, the landlord shall make what is called a regularization of the expenses. It means that the landlord has to compare the money he received from the tenant for the payment of the service costs to the real expenses. If the tenant paid too much, the landlord has to pay him/her the money back. If he/she did not paid enough, the landlord can claim for the difference.

If some of the charges remained unpaid by the tenant, the landlord can go to court (*Tribunal d'Instance*) or to the *Commission régionale de conciliation* to claim the payment only during five years (Article 2224 of the Civil Code). The landlord cannot evict the tenant if he/she pays the rent with delays. The eviction of the tenant is only possible in limited cases (see eviction p. 150).

The 1987 Decree explains what are the cost that must be paid by the landlord and which must be paid by the tenant. But it does not give details about when the landlord is supposed to pay first and to be reimbursed by the tenant. Most of the time, every month, sometimes every quarterly, tenant pays a fix amount. At the end of the year the mandatory regularization is undertaken. The amount is based on an evaluation of the charges. Most of the time the utilities the tenant reimburse to the landlord are all the cost linked to the common areas, the outdoor spaces and the lift and hoist and taxes. For the cold water, hot water, central heating and the individual installations, it depends on each

dwelling. For example, if there is only one device to measure the water of the whole building, or if there is one sole system for the central heating, the costs related will be reimbursed by the tenant to the landlord. If not, as in most cases for electricity, Internet, television and telephone, the tenant will conclude his/her own contracts of supply, which will allow him/her to choose the supplier.

There are no specific rules concerning the repartition of charges in the case the tenant uses only a part of the dwelling rented with co-tenants. The division should result from a contract among them (if ever they made a contract). Otherwise, and this solution is not satisfactory, as there is no contract among the tenants, the only applicable rules are the general provisions of the Civil Code concerning non-contractual liability (Article 1382 of the Civil Code³⁹² etc.). The solution is the same if the owner of the flat is renting one of the rooms of the house he/she lived in. In such a case, the division of the Decree adopted the 26th August 1987 does not seem relevant as the landlord himself/herself benefits also from all the utilities.

The landlord has no possibility to disrupt the supply if the tenant does not pay the rent or the charges. In such a case, she/he must follow the specific proceedings. On the contrary, the suppliers and only the supplier can do so. If the tenant does not pay within fourteen days after the deadline the supplier of water, electricity, gas and heating shall send a letter to inform the tenant he/she has 30 days to pay if he/she is in a precarious situation, or fifteen days in other cases³⁹³. If the tenant does not pay in that delay, the supplier can restrain the access to the utilities mentioned. The tenant has the possibility to apply to a special fund created in each department and dedicated to financial issues linked to housing (in French: "*Fond de solidarité pour le logement*"³⁹⁴). There are representations of this fund in each department. People can contact this fund when they have issue to pay their rents, the deposit, the insurance or utility bills (water/gas/electricity/telephone etc.). Depending on the income of the family and the need, the fund can decide to help or not the family. The help can for example be refused if the rent or the costs are disproportionate considering the incomes of the family.

- *Deposit:*
 - *What is the legal concept (e.g. is the deposit an advance rent payment or a guarantee deposit to cover future claims of the landlord)?*
 - *What is the usual and lawful amount of a deposit?*
 - *How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant?)*
 - *What are the allowed uses of the deposit by the landlord?*

³⁹² This provision states that: "Any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it"

³⁹³ Decree 2008-780 of the 13 August 2008 concerning the procedure in case of unpaid electricity, gas, heat and water bills, (in French: *Décret n°2008-780 du 13 août 2008 relatif à la procédure applicable en cas d'impayés des factures d'électricité, de gaz, de chaleur et d'eau*).

³⁹⁴ Decree 2005-212 of the 2nd March 2005 concerning the solidarity fund for housing, (in French: "*Décret n°2005-212 du 2 mars 2005 relatif aux fonds de solidarité pour le logement*").

The deposit is an amount of money, which is supposed to cover the potential damages made by the tenant. The deposit is not supposed to be used to pay the rent, but only to enable the landlord to make repairs due to damages made by the tenant.

There is no mandatory deposit, which means that if there is no provision organizing a deposit in the contract, the landlord does not have any rights to ask for a deposit.

There is no provision in the French law concerning what the landlord is supposed to do with the deposit. The landlord can therefore do whatever he/she wants with it, his/her only obligation is to reimburse the tenant at the end of the contract.

Article 22 of the 1989 Act deals with the deposit.

The landlord is not allowed to ask for a deposit if the payment of the rent is supposed to be made in advance for a period of two months or more. E.g. if the rent is paid in advance every quarter, the landlord cannot ask for a deposit.

If there is a provision in the contract concerning the deposit, the conditions are fixed by the law. The amount cannot exceed one month of the rent. This amount was reduced from two months to one month by the 2008 Act³⁹⁵.

The amount is transferred to the landlord when the lease agreement is signed. It can be transferred either by the tenant himself/herself or by a specific organisation. It could be *Avance loca-pass*³⁹⁶. This mechanism was created to lend money (without interest) to tenants to finance their deposit. The tenant has to fulfil conditions to obtain an *avance loca-pass*. The amount awarded is of a maximum of 500 euros, which can cover a part or the entire deposit. It will be reimbursed within three years with a minimum of twenty euros per month. The tenant can start to reimburse only three months after being awarded the *avance loca-pass*.

The other option is to obtain help from a special fund created in each department and dedicated to financial issues linked to housing (in French: "*Fond de solidarité pour le logement*", see information p.**Fehler! Textmarke nicht definiert.**).

When the contract terminates, the deposit is given back to the tenant within a maximum of two months after the return of the key by the tenant.

The amount corresponds to the amount given by the tenant when entering the flat minus the amount due to the landlord. The tenant does not receive any interest.

The amount of the deposit cannot be changed during the contract, even when the contract is renewed.

The reimbursement by the landlord at the end of the lease is calculated using the inventory but also taxes the landlord has to pay in the name of the tenant or charges.

The landlord has to give a justification for the amount deducted from the initial amount.

³⁹⁵ Act 2008-111 of the 8 February 2008 concerning buying power, (in French: "*Loi n°2008-111 du 8 février 2008 pour le pouvoir d'achat*").

³⁹⁶ Art. R441-20 to R441-30 and Art. R313-19-1 IV and V Building and Housing Code.

If there is a change in landlord (free transfer, inheritance or sale), the new landlord will have to give back the deposit. Any convention that states something different only concerns the parties to the transfer.

If the deposit is not returned within two months after the term of the contract, the tenant should ask the landlord, e.g. by sending him/her a registered letter. If the landlord does not respect this delay, interest at the legal rate shall be paid to the tenant when the deposit is reimbursed.

If the owner refuses to pay the deposit despite this approach, the tenant should start a proceeding in front of the *Commission départementale de conciliation*. If no agreement is reached, the tenant or the landlord can go to court. If the request is less than 4,000 euros, the “*Juge de proximité*”, equivalent district court, has jurisdiction. If the amount is above 4,000 euros, maybe rarely the case as the amount is one month rent, the *Tribunal d’instance* has jurisdiction.

The ALUR Act specifies that the deposit has to be given back within two months after the handover of the keys and within one month when both the inventories made at the entrance and at the end of the contract are similar. Otherwise the amount is increased of 10 % each month. The landlord can keep a provision that cannot exceed 20% of the amount until the final statement of the service cost. These provisions are applicable since the 27th of March 2014 for the contract signed after this date.

The ALUR Act also creates a “*Garantie universelle des loyers*” also called GUL. This mechanism meant to avoid eviction. If the parties subscribe to this guarantee, when the tenant does not pay the rent, the landlord can be refund of the amount of the rent with a maximum linked to the reference rent determined yearly by the Prefect. To be able to access such mechanism, the tenant has to earn at least two times the amount of the rent. The contract shall comply with the standard contract, as it will be determined by a decree. The dwelling has to be considered as decent. The tenant shall not be a member of the family of the landlord. The provision concerning the GUL will be included in all the contracts. If the parties want to exclude this mechanism, they have to write it expressly. The contract shall be declared at an organism called “*Agence de la garantie universelle des loyers*”. This guarantee is not mandatory and the landlord can use other mechanism. The provisions concerning the GUL will be applicable when decrees will be adopted and at the latest the 1st January 2016.

- *Repairs*
 - *Who is responsible for what kinds of maintenance works and repairs?*
 - *What kind of repairs or works may lawfully be assigned to the other party (especially the tenant)*

The obligation of maintenance of the dwelling is divided between the tenant and the landlord.

The obligations of the tenant are defined at article 7 of the 1989 Act. According to article 7 d) “The tenant is obliged (...) to deal with the maintenance of the dwelling, with the equipment specified in the contract and with minor repairs as well as all the rental repairs defined by a decree (*Décret en Conseil d’Etat*, i.e. a special form of Decree),

unless they are caused by decay, defect, construction defect, unforeseen event or “force majeure” (See table 6.5).

An insight of what the rental repairs can be is given by article 1754 of the Civil Code³⁹⁷. But, a very precise list of what shall be considered as rental repairs, i.e. in French “*réparations locatives*”, is given by a Decree adopted the 26th of August 1987³⁹⁸.

This list is divided into six sections: External areas exclusively for the use of the tenant, Openings, Interior parts, Plumbing, Equipment for electricity, other equipment mentioned in the lease.

If the tenant does not perform the repairs he is supposed to deal with, he can have to pay damages to the landlord. The *Cour de cassation* noted that the damages are due, no matter if the landlord makes the repairs or not. The tenant has to pay even if the repairs are no more needed, as the building will be destroyed³⁹⁹.

All the other repairs than the ones mentioned in the 1987 Decree have to be dealt by the landlord. Even some of the rental repairs must be performed by the landlord, those due to damages “caused by decay, defect, construction defect, unforeseen event or force majeure” (Article 7d of the 1989 Act).

Article 606 of the Civil Code also mentioned works the landlord has to deal with. It states that⁴⁰⁰ :

“Major repairs are those to main walls and vaults, the restoring of beams and of entire coverings;

That of dams, breast walls and enclosing walls also in entirety.

All other repairs are of maintenance.”

The French *Cour de cassation* gave clarifications stating that:

³⁹⁷ Art. 1754 of the Civil Code: “Repairs incumbent upon the tenant or those of routine maintenance for which a tenant is responsible, unless otherwise stipulated, are those which are considered as such by the usage of the place and, among others, the repairs to be made :

To fireplaces, back-plates, mantelpieces and mantelshelves;

To the plastering of the bottom of walls of flats and other places of dwelling, to the height of one metre;

To pavements and tiles of rooms, where only a few are broken;

To panes of glass, unless they are broken by hail, or other accidents, extraordinary and by force majeure, for which a tenant may not be made responsible;

To doors, windows, boards for partitioning or closing shops, hinges, bolts and locks.”

³⁹⁸ Decree 87-712 of the 26th August 1987 adopted in application of 7 of the Act 86-1290 of the 23th December 1986 aimed at boosting rental investment, home ownership and social housing development of land supply and determining the list of recoverable costs, (In French: “*Décret n°87-712 du 26 août 1987 pris en application de l'article 7 de la loi n° 86-1290 du 23 décembre 1986 tendant à favoriser l'investissement locatif, l'accession à la propriété de logements sociaux et le développement de l'offre foncière et relatif aux réparations locatives*”), Art. 1756 of the Civil Code added an obligation concerning the cleaning of cesspools and wells.

³⁹⁹ Civ. 3rd 30 January 2002, Bull Civ. III n° 17.

⁴⁰⁰ In French, article 606 of the Civil Code “*Les grosses réparations sont celles des gros murs et des voûtes, le rétablissement des poutres et des couvertures entières.*

Celui des digues et des murs de soutènement et de clôture aussi en entier.

Toutes les autres réparations sont d'entretien.”

“in application of article 606 of the Civil Code is concerned, maintenance repairs are those that are useful for permanent maintain of the building while major repairs are those concerning the structure and overall strength of the building”⁴⁰¹

The landlord has to make the major repairs even if they cost more than the price of the rent. He/she will not have to repair if he/she has to rebuild and if it is not link to a lack in the previous repairs but link to “*force majeure*” or fortuitous event

According to article 6 of the 1989 Act and articles 1719⁴⁰² and 1720⁴⁰³ of the Civil Code, the landlord must do more than the repairs the tenant is not obliged to make.

The landlord has also to deliver a decent housing (see p.72). The landlord is thus responsible for all the damages that occur and that affect the habitably or the suitability of the house.

Then, the landlord must also deliver a dwelling “in good repair of whatever character. He must, during the term of the lease, make all the repairs which may become necessary, other than those incumbent upon lessees.”⁴⁰⁴ The landlord has an obligation of maintenance of the renting object according to the use written in the contract.

When repairs need to be made and the landlord refuses, the tenant has to send him a registered letter to ask him/her to comply with his/her obligation. If the landlord does not reply within two months, the tenant is entitled to bring the dispute before the *Commission départementale de conciliation* or the *Tribunal d'Instance*. The judge can force the landlord to make the repair, or to authorize the tenant to make the repairs and to be reimbursed by the landlord, or to award damages to the tenant for disturbance.

The *Cour de cassation* also stated that the tenant can have to pay a part of the repairs that the landlord should pay, if the tenant made a fault. E.g. the tenant who waits eight years to inform the landlord that some repairs are needed has to pay a part of the bill as his carelessness accentuated the need for repairs⁴⁰⁵.

⁴⁰¹ Our translation. Civ. 3rd 13 July 2005, n° 04-13764: In French : « *au sens de l'article 606 du Code civil, les réparations d'entretien sont celles qui sont utiles au maintien permanent en bon état de l'immeuble tandis que les grosses réparations intéressent l'immeuble dans sa structure et sa solidité générale* »

⁴⁰² Art. 1719 of the Civil Code: “A lessor is bound, by the nature of the contract, and without need of any particular stipulation:

1° To deliver the thing leased to the lessee “and, where the main dwelling of the latter is concerned, a decent lodging. *If the premise rented to be used as a dwelling are unsuitable for this purpose, the landlord cannot rely on the invalidity of the lease or on its termination to demand the expulsion of the occupier*” (for the part in *Italic*, our translation).

2° To maintain that thing in order so that it can serve the use for which it has been let;

3° To secure to the lessee a peaceful enjoyment for the duration of the lease;

4° To secure also the permanence and quality of plantings.

⁴⁰³ Art. 1720 of the Civil Code: “A lessor is bound to deliver the thing in good repair of whatever character. He must, during the term of the lease, make all the repairs which may become necessary, other than those incumbent upon lessees.”

⁴⁰⁴ Article 1720 of the Civil Code.

⁴⁰⁵ Civ. 3rd 9 February 2005 n°03-19609.

According to article 6 d) of the 1989 Act, the parties can decide that the tenant will deal with some of the repairs the landlord is normally supposed to make. The parties may agree on compensation for the tenant and on duration, (e.g. the rent will be lower for a limited period of time depending on the amount of the work realised by the tenant). In case of early departure of the tenant, a provision concerning the compensation of the tenant shall also be included.

Judges are very strict with such provisions and often refuse the tenant to pay too expensive works, such as the one concerning the structure of the house⁴⁰⁶ or to rebuild the roof⁴⁰⁷.

The tenant has also an obligation not to destroy the object of the rent⁴⁰⁸. He/she must give it back in the same condition as it was at the beginning of the rent and pay the repairs for the loss and degradations that occur during the rent except if he/she can prove it was not his/her fault. Against the tenant the law creates an “*obligation de moyen renforcée*” also called “*obligation de résultat atténuée*” which means that the tenant is presumed to have made a fault leading to the damages of the dwelling. He/she is supposed to be able to prove he/she did not make any fault, but such a proof will be very hard to make and the tenant may always be responsible, except case of *force majeure*. He will always be responsible if it is not possible to determine what the cause of the alteration is.

The tenant is also responsible for damages caused by people living with him/her and also but people sub-letting (Article 1735 of the Civil Code⁴⁰⁹)⁴¹⁰. For instance, the tenant is responsible for damages caused by her/his wife, her/his children, her/his visitors or the people he hired to make repairs in the dwelling.

According to article 1756 of the Civil Code one repair should be added to the list provided by the 1987 Decree: the cleaning of the wells and cesspools, except if there is one provision in the contract saying the contrary.

Table 6.5 Rental repairs

	Rental repairs (to be performed by the tenant)
	• a) Private gardens :

⁴⁰⁶ Civ. 3rd 9 July 2008 Bull. Civ. III. n°121.

⁴⁰⁷ Civ. 3rd 10 May 1991 Bull. Civ. III. n°127.

⁴⁰⁸ Art. 1730 of the Civil Code: “Where an inventory of fixtures has been made between the lessor and the lessee, the latter must return the thing such as he received it, according to that inventory, except for what has perished or has been deteriorated through decay or force majeure.”

Art. 1731 of the Civil Code: “Where no inventory has been made, the lessee is presumed to have received the premises in a good state of repairs incumbent upon lessees, and must return them in the same state, except for proof to the contrary.”

Article 1732 of the Civil Code: “He is answerable for the deteriorations or losses occurring during his enjoyment, unless he proves that they took place without his fault.”

⁴⁰⁹ Art. 1735 of the Civil Code: “A lessee is responsible for the deteriorations and losses which occur through the act of persons of his house or of his sub-tenants.”

⁴¹⁰ A. Djigo, “La responsabilité du preneur du fait des gens de sa maison”, *Loyers et copr.*, 2000, chron. p. 4.

<p>External areas exclusively for the use of the tenant has exclusive use.</p>	<p>Routine maintenance, including driveways, lawns, ponds and swimming pools size , pruning, weeding trees and shrubs ; Replacement shrubs, repair and replacement mobile watering system .</p> <ul style="list-style-type: none"> • b) Awnings, canopies and terraces : Removal of the foam and other plants. • c) downspouts and gutters : Disgorging ducts .
<p>Openings</p>	<ul style="list-style-type: none"> • a) Sections such as open windows and doors : Lubrication of hinges, hinges and hinges; Minor repairs buttons and door handles, hinges including replacement of bolts and pins . • b) Glazing : Rehabilitation of mastics; Replacement of deteriorated windows . • c) Devices occulting light such as blinds and shutters : lubrication ; replacement including ropes, pulleys or a few blades. • d) Locks and Security Locks : lubrication ; Replacement of small parts as well as lost or damaged keys. • e) Grilles: Cleaning and lubrication; Including replacement of bolts, pins.
<p>Interior parts</p>	<ul style="list-style-type: none"> • a) Ceilings, walls and interior partitions: -maintenance of cleanliness ; -Minor connections paintings and tapestries; replacement or replacement of some elements of coating materials such as ceramic , mosaic, plastic , filling holes made similar to a repair by the number, size and location of these . • b) Parquet floors, carpets and other floor coverings : -Polishing and servicing of vitrification ; -Replacement of some parquet floor boards and rehabilitation , installation of fittings carpets and other floor coverings , especially in case of stains and holes. • c) Fitted wardrobes and joinery such as

	skirting boards and beadings and moldings : Replacing closet shelves and cleats and repair their closure; attachment fittings and replacement tips woodwork.
Plumbing	<ul style="list-style-type: none"> • Water mains : disgorging : <ul style="list-style-type: none"> • Including replacement of gaskets and clamps. • b) gas pipelines : • Current valves , traps and vents maintenance; • Periodic replacement hoses connection. • c) Septic tanks, cesspools and latrines : <ul style="list-style-type: none"> • Drain . • d) heating, hot water and plumbing production Replacement of bimetallic, pistons, membranes, water boxes, piezo ignition, valves and seals of gas appliances; Washing and cleaning of radiators and piping ; Replacement of seals, valves and glands taps; Replacement of seals, gaskets and floats bells flushing . • e) Sinks and fixtures: <ul style="list-style-type: none"> Cleaning lime deposits , replacement hoses showers.
Equipment installations for electricity	Replacement of switches , sockets , circuit breakers and fuses, bulbs, fluorescent tubes , repair or replacement of rods or protective sheaths .
Other equipment mentioned in the lease.	<ul style="list-style-type: none"> • a) current and minor repairs of appliances such as refrigerators, washing machine and dishwasher , tumble dryer , cooker hoods , softeners , solar collectors, heat pumps, air conditioning units , individual antennas broadcast and Maintenance television , taped furniture , fireplaces, windows and mirrors; • b) Petty repairs necessitated by the removal of the beads; • c) lubrication and replacement of seals hoppers; • d) Sweeping ducts and flue gas ducts.

The ALUR Act gives details about the works. It specifies that the dilapidation of a dwelling shall be defined by Decree. It also states that information of the works that shall be performed by the landlord shall be send to the tenant. The works cannot be realised

on Saturday, Sunday and public holidays without the agreement of the tenant. This one can challenge the relaiement of the works in front of the judges. He has to allow the access to the dwelling for the preparation of the dwelling.

- *Connections of the contract to third parties*
 - *Rights of tenants in relation to a mortgagee (before and after foreclosure)*

The law protects the tenant if the house is sold, whatever the reason of the sell is. The sell can be due to the fact that the landlord did not reimburse his/her loan.

The contract ends only in the condition specified in the 1989 Act. If the house is sold, due to a mortgage, the landlord changes, except in the case where the tenant himself or herself buys the house.

If the tenant does not buy the house and if the contract does not arrive to its term when the house is sold, the contract goes on with the new landlord. The solution is the same if a mortgage lender repossesses the house. In these cases, the tenant stays in the house and at the same conditions as previously. This hypothesis is the same as the one of assignment of claim. To pay his/her rent to the new landlord, the tenant must have been informed of the transfer (See transfer of claim p.121). The rent contract can only be terminated by the landlord (new or old) when it arrives to its ends and if specific conditions are gathered (see termination of the contract, p.147)

6.5 Implementation of tenancy contracts

- *Disruptions of performance (in particular "breach of contract") prior to the handover of the dwelling*
 - *In the sphere of the landlord:*
 - Delayed completion of dwelling*
 - *Refusal of handover by landlord (in particular: case of "double lease" in which the landlord has concluded two valid contracts with different tenants)*
 - *Refusal of clearing and handover by previous tenant*
 - *Public law impediments to handover to the tenant*

If there is a delay in the completion of the dwelling, or in case of refusal of clearing and handover by the previous tenant, the landlord is not able to deliver the dwelling. Thus, the landlord is not able to comply with the main obligation of the lease agreement (Article 6 of the 1989 Act).

E.g. if some works must be performed on the structure of the building, judges consider that the landlord does not respect his obligation to deliver the rental object⁴¹¹.

The solution is the same concerning potential public law that would prevent the landlord to hand over the dwelling to the tenant.

There are no specific rules on that topic; the general rules concerning contracts apply (Article 1147 and following of the Civil Code). The landlord can be condemned to pay damages to the tenant, except if he can prove the impossibility to hand over is linked to force majeure or to a fault of the tenant himself.

⁴¹¹ Civ. 3rd 9 July 2008, Bull. Civ. III n°121.

There is no provision in the 1989 Act concerning the hypothesis of double lease, but the case law gives some clues.

The French *Cour de cassation* decided that the first one to whom the landlord delivered the rental object is the tenant and if there was no delivery, the first who signed a valid contract⁴¹². The court⁴¹³ also stated that once the renting object is delivered to the first tenant, it is not possible to deliver it to someone else according another lease agreement later.

- *In the sphere of the tenant: refusal of the new tenant to take possession of the house*

There is also no provision in the French law concerning this situation. The tenant is obliged, among other obligations (Article 7 of the 1989 Act) to take care of the dwelling. If he refuses to take possession he does not respect the contract.

The normal way for him to leave is to give notice to the landlord with three months' delay (one month in special cases see question concerning the termination of the contract by the tenant, see p. 146)

If the tenant refuses to take possession of the dwelling, as for the landlord who refuses to hand it over, the general rules concerning contracts apply (Article 1147 and following of the Civil Code). The tenant can be condemned to pay damages to the landlord, except if he can prove the impossibility to take possession is linked to "force majeure" or to a fault of the landlord himself.

- *Disruptions of performance (in particular "breach of contract") after the handover of the dwelling*
 - *Defects of the dwelling*
 - *Notion of defects: is there a general definition?*
 - *Examples: is the exposition to noise e.g. from a building site in front of the house or are noisy neighbours a defect? damages caused by a party or third persons? Occupation by third parties?*
 - *The possible legal consequences: rent reduction; damages; "right to cure" (to repair the defect by the landlord); reparation of damages by tenant; possessory actions (in case of occupation by third parties) what are the relationships between different remedies; what are the prescription periods for these remedies*

There is no general definition of what a defect of the dwelling is in the French law. The notion varies from the various obligations of the landlord. Obligations of the landlord are specified at article 6 of the 1989 Act.

The first kind of defect can be linked to the building. One of the first obligations of the landlord is to deliver a decent housing (See the rules and regime applicable p. 72) When a judge considers that a dwelling is indecent, he may oblige the landlord to perform the work to have a decent dwelling, impose a rent reduction and fix damages to be paid to the tenant. If a dwelling is indecent, the tenant has a right to leave without notice.

The landlord is also supposed to deliver the dwelling without any repairs to be made. In the contract, the parties can decide that the tenant will make the repairs and that he/she takes the dwelling, as it is, "*en l'état*".

⁴¹² Soc. 12 February 1954, Bull. Civ. IV. n°105; Civ. 1st June 1954, Bull. Civ. I n°383 GAJC n°270/271.

⁴¹³ Civ. 2nd 19 May 2010, Bull. Civ. III n°96.

However, when urgent repairs must be down, the tenant cannot oppose to them, according to article 1724 of the Civil Code⁴¹⁴. If the repairs take too much time, the rent can be reduced during that time. The ALUR Act reduces the duration from 40 days to 21 (see article 4 of the 1989 Act). If the tenant cannot stay to live in the dwelling, the tenant has a right to terminate the contract.

The landlord has also an obligation to offer a peaceful enjoyment of the lease object. This obligation only stops in case of “force majeure”⁴¹⁵. If the landlord cannot offer to the tenant a peaceful enjoyment of the dwelling, the contract can be cancelled (full eviction) or the rent be reduced (partial eviction).

This obligation means that the landlord is not allowed to change the shape of the rental object. Article 1723 of the Civil code states: “A lessor may not, during the term of the lease, change the form of the thing leased.” The landlord must not disturb the private life of the tenant, which means he/she has to offer to the tenant a peaceful enjoyment of the premise. In the contract, the landlord can include a provision saying he/she is not responsible of the peaceful enjoyment of the renting thing. If the tenant is a consumer and the landlord a professional, judges check if it cannot be considered as an unfair provision (in French “*clause abusive*”, see article 4 of the 1989 Act, p. 96). They also check if the landlord made any serious misconduct (in French: “*faute lourde*”) that prevents the tenant from the full enjoyment of the renting thing⁴¹⁶.

The peaceful enjoyment depends on the possibility of the landlord to prevent the event. The landlord cannot be liable for any exposition to noise or any disturbance.

Linked to the obligation of peaceful enjoyment, the *Cour de cassation* created an obligation of prudence. For example, the landlord has to warn his/her tenants that scaffoldings will be constructed and that they can have an impact on the thieves as the building is more easily accessible⁴¹⁷.

It also created an obligation of security. First, it denied the existence of such obligation considering that the landlord is not responsible of the fall of a wardrobe that hurt the tenant when he tried to open it⁴¹⁸. Then, it considered an obligation of security exists in a case where the tenant was electrocuted when he was installing an extractor⁴¹⁹. The security obligation is what we call an “*obligation de moyen*”. It refers to the fact that the landlord has to make his/her best to achieve a goal, to use all the means he/she has. In the French law, it is opposed to “*obligation de résultat*” that refers

⁴¹⁴ Art. 1724 of the Civil Code: “Where, during the lease, the thing leased needs urgent repairs which cannot be postponed until its end, the lessee must bear them, whatever inconvenience they cause him and although he is deprived of a part of the thing leased while they are being made.

But where those repairs last more than forty days, the rent shall be reduced in proportion to the time and to the part of the thing leased of which he has been deprived.

Where the repairs are of such a nature that they render uninhabitable what is required for the lodging of the lessee and his family, he may have the lease terminated.”

⁴¹⁵ Civ. 3rd 29 April 2009 Bull. Civ. III. n°88.

⁴¹⁶ Civ. 3rd 21 January 2009, Bull. Civ. III. n°13.

⁴¹⁷ Civ. 3rd 28 February 1990, Bull. Civ. III. n° 63.

⁴¹⁸ Civ. 3rd 23 April 1989, Bull. Civ. III. n°90.

⁴¹⁹ Civ. 3rd 21 November 1999, Bull. Civ. III n°236.

to the fact that a person has to achieve a result. Article 1386-7⁴²⁰ of the Civil Code allows in some circumstance to sue the producer in case of defective product.

The landlord has also two obligations of guarantee. First, he/she has to guarantee the tenant from the defect of the rental flat (article 1721 of the Civil Code). He/she has to ensure that the tenant will be able to use the rental object, even if the defects were not known before the conclusion of the lease agreement. This guarantee is not applicable if the defect is visible from everybody, including the tenant when he/she visited the dwelling. In that case, we assume he/she agrees to take the flat with this defect. In case of force majeure, the *Cour de cassation*⁴²¹ considered that the landlord can exonerate herself/himself from her/his liability. For example, in a case where the tenant died because of a defect in the installation of a water heater, judges considered that the landlord cannot be responsible for it. The parties can exclude the liability of the landlord in the contract, except if the tenant is considered as a consumer and protected as such.

If the landlord is considered responsible, the contract can be cancelled, or the rent reduced and damages given to the tenant. The only thing the tenant has to prove is the dysfunction of the rental object⁴²².

- *Entering the premises and related issues*
 - *Under what conditions may the landlord enter the premises?*
 - *Is the landlord allowed to keep a set of keys to the rented apartment?*

There is no provision concerning the question if the landlord is allowed or not to keep a set of keys of the rented apartment. If the law does not prohibit it, it is not illegal. But, regarding all the obligations the landlord has, he/she cannot enter the dwelling without the agreement of the tenant. If he/she does so, he/she does not respect his/her contract and can be sentenced to the cancellation of the contract or to pay damages to the tenant.

Moreover, he/she can be sentenced on criminal basis. People who enter the dwelling of someone else, without being allowed to do so or with violence can be sentenced to 15,000 euros and one-year imprisonment⁴²³.

The landlord is allowed to enter the dwelling once or twice a year to check the maintenance of the premise. He/she needs to make an appointment with the tenant and he/she cannot enter without the agreement of the tenant.

In case of termination of the contract, the tenant has to allow the landlord to come in to make visit in order to find new tenants.

- *Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?*

⁴²⁰ Introduced in 1998 (Act 98-389 of the 19th May 1998) and modified in 2004 (Act 2004-1343 of the 9th December 2004) and 2006 (Act 2006-406 of the 5th April 2006).

⁴²¹ Civ. 3rd 26 October 1977, Bull. Civ. I n°357.

⁴²² Civ. 3rd 1st April 2009, Bull. Civ. III n°71.

⁴²³ Art. 226-4 of the Criminal code.

The landlord is obliged to deliver the dwelling to the tenant (article 6 of the 1989 Act). Thus, he is not allowed to lock a tenant out for not paying the rent. If ever he/she does so, he/she can be considered as entering the place without the agreement of the tenant and then be sentenced on criminal basis as mentioned to answer the previous question.

If the tenant does not pay the rent, the landlord has to follow the specific procedure of the law to obtain payment and for the eviction of the tenant (See p.146).

- *Rent regulation (in particular implementation of rent increases by the landlord)*
 - *Ordinary rent increases to compensate inflation/ increase gains*
 - *e.g. upgrading the energy performance of the house, or similar lawful and dealt with in a special procedure?*
 - *Rent increases in "houses with public task"*
 - *Procedure to be followed for rent increases*
 - *Is there some orientation at the market rent; if yes, how is the market rent measured/calculated (e.g. statistical devices such as a Mietspiegel)?*
 - *Possible objections of the tenant against the rent increase*

Concerning the increase of the rent, see the question concerning the increase rent where is explained how and when the rent is increased, what the tenant can do to object and what the consequences are p. 123.

- *Alterations and improvements by the tenant*
 - *Is the tenant allowed to make (objective) improvements on the dwelling (e.g. putting in new tiles)?*
 - *Must, and if yes under what conditions, improvements of the dwelling by the tenant be compensated by the landlord?*
 - *Is the tenant allowed to make other changes to the dwelling?*
 - *-in particular changes needed to accommodate a handicap (e.g. building an elevator; ensuring access for wheelchairs etc)?*
 - *-fixing antennas, including parabolic antennas*

As mentioned above, the tenant is supposed to deal with rental repairs. But, the tenant is supposed to take good care of the dwelling and to use it as a "good family man", "*en bon père de famille*"⁴²⁴. It means that he/she has to be quiet and to enjoy peacefully the use of the renting thing.

According to article 7 f) of the 1989 Act, the tenant shall not "transform the premise or equipment rented without the written agreement of the landlord".

The tenant is thus not allowed to transform the dwelling. One of the issues is the interpretation of this notion of "transformation".

Judges stated that the fact to modify the structure of the building requires the agreement of the landlord, e.g. to break a wall to have a bigger room⁴²⁵, to change the destination of a room from a bedroom to a kitchen and from a kitchen to a laundry⁴²⁶ or

⁴²⁴ Art. 1728, 1 of the Civil Code: "A lessee is bound to two main obligations:

1° To make use of the thing leased as a prudent administrator and according to the purposes intended by the lease,

or according to those presumed under the circumstances, failing an agreement."

⁴²⁵ CA Paris, 5 January 2010, *Loyer et copr.* 2010, n° 238, obs Vial-Pedroletti.

⁴²⁶ CA Paris, 18 March 1994, *Loyers et copr.* 1994, n°272.

to build a swimming pool⁴²⁷. On the contrary, the fact to change the colour of the paintings cannot be considered as a transformation, even if it is colourful⁴²⁸, except if it is too eccentric and if the landlord cannot rent the dwelling because of the paintings⁴²⁹.

There is no specific provision in the law concerning the changes needed to accommodate a handicap. The tenant needs the agreement of the landlord if he/she needs to modify the structure of the building.

Fixing antennas, including parabolic, can be seen a transformation the tenant cannot make without the agreement of the landlord.

If the tenant does not respect this rule, the landlord can first terminate the contract. At the end of the contract, he can also ask the tenant to demolish the transformation and to rebuild the dwelling as it was previously⁴³⁰. The landlord can also decide to keep the dwelling as it was and the tenant who did not ask for his agreement before the works cannot ask for any financial compensation even the works is an improvement of the dwelling⁴³¹. Article 7 f of the 1989 Act also allows the landlord to ask the tenant to restore immediately the dwelling if the transformation jeopardizes the proper functioning of equipment or the safety of the premise. It could be the case if the works prevent people from accessing the roof of the building⁴³².

The Civil Code gives a special rule in case of fire⁴³³. This article 1733⁴³⁴ of the Civil Code is very severe for the tenant. He is responsible for fire except if he can prove the fire started in a neighbouring house or is due to fortuitous event or force majeure, or construction defect. The *Cour de cassation* considered that the tenant was not responsible of a fire caused by short-circuit due to a lack of maintenance by the landlord⁴³⁵. Sometimes, the damages the tenant has to pay are only reduced but only if the faults of the landlord are the origin of the fire⁴³⁶.

The fact that the tenant did not make any fault is not sufficient enough for him not to be responsible. If the origin of the fire is not determined, the tenant is responsible. After a fire, the tenant will have to reimburse the value of reconstruction cost. That is one of the reasons why the tenant has an obligation to insure the dwelling (Article 7 g) of the 1989 Act) (concerning the obligation of insurance, see p. 90).

Three exceptions are admitted. The scope of this article, which was at first quite broad, was reduced in 1996 by the *Cour de cassation*⁴³⁷ and only concerns the relation between a landlord and a tenant. E.g. the relation with the subtenant is not concerned.

⁴²⁷ CA Paris, 6 June 2007, *Loyers et copr.* 2007, n°2007, n° 239, note Vial-Pedroletti.

⁴²⁸ CA Nancy, 1st February 1995, *Rev. huiss.* 1996 p. 98; CA Paris 20 September 2005, *Loyers et copr.* 2006, n°10; CA Paris, 10 January 2008, *AJDI* 2008 p. 214

⁴²⁹ CA Grenoble 25 October 2011, *Loyers et copr.* 2012, n) 39.

⁴³⁰ CA Paris, 11 September 2008, *Loyer et copr.* 2009 n°8.

⁴³¹ Civ. 3rd 11 December 1996, *Rev. loyer.* 1997. 189.

⁴³² CA Paris, 9 December 2004, *Loyers et copr.* 2005, n°87 obs. Vial Pedroletti.

⁴³³ V. Egéa, « Réflexion sur la responsabilité pour faute en matière d'incendie », *D.* 2008, chron. 1532.

⁴³⁴ Art. 1733 of the Civil Code: "He is answerable for fire, unless he proves:

That the fire happened by a fortuitous event or force majeure, or by a defect of construction, or

That the fire was communicated through a neighbouring house."

⁴³⁵ Civ. 3rd 15 June 2005, n°04-12243.

⁴³⁶ Civ. 3rd 17 June 2007, n°06-10033.

⁴³⁷ Civ. 3rd 17 July 1996, *Bull. Civ. III* n° 184.

Then, when the fire damages more than one dwelling, all the tenants are responsible and not only one of them⁴³⁸. Finally, if the landlord lives with the tenant, this one is not responsible except if the landlord can prove the fire started in the place reserved to the tenant.

Since a law adopted in 2010⁴³⁹, the landlord has to provide a smoke detector to the tenant, either by installing one, either by refunding the tenant who install one. The ALUR act specifies that the landlord has to insure the functioning when the inventory is realised and that the tenant is in charge of the maintenance.

- *Maintenance measures and improvements, in particular upgrading the energy performance of the house by the landlord*
 - *What kinds of maintenance measures and improvements does the tenant have to tolerate?*
 - *What conditions and procedures does a landlord who wants to make renovations need to respect (e.g. giving adequate [i.e. sufficiently long] notice; offer an alternative dwelling; offer a rent reduction to compensate for disturbances)?*

Article 7 e) of the 1989 states that the tenant is obliged to let the landlord perform the works to improve common areas and his dwelling. The works can be ordinary maintenance of the premise, or works to improve the energy performance of the place. This article is supplemented by paragraph 2 and 3 of the article 1724 of the Civil Code that states that if the duration of the works is more than forty days, the tenant can ask for a reduce of the rent depending on the time and the party of the rental place the tenant was deprived of⁴⁴⁰. If ever during the works, it is no more possible to live in the dwelling, the tenant can ask for the termination of the lease contract.

- *Uses of the dwelling*

Article 7 b) of the 1989 Act states the tenant has to respect the intended use of the dwelling (in French: "*destination*") as it is stipulated in the contract. For example, the tenant has to respect the division residence/professional use when it is a mixed contract (see concerning this division, p. 101).

The tenant is not allowed to do what he/she wants with the dwelling. He/she is supposed to take good care of the dwelling and for example the alterations he/she is allowed to make are limited (see on that topic, p. 141). He/she also has to respect the neighbourhood, as he/she can be responsible in case of disturbance. The rules applicable to neighbourhood disturbance are applicable everybody, no matter if the people living in the dwellings are the owner or if they are tenants. But, the landlord can use the inappropriate use of the dwelling as a reason not to renew the contract when it arrives to its end. For example, the disturbance has been considered by the judges as a

⁴³⁸ See art. 1734 Civil code: " Where there are several tenants, they are all liable for a fire in proportion to the rental value of the part of the building which they occupy; Unless they prove that the fire has originated in the dwelling of one of them, in which case, that one alone is liable; or

Unless some of them prove that the fire could not have started with them, in which case those ones are not liable."

⁴³⁹ Act 9 March 2010.

⁴⁴⁰ CA Limoges, 18 November 2010, *AJDI* 2011, p. 215.

good reason⁴⁴¹ to terminate the contract (see. concerning the termination of the contract by the landlord, p. 147)

- *Allowed vs. forbidden uses such as keeping animals; smells; receiving guests; prostitution and commercial uses (e.g. converting one room in a medical clinic); removing an internal wall; fixing pamphlets outside.*

A law adopted in 1970 states that the landlord is not allowed to prevent the tenant from having pets in his dwellings⁴⁴².

However, the pets shall not make damages to the building or shall not cause troubles. The tenant who possesses more than thirty cats and two dogs can be sentenced to pay damages to his neighbours due especially to the smell⁴⁴³.

In 1999⁴⁴⁴, the 1970 Act was amended to give the authorisation to the landlord to prevent the tenant from having dogs classified as “attack” dogs, and therefore considered by the French authorities as very dangerous.

The tenant is allowed to have visitors; the landlord is not allowed to prevent him from inviting people who are not living with him. Such a provision in the contract would be considered as unfair and as so null (See article 4 n) of the 1989 Act, p. 96). Such ban can also considered as an infringement of the article 8 of the European Convention on Human Rights⁴⁴⁵.

But the tenant is not responsible for actions of people that are coming to visit him/her. For example, a doctor is not responsible for troubles linked to his/her patients⁴⁴⁶ bad habits. In case of dispute, the victim has to seek for the liability of the person responsible for the trouble. The tenant can also be liable if he/she encourages the anti-social behaviour of his/her visitors or if he/she takes parts in the troubles.

On the contrary, the landlord can be responsible if his/her tenant does not respect the neighbours. The landlord has to give notice to the tenant that he/she will use all the means he/she has to prevent the tenant from disturbing the neighbours (Article 6-1 of the 1989 Act).

Considering article 1728,1 of the Civil Code⁴⁴⁷, the tenant has to respect the “*destination*” of the dwelling, which mean he has to respect what the dwelling is made for. If nothing is written in the contract, it is necessary to check the intentions of parties at the moment they signed and the specific circumstances. For example, judges decided

⁴⁴¹ CA Paris, 29 May 1997, *Loyers. et copr.*, 1997, n°229 ; CA Paris, 12 February 2004, *AJDI* 2004, n°382 ; *JCP* 2004, IV, 2438 ; CA Riom, 20 February 2012, *Loyers et copr.* 2012 n°132.

⁴⁴² Act 70-598 of the 9th July 1970 modified by Loi n° 2012-387, 22 March 2012.

⁴⁴³ CA Paris, 13 July 1989, *D.* 1989 somm. 401, see also, Civ. 3rd 28 June 1989, *Rev. loyer* 1989 p. 423.

⁴⁴⁴ Act 99-5, 6 January 1999 article 3-I.

⁴⁴⁵ Civ. 3rd 6 March 1996 Bull. Civ. III. n°60; Civ. 3rd 22 March 2006 Bull. Civ. III n°73

⁴⁴⁶ Civ. 3rd 19 November 2008, Bull. Civ. III. n°174

⁴⁴⁷ Art. 1728, 1 of the Civil Code: “A lessee is bound to two main obligations:

1° To make use of the thing leased as a prudent administrator and according to the purposes intended by the lease, or according to those presumed under the circumstances, failing an agreement;”

that the tenant did not respect the intended use (in French: “*destination*”) of the dwelling if he lives in a four rooms flat with his three wives and twelve children⁴⁴⁸.

To change the destination of the dwelling, the tenant needs an authorization of the landlord. For example, the tenant cannot open fish shop in his dwelling without the authorization of the landlord⁴⁴⁹. The passivity of the landlord cannot be considered as an approval of the change of destination of the dwelling.

The law allows what is called “*clause d’habitation bourgeoise exclusive*”⁴⁵⁰. Such provision prevents the tenant from practising any professional activity, even as self-employed. For example, the tenant who is a painter is not allowed to practise at home if such a provision is in his contract⁴⁵¹. If such a clause is not exclusive, the tenant is only allowed to practise liberal activity or to work from home⁴⁵².

This kind of provisions can also be including in the condominium rules.

- *Is there an obligation of the tenant to live in the dwelling?*

The principle is that there is no obligation for the tenant to live in the dwelling. Judges consider that what is written in the contract is important. The use of the rental object by the tenant is not important, as long as he respects the destination of the dwelling, no matter what the tenant does with the object. What matters are the contents of the contract⁴⁵³.

The tenant has to furnish the flat so that the landlord can seize the contents if the tenant does not pay the rent or other charges he/she has to pay (Article 2332 of the Civil Code).

Article 14-1 of the 1989 Act states that the landlord can ask the tenant to prove he occupies the dwelling if some reasons make the landlord think that the tenant abandoned the dwelling. If the tenant does not answer to the letter of the landlord, this one can ask a bailiff to certify that the dwelling is abandoned and if necessary a list of the content and of its value. If the dwelling is abandoned, the landlord is allowed to bring the dispute before the judges who can declare the termination of the contract and if necessary organise a sell of its content.

- *Video surveillance of the building*
 - *Is the surveillance of certain parts (e.g. corridors) of the building lawful and usual?*

The applicable law to video surveillance of building is the Act 78-17 adopted the 6 of January 1978⁴⁵⁴. According to this law, if the goal of the video surveillance is to prevent from theft, the camera shall not record images and can only film the house and its access. All the inhabitants of the house have to agree with the installation, even in the

⁴⁴⁸ CA Paris, 1st Chamber, 4 November 1986 *D.* 1986 *IR* 441;

⁴⁴⁹ Ass. Plén. 3 May 1956, *Gaz. Pal.* 1956 1^{re} sem. 394.

⁴⁵⁰ Dagot, “La clause d’habitation bourgeoise”, *JCPG* 1967 I 2108 ;

⁴⁵¹ Civ. 3rd 16 April 1969 Bull. civ. III n° 286

⁴⁵² Soc. 11 October 1957, *Gaz. Pal.* 1957, 2nd sem. 292.

⁴⁵³ Ass. Plén. 3 May 1956 Bull. Civ. n°1; Civ. 1st 6 January 1960 Bull. Civ. I. n°10; Com. 8 May 1961: Bull. Civ. III n°193. Soc. 17 July 1962 Bull. Civ. IV n°650; Civ. 3rd, 11 June 1976; Bull. Civ. III n°255.

⁴⁵⁴ Act 78-17 of the 6th of January 1978 concerning computers, files and freedom, (in French: “*Loi n° 78-17 du 6 janvier 1978 relative à l’informatique, aux fichiers et aux libertés*”), www.legifrance.fr.

case of a building with several dwellings. If the camera records the images, a registration at the *Commission nationale informatique et liberté*, i.e. the CNIL giving details about the purpose of the record is necessary. This commission is an administrative independent administrative body that is in charge of data protection issues. It has to inform, advise and educate people but it also has power to regulate control and if needed to impose penalties. The record can only be kept for one month. All the people that are registered shall be inform in advance (visitor, baby-sitter), e.g. with a small plaque.

If this provision is not respected, the owner of the camera can be sentenced on criminal bases (one year prison and a maximum of 45,000 euros). Moreover, the film cannot be used as a proof in court.

The decision to install, the payment, and the works have to comply with the rules concerning co-ownership⁴⁵⁵.

6.6 Termination of tenancy contracts

- *Mutual termination agreements*

There is no provision in the French law concerning a mutual agreement of the tenant and the landlord to terminate the contract. If both agree, the only option is that the tenant terminates the contract as he has more freedom to do so than the landlord. The landlord can also terminate the contract but only at its term (See following questions).

- *Notice by the tenant*
 - *Periods and deadlines to be respected*
 - *May the tenant terminate the agreement before the agreed date of termination (especially in case of contracts limited in time); if yes: does the landlord then have a right to compensation (or be allowed to impose sanctions such as penalty payments)?*
 - *Are there preconditions such as proposing another tenant to the landlord?*

The termination of the contract by the tenant is organized by the articles 12 and 15 paragraph I of the 1989 Act.

The tenant can leave at any time, subject to respect certain formal requirements. The leave is effective at the expiration of a period of notice, variable depending on the circumstances of his departure.

The tenant has to inform the landlord three months in advance. In specific cases, the notice is only one month⁴⁵⁶: if the tenant finds his first job, if his/her job is transferred, if he/she loses his job, if he/she founds a new job after losing the previous one, if the tenant is more than sixty years old and his/her health justifies his/her move, if the tenant benefits from social allowance (in French: *Revenu minimum d'Insertion* or *Revenu de*

⁴⁵⁵ Act 65-557 of the 10th of July 1965 concerning the status of co-ownership for constructed building (In French: "*Loi n° 65-557 du 10 juillet 1965 fixant le statut de la copropriété des immeubles bâtis*")

⁴⁵⁶ Damas N., "Préavis réduit : des limites à la valse-hésitation du bailleur", *AJDI* 2013, p. 9; Civ. 3rd 19 September 2012, n°11-21.186

solidarité active). Judges⁴⁵⁷ stated that the tenant who changes jobs benefits from the shorter notice even if his/her new job is in the same region. There is no condition in the 1989 Act concerning the localization of the new job.

The period starts when the landlord receives the letter.

The tenant has to pay the rent during the full period, one or three months, except if he reached an agreement with the landlord or if another tenant enters the dwelling before the end of the period.

To inform the landlord that he wants to leave, the tenant has to send him a registered letter with acknowledgement of receipt or to have the notice served by a bailiff. There is no provision in the law concerning the content of the letter but if the tenant benefits from a shorter notice, he should inform the landlord. Once the tenant sends his notice, he has to leave the dwelling at the end of the period, except if he reached an agreement with the landlord to stay or to extend the notice.

The ALUR Act reduces the duration of the notice to one month to other hypothesis: area where it is hard to find a dwelling (article 17 of the 1989 Act), disabled tenants, dwelling which allows the tenant to ask for social allowance. The tenant has now the obligation to mention the reasons why he wants to benefit from a shorter notice. These rules are applicable since the 27th of March 2014 for the contracts signed after this date. The tenant is no more obliged to send the notice by post but can also delivered it directly by hand to the landlord.

- *Notice by the landlord*
 - *Ordinary vs. extraordinary notice in open-ended or time-limited contracts; is such a distinction exists: definition of ordinary vs. extraordinary (= normally related to fundamental breaches of the contract, e.g. in cases of massive rent arrears or strong antisocial behaviour)*
 - *Statutory restrictions on notice:*
 - *for specific types of dwellings, e.g. public dwellings; dwellings recently converted into condominiums (if there exists a special form of protection in this case as in German law) etc.*
 - *in favour of certain tenants (old, ill, in risk of homelessness)*
 - *for certain periods*
 - *after sale including public auction ("emptio non tollit locatum"), or inheritance of the dwelling*
 - *Requirement of giving valid reasons for notice: admissible reasons*
 - *Objections by the tenant*
 - *Does the tenancy have "prolongation rights", i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?*
- *Challenging the notice before court (or similar bodies)*
 - *in particular claims for extension of the contract or for granting of a period of grace under substantive or procedural law*

According to article 15 of the 1989 Act, the owner is only allowed to give notice to the tenant at the end of the lease agreement and he/she can only give notice for three reasons⁴⁵⁸.

⁴⁵⁷ Civ. 3rd 19 September 2012, n°11-30.369, Damas N, "Condition d'application du préavis réduit pour licenciement", *AJD* 2013, p. 521.

⁴⁵⁸ O. Giannetti, B. Raclet, "Bail d'habitation : les congés du bailleur", *Administrer*, 2014, p. 6-12.

The first one is the will of the landlord to live in the dwelling as his/her main residence or to have one of his/her relatives to live in the dwelling. The relatives concerned can be: the spouse, the person with whom he/she cohabits for over a year, the person he/she lived in partnership with (i.e. PACS, *Pacte civil de solidarité*), if the pact was signed at least one year before the date of termination, and their respective ancestors and descendants.

The leave must be served to the tenant either by registered letter with acknowledgment of receipt or by a judicial officer or hand-delivered against signature. This notice should be sent to the tenant at least 6 months before the end of the lease. It must specify the reasons why the landlord does not want to continue the lease and include the names and addresses of the beneficiaries. If this information is not written in the notice, the leave is not valid; the lease is renewed for the same period (3 or 6 years see question duration of the contract).

After leaving the dwelling, the tenant may contest the reasons given by the landlord but he has to prove that the house is not occupied by the person or persons mentioned in the letter, or that the dwelling is empty, or that the property is used as a second home. He can then ask the district court to award him damages for the prejudice suffered.

The ALUR Act modifies the rules. The landlord has to indicate the link he has with the beneficiary if he wants to have his dwelling back. He has to justify the fact that it has serious reason to ask to have the dwelling back. In case he wants to sell the dwelling, the pre-emption right of the tenant is extended (see p.97). Judges can always check if the reasons and justifications given by the owner are real. The new law also specifies that an information document shall be given to the tenant concerning his rights and the duties of the landlord. These rules are applicable for the contract signed after the 27th of March 2014. The content of the information document shall be determined in a decree. The landlord is no more obliged to send the notice by post but can also delivered it directly by hand to the tenant.

The second reason for a landlord to terminate the lease is the sale of the dwelling. The premise can be sold during the contract or at the end of the contract (See transfer of claim if the property is sold during the contract, p.121). The owner can sell the property occupied during or at the end of the lease without informing the tenant. As the conditions of the contract are not changed for the tenant, the lease terms stays the same and the new landlord cannot evict the tenant, there is no duty information from the seller to inform the tenant. The new owner must only give his details to the tenant, and he will also refund the deposit when the lease terminates.

The owner may also decide to sell the property to the tenant or to a third part. In this case, the notice must be send to the tenant at least 6 months before the end of the lease by registered letter with acknowledgment of receipt or issued by a judicial officer, or hand-delivered against signature. The letter of termination shall indicate the selling price and the method of payment. It must describe precisely what is sold. If the landlord does not comply with these obligations, the notice is not valid. After receiving the letter, the tenant has two month to say if he is interested or not. If he is not, he must leave the place at the end of the lease. (See the complete procedure in the question concerning pre-emptory rights of the tenant, p.97)

The landlord is finally also allowed to give notice for legitimate and serious reasons. There is no definition of that concept in the law. In general, the fact that the tenant does not respect his obligation is sufficient. For example, if the tenant does not pay the rent or if he does not respect his obligation of peaceful enjoyment of the dwelling. In this case, the landlord shall inform the tenant six months before the end of the contract by registered letter or through the service by a bailiff. The letter must explain the reason of the leave.

The landlord can terminate the contract following very severe procedure of eviction when the landlord does not pay the rent and service cost (See the relevant question p.150).

Article 15 paragraph III of the 1989 Act organises a special protection for tenants that are over seventy years and whose income are less than a certain limit (1,5 less than what is called in French: "*salaire minimum de croissance*"). The landlord cannot refuse to renew the contract, or if so he has to provide the tenant with another dwelling. Such a dwelling shall comply with the needs of the people and in a geographical area close to the former dwelling. If it is in another city, this one shall not be farer than 5 km.

This rule is not applicable if the landlord himself is over sixty or if his own income is less than a certain limit (1,5 less than the minimum wage, i.e. in French: "*salaire minimum de croissance*"). Both ages of the tenant and landlord are checked at the time of the contract and their income at the time of the service of the notice. The ALUR act modifies the age limit and the protective rule applies now to people who are over sixty-five (for landlord and tenant). The income is now related to the possibility for the tenant to access dwelling with upper limits. These new rules are applicable to contracts signed after the 27th of March 2014.

If the dwelling is a social housing, there is no termination at the term of the contract. The only option for the HLM is to ask the tenant to leave if the tenant does not fulfil his obligation. The HLM organisation can bring the case before the judge to ask the tenant to leave. If the contract contains a provision saying that the tenant shall leave if he does not respect his obligations (payment of the rent and service cost, peaceful enjoyment of the dwelling), judges only check if the tenant respects or not his/her obligations. If there is no such a provision, judges also check if the fault of the tenant and the punishment are commensurate.

- *Termination for other reasons*
 - *Termination as a result of execution proceedings against the landlord (in particular: repossession for default of mortgage payment)*
 - *Termination as a result of urban renewal or expropriation of the landlord*
 - *What are the rights of tenants in urban renewal? In particular: What are the rules for rehousing in case of demolition of rental dwellings? Are tenants interested parties in public decision-making on real estate in case of urban renewal?*

There is no other provision in the law concerning this type of termination of the contract. In case of repossession of the dwelling for default of mortgage payment, the landlord changes but not the lease (See transfer of claim p.121).

Expropriation⁴⁵⁹ exists, in the benefit of public person or corporate body, who wants to buy building for urban renewal. In such a case, there is nothing the tenant can do. He/she can only give his/her point of view before the authorities make the decision. The procedure is complicated and requires the intervention of several authorities. A specific judicial judge, linked to the *Tribunal de Grande Instance* is in charge of the decision of expropriation. The *Conseil Constitutionnel* considers the judicial judges, as opposed to administrative judges, as the natural judges in charge of the protection of the property rights⁴⁶⁰.

Once the expropriation is decided, the tenant has to leave within one month. But the one who is responsible for the expropriation has to find a new dwelling to the tenant. He/she has to inform him at least six months before and to propose him at least two offers corresponding to his/her needs.

6.7 Enforcing tenancy contracts

- *Eviction procedure: conditions, competent courts, main procedural steps and objections*
- *Rules on protection ("social defences") from eviction*
- *May rules on the bankruptcy of tenant-consumers influence the enforcement of contracts?*

The landlord is never allowed to enter the dwelling and change the keys by himself. He has to follow the procedure organised by the law. The rules concerning bankruptcy on consumer are not concerned by such hypothesis.

If the tenant does not respect his/her obligation to pay the rent and the annex charges, the landlord can terminate the contract. If there is provision in that sense in the contract, the landlord does not need to bring the case before a judge.

As soon as the tenant does not pay his rent, before asking for the termination of the contract, the landlord shall contact the insurance if there is one (see p.121, *garantie des risques locatifs*) or the guarantor. If the tenant receives allowance for the dwelling (in French: "*allocation logement*"), the landlord can contact the administrative organisation (in French: "*Caisse d'allocation familiale*") to receive directly the payment.

If the rent is not paid, the landlord can start a procedure to obtain the termination of the contract in application of the clause contained in the contract (Articles L412-1 to L412-6 of the Code of civil procedure of execution).

First, he has to serve through a bailiff a demand of payment (in French: "*Commandement de payer*") giving to the tenant a delay of two months to pay. The tenant has a delay of two months to take the dispute to tribunal to ask for more delays or to apply to the special fund (in French: "*Fond de solidarité pour le logement*"). If there is a guarantor, the bailiff has to notify him the demand of payment.

If after two months, or after the delay awarded by the judge if the tenant already brought the case before the judges, the landlord take it to the tribunal for a summary judgement stating that the lease is terminated and ordering the expulsion.

⁴⁵⁹ See Expropriation code : Art. L11-1 to L11-1-1 ; C. Otero, *Cours de droit administratif des biens*, 2011-2012, Université de Rouen, 197 p. ; C. Otero, G. Tréguier, *Le droit administratif des biens en QCM*, Editions Ellipses, 2012, 160 p.

⁴⁶⁰ See *Conseil Constitutionnel*, n° 89-256 25 July 1989.

If there is no provision in the contract, the landlord can directly bring the dispute before the judges to ask for the termination of the contract and the expulsion of the tenant. The landlord can ask the tenant before taking him/her to court but he/she is not obliged to do it.

The tribunal checks if the fault of the tenant is serious enough to justify the termination of the lease and his expulsion. If the judge considers that the tenant is able to pay, he can decide payment deadline. Otherwise, the judge has to terminate the contract.

After the judgement, the landlord has to appoint a bailiff to send to the tenant an order to leave the dwelling within two months. The tenant can go to court (in French: "*Tribunal de grande instance*") to ask for a delay. The Tribunal can grant from one month to a year to the tenant depending on his situation (age, health, family situation).

If a notary wrote the lease agreement, there is no need for the landlord to go to court, as the contract is directly enforceable. If the tenant does not pay the rent, the landlord can directly appoint a bailiff for the execution of the contract.

The expulsion of the tenant requires the intervention of bailiff. The bailiff can announce his visit but it is not mandatory. He can come to the house every day between 6 AM and 9 PM.

If there is no protest of the tenant: the bailiff writes minutes in which he lists the furniture of the tenant, indicates the place where there are and takes back the key of the dwelling.

If the tenant refuses to open the door, the bailiff writes minutes in which he explains the failure and he asks for the intervention of the police.

If the tenant is absent, the bailiff can only enter the dwelling if a police authority and a locksmith accompany him. He informs the tenant by a poster on the door informing the tenant he can no longer enter in the dwelling.

According to the law, during the winter, from the 1st November to the 15th March, no expulsion is allowed. This period is called "*trêve hivernale*" in French. Due to a very hard winter, in 2013 the period was extended until the 31th of March. The landlord is allowed to start a procedure but he will have to wait until then end of the period for the execution. The exception does not apply if the procedure is against a squatter, if an administrative act states that the building is dangerous (in French: "*arrêté de péril*") or if the expulsion of the tenant is accompanied by a rehousing corresponding to the need of the tenant.

The new ALUR act (see details p.155), finally adopted the 24th March 2014 and which entered into force the 27th March 2014, extended this period until the 31 of March. To anticipate with the new law, on the 11 of March 2014, two ministries, the Home office and the ministry in charge of housing issues published a letter⁴⁶¹ saying that for 2014 the period is already extended until the 31 of March.

6.8. Tenancy law and procedure "in action"

⁴⁶¹ http://www.territoires.gouv.fr/IMG/pdf/140312_cp_prolongement_treuve_expulsions_locatives.pdf

The practical role of private rented housing can only be realistically assessed when the practical functioning of the legal system in our field (“tenancy law in action”) is taken into account.

- *What is the legal status and what are the roles, tasks and responsibilities of associations of landlords and tenants?*
- *What is the role of associations of landlords and tenants?*

The law, in articles L364-1 of the Building and Housing Code and article 41 to 44 of the 1986 Act⁴⁶²

An association of tenants is supposed to represent the interest of the tenants in the relation with the landlords, the managers and the administrative authorities.

The creation of such a group has to be declared at the Prefecture. If an association is created from people living in the same building, if at least 10 % of the tenants are members or if it is linked to the national commission on dialogue (*Commission nationale de concertation*), the association is considered as representative. It means that it has to have a board for information in a place where tenants can see it but also to have from one to three representatives to be invited in some of the meetings of the inhabitants. The property manager or the landlord has to be informed by registered letter. The representatives are allowed to give their point of view and can have access to document concerning the building.

Associations that are members of the *Commission nationale de concertation* have the right to go to court to defend tenants’ rights or to represent one tenant.

Associations can also for example conclude agreements about general terms and conditions of leases on dwelling, at national or regional levels.

Members of associations of tenants (same number as members of landlord associations) sit at the “*Commission départementale de conciliation*”.

The ALUR Act changes the rules and there is no more need for an accreditation for the associations. Some specific organisms, such as the ones who pay housing benefit can represent the interest of the tenant.

The French law⁴⁶³ also organises associations of owners, which aims to improve to maintain or develop properties. Sometimes, such association is in charge of environmental issues. Various statuses are offered to owners: Free trade unions (in French: “*association syndicale libre*”), Authorised trade unions (in French: “*associations syndicales autorisées*”), mandatory trade unions (in French: “*Associations syndicales constituées d’office*”). These associations are not involved in the relation landlord/tenant but only concerning the management of properties etc.

⁴⁶² Act 86-1290 of the 23th December 1986 designed to encourage investment in real estate to rent, access to home ownership and increase of real estate offer, (in French: *Loi n° 86-1290 du 23 décembre 1986 tendant à favoriser l’investissement locatif, l’accession à la propriété de logements sociaux et le développement de l’offre foncière*), www.legifrance.gouv.fr.

⁴⁶³ Ruling of the 1st July 2004 concerning the association of landlords (in French : *Ordonnance du 1er juillet 2004 relative aux associations syndicales de propriétaires*), Decree of the 3rd May 2006 concerning associations of landlord (in French : *Décret du 3 mai 2006 relatif aux associations syndicales de propriétaires*).

- *What is the role of standard contracts prepared by association or other actors?*

Association or real estate agencies or notaries can have standard contracts. The 1989 Act explains in its article 3 what the mandatory provisions of the tenancy contract are and in its article 4 what the forbidden provisions are (see, for unfair provision p.96).

Establishing a standard contract is thus easy and the contract can be reused and adapted when necessary.

However more than a standard contract, what can be important is who is in charge of writing the contract. If a notary establishes the contract, its value is higher, as the notary is a public officer who is entitled to established public deeds.

- *How are tenancy law disputes carried out? Is tenancy law often enforced before courts by landlords and tenants and/or are - voluntary or compulsory - mechanisms of conciliation, mediation or alternative dispute resolution used?*
- *Do procedures work well and without unreasonable delays? What is the average length of procedures? Are there peculiarities for the execution of tenancy law judgments (e.g. suspensions of, or delays for, eviction)?*
- *Are there problems of fairness and justice? Are there problems of access to courts especially for tenants? What is the situation concerning legal fees, legal aid and insurance against legal costs?*

If there is an issue between a tenant and a landlord, one of them can first bring it before the *Commission départementale de conciliation*. This Commission is entitled to help them to reach an agreement. Seizing such a Commission is free of charge and not mandatory.

If the parties do not reach any agreement or if they decide not to bring the dispute before the Commission, they can bring it in front of the Tribunal d'Instance. In such a case, Proceeding will be longer and more expensive. They are not obliged to be represented by a lawyer but parties will often do since they do not have the knowledge to deal with the procedure by themselves.

The party who did not succeed in first instance can challenge the decision in front of the Court d'appel but only if the demand is worth more than 4,000 euros. To go on appeal, parties need to be represented by a lawyer.

The party who did not succeed in front of the Court of appeal or the one who did not succeed in front of the *Tribunal d'Instance* for demand of less than 4,000 euros can challenge the decision in front of the *Cour de cassation*. In such a case they will need a specific lawyer (in French: *Avocat au Conseil*).

Due to such a system, there are many decisions of first instance jurisdiction concerning lease agreements, but a lot less from *Cour d'appel* and *Cour de cassation*. The procedure can be very long, but this problem is similar for all the trials and not only for proceedings concerning tenancy contracts. Sometimes, it may cost to party more than what they ask or need, because they need to hire a lawyer and they will have procedural costs. Even if there is financial help to go to court, the help depends on the income. One of the peculiarities of the tenant/landlord issues is that they can concern small amount of money and sometimes it does not worth going to court. It is one of the advantages of the "*Commission de conciliation*".

Due to my experience, the fact that parties have a right to bring the case before Commission de conciliation, free of charge, is not well known. When they have an issue, they most of the time go to see a lawyer who advise them to go to court of who try to reach an agreement directly with the lawyer of the other party.

- *Are there “swindler problems” on the rental market (e.g. flats fraudulently advertised on the internet as rental offers by swindlers to whom the flats do not belong)?*

There are swindlers problem due to the fact that some landlords offer premise that cannot be considered as decent (See swindler landlord p.79). There are not such issues as people offering flat that are not their due to the process to rent a flat (visit inventory etc.)

Sometimes, the advertising does not correspond to the real dwelling to rent. In such a case, the tenant can be protected as every consumer by the rules concerning misleading advertisement⁴⁶⁴.

Some frauds are reported but do not concern the application of the 1989 Act. Abuses are known concerning the rent of holidays home. Some “ghosts” houses are rented for holidays and when people arrive, the place does not exist or does not belong to the one who rented it. The one who rented loose the money he paid for the deposit.

- *Are the areas of “non-enforcement” of tenancy law (such as legal provisions having become obsolete in practice)?*

There is no area of non-enforcement concerning tenancy law. The 1989 Act is regularly adapted. Little by little, the 1948 Act is less and less applied as people who rent dwelling falling under the scope of this law die (contracts concluded before 1982) or the dwelling are modified to fall under the scope of the 1989 Act.

On the contrary, concerning some issues, an intervention of the legislator to adopt new rules is really needed, e.g. in case of flat-sharing, (on this topic see, p. 111)

- *What are the 10-20 most serious problems in tenancy law and its enforcement?*

Table 6.6 Serious problems in tenancy law

Type of problems	Explanation
1. Indecent housing/ Swindler landlord	Unsecure, unhealthy, very small dwellings
2. Access to dwelling	Not enough dwelling, many guaranties some people cannot give to landlord
3. Rental price	Very high rent in big cities such as Paris
4. Fees of the agency	No clear determination of the fees of rental agencies
5. Lack of knowledge of the law from real estate agency	Many mistakes in the contract and in the application of the 1989 Act, e.g. concerning division of cost between tenant and landlord

⁴⁶⁴ Art. L121-1 and following of the Consumer Code.

6. No provision concerning flat-sharing	No rules which leads to lack of protection for tenant
7. Lack of rules concerning furnished flat	Same situation as for flat sharing
8. Very complex system too many laws	Really hard to figure out what is the applicable law to each situation. A real code of the lease on dwelling would be very useful
Opacity of the social housing concerning the distribution of dwellings	Not enough dwelling thus some choice are complex
9. Lack of dwelling, both in the social housing system and in the regular market	Too many people looking for a dwelling with issues accessing rental market
10. Lack of transparency concerning the role of the agencies	Seen by the tenant as acting for the landlord and vice versa
11. Lack of transparency for the deposit	Always unclear why the landlord keep money
12. Technical diagnosis are provided with the contract too late for the tenant	The tenant cannot choose his dwelling taking this element in consideration

- What kind of tenancy-related issues are currently debated in public and/or in politics?

A new act, the ALUR Act⁴⁶⁵, was adopted the 24th March 2014. The new text called ALUR aims mainly:

- to regulate the determination of the rent,
- to make lease agreement simpler and safer
- to create a global mechanism to guarantee the payment of the rent (in French: “*garantie universelle des loyers*”⁴⁶⁶)
- to fight against indecent dwelling
- to help people to get a dwelling and not only an accommodation,
- to prevent from deterioration of co-ownership buildings
- to encourage innovation
- to support participative actions concerning housing.
- to introduce more transparency into social housing,
- to accelerate the construction of dwellings
- to improve environmental rules.

Some of its provisions are applicable since the 27th March 2014 but for the other decrees are required to supplement the content of the new act. For example, decrees are required for the creation of the mechanism of guarantee called “Garantie universelle des loyers” or for the creation of an observatory of rents (see in the text of the report the modification and their entry into force).

⁴⁶⁵ Mendak P. « Projet de loi "Alur", entretien avec Cécile Duflot », *Revue des loyers et des fermages*, p. 314. Y. Rouquet, “Projet de loi "logement et urbanisme" (deuxième lecture) : volet baux d'habitation”, *D.* 2014, p. 208 ; Y. Rouquet, “Projet de loi "logement et urbanisme" : volet bail d'habitation”, *D.* 2013, p. 2171.

⁴⁶⁶ S. Gasnier, « La garantie universelle des loyers en question » *AJDI* 2013, p. 641

7. Effects of EU law and policies on national tenancy law

7.1 EU policies and legislation affecting national housing policies

7.2 EU policies and legislation affecting national tenancy laws

- *EU social policy against poverty and social exclusion*
- *consumer law and policy*
- *competition and state aid law*
- *tax law*
- *energy saving rules*
- *private international law including international procedural law*
- *anti-discrimination legislation*
- *constitutional law affecting the EU and the European Convention of Human Rights*
- *harmonization and unification of general contract law (sources such as the Common European Sales Law, the Common Framework of Reference or the Principles of European Contract Law may be considered here)*
- *fundamental freedoms*
 - *e.g. the Austrian restrictions on the purchase of secondary homes and its compatibility with the fundamental freedoms;*
 - *cases in which a licence to buy house is needed – is this compatible with the fundamental freedoms?*

For these questions see Table 7.1.

Table 7.1 : European Directives Affecting Leases

DIRECTIVES	TRANSPOSITION	RELATED SUBJECT	PART QUESTIONNAIRE
CONSTRUCTION			
Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJEU 30.4.2004 N° L 134/114)	<ul style="list-style-type: none"> • Décret n° 2005-601 du 27/5/2005 modifiant le décret n° 2004-15 du 7/1/2004 portant code des marchés publics. • Ordonnance n° 2005-649 du 6/6/2005 relative aux marchés passés par certaines personnes publiques ou privées non soumises au code des marchés publics. • Décret 2006-975 du 1er août 2006 portant code des marchés publics. • Décret no 2010-406 du 26 avril 2010 relatif aux contrats de concession de travaux publics et portant diverses dispositions en matière de commande publique 		
Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJEC 11.02.1989 N° L 40/12)	<ul style="list-style-type: none"> • Arrêté ministériel du 31/07/1992 relatif à l'agrément technique européen et fixant la liste des organismes habilités à délivrer l'agrément technique européen JO du 29/08/1992, page 11801 • Décret n° 92-647 du 08/07/1992 concernant l'aptitude à l'usage des produits de construction JO du 14/07/1992, page 9483 		
TECHNICAL STANDARDS			
Energy efficiency			
Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJEU 14.11.2012 N° L 315/1).	No transposition yet	Energy saving targets imposed to the State. It also deals with the Public Administration buildings and others that require greater energy savings.	
Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJEU 18.06.2010 N° L153/13).	<ul style="list-style-type: none"> • Décret 2009-1154 du 29 septembre 2009 créant un label « haute performance énergétique rénovation » pour certains bâtiments existants • Décret 2006-592 du 24 mai 2006 relatif aux caractéristiques thermiques et à la performance énergétique des constructions • Décret no 2007-363 du 19 mars 2007 relatif aux études de faisabilité des approvisionnements en énergie, aux caractéristiques thermiques et à la performance énergétique des bâtiments existants et à l'affichage du diagnostic de performance énergétique • Arrêté du 8 mai 2007 relatif au contenu et aux conditions d'attribution du label « haute performance énergétique » 	Energy efficiency of the new and the existing buildings.	Part II 2.a 'Regulation on energy saving'.

- Arrêté du 8 août 2008 portant approbation de la méthode de calcul Th-C-E ex prévue par l'arrêté du 13 juin 2008 relatif à la performance énergétique des bâtiments existants de surface supérieure à 1 000 mètres carrés, lorsqu'ils font l'objet de travaux de rénovation importants
- Arrêté du 29 septembre 2009 relatif au contenu et aux conditions d'attribution du label « haute performance énergétique rénovation »
- Arrêté du 20 décembre 2007 relatif au coût de construction pris en compte pour déterminer la valeur du bâtiment, mentionné à l'article R. 131-26 du code de la construction et de l'habitation
- Arrêté du 13 juin 2008 relatif à la performance énergétique des bâtiments existants de surface supérieure à 1 000 mètres carrés, lorsqu'ils font l'objet de travaux de rénovation importants
- Arrêté du 3 mai 2007 relatif aux caractéristiques thermiques et à la performance énergétique des bâtiments existants
- Arrêté du 26 octobre 2010 relatif aux caractéristiques thermiques et aux exigences de performance énergétique des bâtiments nouveaux et des parties nouvelles de bâtiments
- Arrêté du 24 mai 2006 relatif aux caractéristiques thermiques des bâtiments nouveaux et des parties nouvelles de bâtiments
- Arrêté du 18 décembre 2007 relatif aux études de faisabilité des approvisionnements en énergie pour les bâtiments neufs et parties nouvelles de bâtiments et pour les rénovations de certains bâtiments existants en France métropolitaine
- Arrêté du 7 décembre 2007 relatif à l'affichage du diagnostic de performance énergétique dans les bâtiments publics en France métropolitaine
- Arrêté du 21 septembre 2007 relatif au diagnostic de performance énergétique pour les bâtiments neufs en France métropolitaine
- Arrêté du 3 mai 2007 relatif au diagnostic de performance énergétique pour les bâtiments existants à usage principal d'habitation proposés à la location en France métropolitaine
- Arrêté du 8 février 2012 modifiant l'arrêté du 3 mai 2007 relatif au diagnostic de performance énergétique pour les bâtiments existants à usage principal d'habitation proposés à la location en France métropolitaine
- Arrêté du 15 septembre 2006 relatif au diagnostic de performance énergétique pour les bâtiments existants proposés à la vente en France métropolitaine
- Arrêté du 8 février 2012 modifiant l'arrêté du 15 septembre 2006 relatif au diagnostic de performance énergétique pour les bâtiments existants proposés à

	<p>la vente en France métropolitaine</p> <ul style="list-style-type: none"> • Arrêté du 27 janvier 2012 relatif à l'utilisation réglementaire des logiciels pour l'élaboration des diagnostics de performance énergétique suivant la méthode de calcul 3CL-DPE version 2012 et modifiant l'arrêté du 15 septembre 2006 relatif aux méthodes et procédures applicables au diagnostic de performance énergétique pour les bâtiments existants proposés à la vente en France métropolitaine • Arrêté du 13 décembre 2011 modifiant l'arrêté du 16 octobre 2006 modifié définissant les critères de certification des compétences des personnes physiques réalisant le diagnostic de performance énergétique et les critères d'accréditation des organismes de certification • Arrêté du 15 septembre 2006 relatif aux méthodes et procédures applicables au diagnostic de performance énergétique pour les bâtiments existants proposés à la vente en France métropolitaine • Loi 2004-1343 du 9 décembre 2004 de simplification du droit • Loi 2005-781 du 13 juillet 2005 de programme fixant les orientations de la politique énergétique • Loi 2009-967 du 3 août 2009 de programmation relative à la mise en œuvre du Grenelle de l'environnement • Loi 2010-788 du 12 juillet 2010 portant engagement national pour l'environnement • Ordonnance no 2005-655 du 8 juin 2005 relative au logement et à la construction • Décret no 2006-1114 du 5 septembre 2006 relatif aux diagnostics techniques immobiliers et modifiant le code de la construction et de l'habitation et le code de la santé publique • Décret no 2006-1147 du 14 septembre 2006 relatif au diagnostic de performance énergétique et à l'état de l'installation intérieure de gaz dans certains bâtiments • Décret no 2006-1653 du 21 décembre 2006 relatif aux durées de validité des documents constituant le dossier de diagnostic technique et modifiant le code de la construction et de l'habitation • Décret no 2008-461 du 15 mai 2008 relatif au diagnostic de performance énergétique lors des mises en location de bâtiments à usage principal d'habitation et modifiant le code de la construction et de l'habitation • Décret no 2009-648 du 9 juin 2009 relatif au contrôle des chaudières dont la puissance nominale est supérieure à 400 kilowatts et inférieure à 20 mégawatts • Décret no 2009-649 du 9 juin 2009 relatif à l'entretien annuel des chaudières dont la puissance nominale est comprise entre 4 et 400 kilowatts 		
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	<ul style="list-style-type: none"> • Décret no 2010-349 du 31 mars 2010 relatif à l'inspection des systèmes de climatisation et des pompes à chaleur réversibles • Décret no 2010-1269 du 26 octobre 2010 relatif aux caractéristiques thermiques et à la performance énergétique des constructions • Décret no 2010-1662 du 28 décembre 2010 relatif à la mention du classement énergétique des bâtiments dans les annonces immobilières • Décret no 2011-413 du 13 avril 2011 relatif à la durée de validité du diagnostic de performance énergétique • Décret no 2011-807 du 5 juillet 2011 relatif à la transmission des diagnostics de performance énergétique à l'Agence de l'environnement et de la maîtrise de l'énergie • Arrêté du 16 octobre 2006 définissant les critères de certification des compétences des personnes physiques réalisant le diagnostic de performance énergétique et les critères d'accréditation des organismes de certification • Arrêté du 6 mai 2008 portant confirmation de l'approbation de diverses méthodes de calcul pour le diagnostic de performance énergétique en France métropolitaine • Arrêté du 15 septembre 2009 relatif à l'entretien annuel des chaudières dont la puissance nominale est comprise entre 4 et 400 kilowatts • Arrêté du 16 avril 2010 définissant les critères de certification des compétences des personnes physiques réalisant l'inspection périodique des systèmes de climatisation et des pompes à chaleur réversibles dont la puissance frigorifique est supérieure à 12 kilowatts et les critères d'accréditation des organismes de certification • Arrêté du 2 octobre 2009 relatif au contrôle des chaudières dont la puissance nominale est supérieure à 400 kilowatts et inférieure à 20 mégawatts • Arrêté du 16 avril 2010 relatif à l'inspection périodique des systèmes de climatisation et des pompes à chaleur réversibles dont la puissance frigorifique est supérieure à 12 kilowatts • Loi no 2008-1425 du 27 décembre 2008 de finances pour 2009 • Décret no 2009-1529 du 9 décembre 2009 pris pour l'application de l'article 1383-0 B bis du code général des impôts relatif à l'exonération de taxe foncière sur les propriétés bâties des constructions de logements neufs à haut niveau de performance énergétique • Décret n° 2013-695 du 30 juillet 2013 relatif à la réalisation et à l'affichage du diagnostic de performance énergétique dans les bâtiments accueillant des établissements recevant du public de la 1re à la 4e catégorie • Arrêté du 28 décembre 2012 relatif 	
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	<p>aux caractéristiques thermiques et aux exigences de performance énergétique des bâtiments nouveaux et des parties nouvelles de bâtiments autres que ceux concernés par l'article 2 du décret du 26 octobre 2010 relatif aux caractéristiques thermiques et à la performance énergétique des constructions</p> <ul style="list-style-type: none"> • Arrêté du 20 juillet 2011 portant approbation de la méthode de calcul Th-B-C-E prévue aux articles 4, 5 et 6 de l'arrêté du 26 octobre 2010 relatif aux caractéristiques thermiques et aux exigences de performance énergétique des bâtiments nouveaux et des parties nouvelles de bâtiments • Arrêté du 17 octobre 2012 modifiant la méthode de calcul 3CL-DPE introduite par l'arrêté du 9 novembre 2006 portant approbation de diverses méthodes de calcul pour le diagnostic de performance énergétique en France métropolitaine • Décret 2013-979 du 30 octobre 2013 relatif aux études de faisabilité des approvisionnements en énergie des bâtiments nouveaux • Arrêté du 30 octobre 2013 modifiant l'arrêté du 18 décembre 2007 relatif aux études de faisabilité des approvisionnements en énergie pour les bâtiments neufs et parties nouvelles de bâtiments et pour les rénovations de certains bâtiments existants en France métropolitaine 		
Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJEU 18.6.2010 N° L 153/1).	<ul style="list-style-type: none"> • Décret no 2011-1479 du 9 novembre 2011 relatif à l'étiquetage des produits ayant une incidence sur la consommation d'énergie 	Labelling and basic information for household electric appliances' users.	
Commission Delegated Regulation (EU) N° 874/2012 of 12 July 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of electrical lamps and luminaires (OJEU 26.9.2012 N° L 258/1).			
Commission Directive 98/11/EC of 27 January 1998 implementing Council Directive 92/75/EEC with regard to energy labelling of household lamps (OJEC 10.3.1998 N° L 71/1).	<ul style="list-style-type: none"> • No reference 		

Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJEU 5.6.2009 N° L 140/16).

- article 2 de la Loi no 2011-12 du 5 janvier 2011 portant diverses dispositions d'adaptation de la législation au droit de l'Union européenne
- Ordonnance n°2011-1105 du 14 septembre 2011 portant transposition des directives 2009/28/CE et 2009/30/CE du Parlement européen et du Conseil du 23 avril 2009 dans le domaine des énergies renouvelables et des biocarburants
- Décret no 2011-1468 du 9 novembre 2011 pris pour l'application de l'ordonnance portant transposition des directives 2009/28/CE et 2009/30/CE du Parlement européen et du Conseil du 23 avril 2009 dans le domaine des énergies renouvelables et des biocarburants
- Arrêté du 23 novembre 2011 pris en application de l'ordonnance no2011-1105 du 14 septembre 2011 et du décret no 2011-1468 du 9 novembre 2011 et relatif à la durabilité des biocarburants et des bioliquides
- Arrêté du 12 janvier 2012 relatif à l'obligation d'information sur la teneur en biocarburant dans les carburants
- Arrêté du 17 janvier 2012 pris en application du d de l'article 1er et de l'article 3 du décret 2011-1468 du 9 novembre 2011 pris pour l'application de l'ordonnance 2011-1105 du 14 septembre 2011 portant transposition des directives 2009/28/CE et 2009/30/CE dans le domaine des énergies renouvelables et des biocarburants, précisant les modalités du double comptage et fixant la liste des biocarburants et des bioliquides dispensés de respecter les critères de durabilité définis à l'article L. 661-5 du code de l'énergie
- Arrêté du 17 janvier 2012 modifiant l'arrêté du 23 novembre 2011 pris en application de l'ordonnance no 2011-1105 du 14 septembre 2011 et du décret no 2011-1468 du 9 novembre 2011 et relatif à la durabilité des biocarburants et des bioliquides
- Arrêté du 17 janvier 2012 relatif aux définitions de la directive 2009/28/CE
- Arrêté du 1er décembre 2011 relatif aux contenus énergétiques des biocarburants et des carburants
- Arrêté du 3 mai 2007 relatif au contenu et aux conditions d'attribution du label «haute performance énergétique »
- Circulaire du 3 décembre 2008 relative à l'exemplarité de l'Etat au regard du développement durable dans le fonctionnement de ses services et de ses établissements
- Décret no 2011-1893 du 14 décembre 2011 modifiant le décret no 2000-877 du 7 septembre 2000 relatif à l'autorisation d'exploiter les installations de production d'électricité
- Décret n°2000-877 du 7 septembre 2000 relatif à l'autorisation d'exploiter les installations de production d'électricité
- Décret n°2001-410 du 10 mai 2001

Promotion of the use of renewable energy in buildings.

	<p>relatif aux conditions d'achat de l'électricité produite par des producteurs bénéficiant de l'obligation d'achat</p> <ul style="list-style-type: none"> • Décret n°2002-1434 du 4 décembre 2002 relatif à la procédure d'appel d'offres pour les installations de production d'électricité • Décret n°2006-592 du 24 mai 2006 relatif aux caractéristiques thermiques et à la performance énergétique des constructions • Décret n° 2009-1414 du 19 novembre 2009 relatif aux procédures administratives applicables à certains ouvrages de production d'électricité • Loi n° 2000-108 du 10 février 2000 relative à la modernisation et au développement du service public de l'électricité • Loi n° 2005-781 du 13 juillet 2005 de programme fixant les orientations de la politique énergétique • Loi 2009-967 du 3 août 2009 de programmation relative à la mise en œuvre du Grenelle de l'environnement • Loi n° 2010-788 du 12 juillet 2010 portant engagement national pour l'environnement • Arrêté du 24 mai 2006 relatif aux caractéristiques thermiques des bâtiments nouveaux et des parties nouvelles de bâtiments • Arrêté du 26 octobre 2010 relatif aux caractéristiques thermiques et aux exigences de performance énergétique des bâtiments nouveaux et des parties nouvelles de bâtiments • Décret no 2010-1269 du 26 octobre 2010 relatif aux caractéristiques thermiques et à la performance énergétique des constructions • Décret no 2012-62 du 20 janvier 2012 relatif aux garanties d'origine de l'électricité produite à partir de sources renouvelables ou par cogénération 		
<p>Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (DOCE 14.8.2009 N° L 211/55).</p>	<ul style="list-style-type: none"> • article 4 de la LOI no 2011-12 du 5 janvier 2011 portant diverses dispositions d'adaptation de la législation au droit de l'Union européenne • Décret no 2011-1478 du 9 novembre 2011 relatif notamment à la certification du gestionnaire de réseau de transport d'électricité ou de gaz naturel et à la nomination et la révocation des membres de son conseil ou de sa direction • Décret n° 2010-1022 du 31 août 2010 relatif aux dispositifs de comptage sur les réseaux publics d'électricité en application du IV de l'article 4 de la loi n° 2000-108 du 10 février 2000 relative à la modernisation et au développement du service public de l'électricité • article 18 de la loi n° 2010-1488 du 7 décembre 2010 portant nouvelle organisation du marché de l'électricité 	<p>Basic standards for electricity sector.</p>	
<p>Heating, hot water and refrigeration</p>			

Commission Delegated Regulation (EU) N° 626/2011 of 4 May 2011 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of air conditioners (OJEU 6.7.2011 N° L 178/1).		Labelling and information to provide about air conditioners.	
Commission Delegated Regulation (EU) N° 1060/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household refrigerating appliances (OJEU 30.11.2010 N° L 314).		Labelling and information to provide about household refrigerating appliances.	
Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJEU 14.8.2009 N° L 211/94).	<ul style="list-style-type: none"> • article 4 de la LOI no 2011-12 du 5 janvier 2011 portant diverses dispositions d'adaptation de la législation au droit de l'Union européenne • Legal act: Loi; Official Journal: Journal Officiel de la République Française (JORF), Publication date: 06/01/2011; Reference: (MNE(2011)50520) • Ordonnance no 2011-504 du 9 mai 2011 portant codification de la partie législative du code de l'énergie • Legal act: Ordonnance; Official Journal: Journal Officiel de la République Française (JORF), Publication date: 10/05/2011; Reference: (MNE(2011)53804) • Décret no 2011-1478 du 9 novembre 2011 relatif notamment à la certification du gestionnaire de réseau de transport d'électricité ou de gaz naturel et à la nomination et la révocation des membres de son conseil ou de sa direction • Legal act: Décret; Official Journal: Journal Officiel de la République Française (JORF), Publication date: 10/11/2011; Reference: (MNE(2011)57763) • article 18 de la loi n° 2010-1488 du 7 décembre 2010 portant nouvelle organisation du marché de l'électricité 	Basic legislation about natural gas in buildings and dwellings.	
Council Directive of 10 December 1982 amending Directive 78/170/EEC on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot-water distribution in new non-industrial buildings (OJEC 31.12.1982 N° L 378/19).	<ul style="list-style-type: none"> • Arrêté ministériel du 22/10/1980, Journal Officiel • Arrêté ministériel du 02/08/1977, Journal Officiel 	Legislation about heating and hot water in dwellings and buildings.	
Household appliances			
Commission Delegated Regulation (EU) N° 392/2012 of 1 March 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household tumble driers (OJEU		Labelling and information to provide about tumble driers.	

9.5.2012 N° L 123/1).			
Commission Delegated Regulation (EU) N° 1059/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household dishwashers (OJEU 30.11.2010 N° L 314/1).		Labelling and information to provide about dishwashers.	
Commission Delegated Regulation (EU) N° 1061/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household washing machines (OJEU 30.10.2010 N° L314/47).		Labelling and information to provide about washing machines.	
Commission Delegated Regulation (EU) N° 1062/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of televisions (OJEU 30.11.2010 N° L 314/64).		Labelling and information to provide about televisions.	
Commission Directive 2003/66/EC of 3 July 2003 amending Directive 94/2/EC implementing Council Directive 92/75/EEC with regard to energy labelling of household electric refrigerators, freezers and their combinations (OJEU 09.07.2003 N° L 170/10).	<ul style="list-style-type: none"> • Arrêté ministériel du 22/10/1980, Journal Officiel • Arrêté ministériel du 02/08/1977, Journal Officiel 	Labelling and information to provide about household electric refrigerators and freezers.	
Commission Directive 2002/40/EC of 8 May 2002 implementing Council Directive 92/75/EEC with regard to energy labelling of household electric ovens (OJEC 15.05.2012 N° L 128/45).	• Arrêté du 17 janvier 2003 qui concerne l'indication de la consommation d'énergie des fours électriques à usage domestique. JORF du 06/02/2003 p. 2252 à 2255 (NOR : INDI0200825A)	Labelling and information to provide about household electric ovens.	
Commission Directive 96/60/EC of 19 September 1996 implementing Council Directive 92/75/EEC with regard to energy labelling of household combined washer-driers (OJEC 18.10.1996 N° L 266/1).	• Arrêté du 17 janvier 2003 qui concerne l'indication de la consommation d'énergie des fours électriques à usage domestique. JORF du 06/02/2003 p. 2252 à 2255 (NOR : INDI0200825A)	Labelling and information to provide about household combined washer-driers.	
Lifts			
European Parliament and Council Directive 95/16/EC of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (OJEC 07.09.1995 N° L 213).	• Arrêté du 17 janvier 2003 qui concerne l'indication de la consommation d'énergie des fours électriques à usage domestique. JORF du 06/02/2003 p. 2252 à 2255 (NOR : INDI0200825A)	Legislation about lifts.	
Boilers			

<p>Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (OJEC 22.06.1992, N° L 167). Amended by Council Directive 93/68/EEC of 22 July 1993 (BOE 27.03.1995 N° 73).</p>	<ul style="list-style-type: none"> • Décret Numéro 94-566 du 07/07/1994 relatif à l'indication de la consommation en énergie et des nuisances sonores des appareils à usage domestique, Journal Officiel du 09/07/1994 Page 9941 • Arrêté ministériel du 09/05/1994 relatif au rendement des chaudières à eau chaude alimentées en combustibles liquides ou gazeux et à leur marquage, Journal Officiel du 22/06/1994 Page 8976 	<p>Legislation about boilers.</p>	
Hazardous substances			
<p>Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJEU 01.07.2011 N° 174/88).</p>	<ul style="list-style-type: none"> • Décret no 2013-988 du 6 novembre 2013 relatif à la limitation de l'utilisation de certaines substances dangereuses dans les équipements électriques et électroniques 	<p>Legislation about restricted substances: organ pipes of tin and lead alloys.</p>	
CONSUMERS			
<p>Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJEU 22.11.2011 N° L 304/64).</p>	<ul style="list-style-type: none"> • No transposition yet 	<p>Information and consumer rights. Legislation referred to procurement of services, car park. Immovables are excluded: lease of housing, but not of premises.</p>	<p>(RDL 1/2007) Part II 2.b. 'Ancillary duties of both parties in the phase of contract preparation and negotiation'.</p>
<p>Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) N° 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJEU 18.12.2009 N° L 337/11).</p>	<ul style="list-style-type: none"> • Le titre Ier de l'ordonnance n° 2011-1012 du 24 août 2011 relative aux communications électroniques JORF 26/08/2011 • Décret n° 2012-488 du 13 avril 2012 modifiant les obligations des opérateurs de communications électroniques conformément au nouveau cadre réglementaire • Décret n° 2012-436 du 30 mars 2012 portant transposition du nouveau cadre réglementaire européen des communications électroniques • Article 5 du décret n° 2009-834 du 7 juillet 2009 portant création d'un service à compétence nationale dénommé « Agence nationale de la sécurité des systèmes d'information » • Décret no 2012-488 du 13 avril 2012 modifiant les obligations des opérateurs de communications électroniques conformément au nouveau cadre 	<p>Consumer protection in the procurement of communication services.</p>	

	<p>réglementaire européen</p> <ul style="list-style-type: none"> • Décret no 2012-488 du 13 avril 2012 modifiant les obligations des opérateurs de communications électroniques conformément au nouveau cadre réglementaire européen (rectificatif) • Article 21 de la loi n° 2011-901 du 28 juillet 2011 tendant à améliorer le fonctionnement des maisons départementales des personnes handicapées et portant diverses dispositions relatives à la politique du handicap (1) • article 17 de la loi n°2011-302 du 22 mars 2011 portant diverses dispositions d'adaptation de la législation au droit de l'Union européenne en matière de santé, de travail et de communications électroniques 		
Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJEU 01.05.2009, N° 110/30).	<ul style="list-style-type: none"> • No answer yet 	Collective injunctions infringements of Directives Annex I.	
Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJEU 27.12.2006, N° L 376/21).			
Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) N° 2006/2004 of the European Parliament and of the Council (OJEU 01.6.2005 N° L 149/22).	<ul style="list-style-type: none"> • Loi no 2008-3 du 3 janvier 2008 pour le développement de la concurrence au service des consommateurs (1) • Loi no 2008-776 du 4 août 2008 de modernisation de l'économie (1) 	Misleading advertising and unfair business-to-consumer commercial practices.	
Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJEC 04.06.1997 N° L 144/19).	<ul style="list-style-type: none"> • Loi n° 2001-1062 du 15 novembre 2001 relative à la sécurité quotidienne (article 36) JORF du 16 novembre 2001 • Ordonnance n° 2001-741 du 23 août 2001 portant transposition de directives communautaires et adaptation au droit communautaire en matière de droit de la consommation JORF 196 du 25 août 2001 page 13645 - NOR ECOX0100083R (SG(2001)A/11576 du 22/10/2001 et 11790 du 25/10/2001) 	Contracts relating to immovables are excluded, except from lease.	
Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJEC 21.04.1993 N° L 095).	<ul style="list-style-type: none"> • Ordonnance n° 2001-741 du 23 août 2001 portant transposition de directives communautaires et adaptation au droit communautaire en matière de droit de la consommation JORF 196 du 25 août 2001 	Unfair terms	Part II 2.c 'control of contractual terms'.

	<p>page 13645 - NOR ECOX0100083R (SG(2001)A/11576 du 22/10/2001 et 11790 du 25/10/2001)</p> <ul style="list-style-type: none"> • Loi 95-96 du 01/02/1995 concernant les clauses abusives et la présentation des contrats et régissant diverses activités d'ordre économique et commercial, Journal Officiel du 02/02/1995 Page 1755 • Décret no 2009-302 du 18 mars 2009 portant application de l'article L. 132-1 du code de la consommation • Loi du 18/01/1995, Journal Officiel du 02/02/1995 Page 1756 		
<p>Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJEC 31.12.1985 N° L 372/31).</p>	<ul style="list-style-type: none"> • Loi 72-1137 du 22/12/1972 relative à la protection des consommateurs en matière de démarchage et de vente à domicile, Journal Officiel du 23/12/1972 Page 13348 • Loi 89-421 du 23/06/1989 relative à l'information et à la protection des consommateurs ainsi qu'à diverses pratiques commerciales, Journal Officiel du 29/06/1989 Page 8047 	<p>Information and consumer rights. Legislation referred to procurement of services. Contracts on immovables are excluded.</p>	
HOUSING-LEASE	•		
<p>Regulation (EC) N° 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations - Rome I (OJEU 04.07.2008 N° L 177/6).</p>	•	<p>Law applicable (art. 4.1.c and d and 11.5)</p>	
<p>Council Regulation (EC) N° 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJEC 16.01.2001 N° L 12/1).</p>	•	<p>Jurisdiction (art. 22.1)</p>	
<p>Commission Regulation (EC) N° 1920/2001 of 28 September 2001 laying down detailed rules for the implementation of Council Regulation (EC) N° 2494/95 as regards minimum standards for the treatment of service charges proportional to transaction values in the harmonised index of consumer prices and amending Regulation (EC) N° 2214/96 (OJEC 29.9.2001 N° L 261/46).</p>	•	<p>CPI harmonization. Art. 5 includes estate agents' services for lease transactions.</p>	
<p>Commission Regulation (EC) N° 1749/1999 of 23 July 1999 amending Regulation (EC) N° 2214/96, concerning the sub-indices of the harmonized indices of consumer prices (OJEC 13.8.1999 N° L 214/1).</p>	•	<p>CPI harmonization. Subscript 4: Lease, housing preservation and repair, water and other services.</p>	<p>Part II 2.d 'Index-oriented increase clauses'.</p>
<p>Council Regulation (EC) N° 1687/98 of 20 July 1998 amending Commission Regulation (EC) No 1749/96 concerning the coverage of goods and services of the harmonised index of consumer</p>	•		

prices (OJEC 31.07.1998 N° L 214/12).			
Commission Regulation (EC) N° 2214/96 of 20 November 1996 concerning harmonized indices of consumer prices: transmission and dissemination of sub indices of the HICP (OJCE 21.11.1996 N° L 296/8).	•		
Recommendation 65/379/EEC: Commission Recommendation of 7 July 1965 to the Member States on the housing of workers and their families moving within the Community (OJEC 27.07.1965 N° L 137/27).	•	Discrimination on grounds of nationality. Equality in granting housing, aids, subsidies, premiums or tax advantages to workers who have moved within the EU.	
DISCRIMINATION	•		
Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJEU 21.12.2004 N° L 373/37).	<ul style="list-style-type: none"> • Loi no 2008-496 du 27 mai 2008 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations (1) • Décret no 2008-799 du 20 août 2008 relatif à l'exercice par des associations d'actions en justice nées de la loi no 2008-496 du 27 mai 2008 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations • Arrêté du 19 décembre 2007 relatif aux conditions dans lesquelles des données actuarielles et statistiques sont collectées ou répertoriées, transmises et publiées et modifiant le code des assurances • Loi no 2007-1774 du 17 décembre 2007 portant diverses dispositions d'adaptation au droit communautaire dans les domaines économique et financier (1) • Arrêté du 19 décembre 2007 autorisant, dans les branches 3 et 10 mentionnées à l'article R. 321-1 du code des assurances, des différences en matière de primes et de prestations fondées sur la prise en compte du sexe • Arrêté du 19 décembre 2007 autorisant, dans la branche 2 mentionnée à l'article R. 321-1 du code des assurances, des différences en matière de primes et de prestations fondées sur la prise en compte du sexe • Acte juridique: Arrêté; Journal officiel: Journal Officiel de la République Française (JORF), Date de publication: 20/12/2007, Entrée en vigueur: 21/12/2007; Référence: (MNE(2007)59144) 	Discrimination on grounds of sex.	Part II 2.c 'Restrictions on choice of tenant - antidiscrimination issues'.

	<ul style="list-style-type: none"> • Arrêté du 19 décembre 2007 autorisant, dans la branche 1 mentionnée à l'article R. 321-1 du code des assurances, des différences en matière de primes et de prestations fondées sur la prise en compte du sexe • Arrêté du 19 décembre 2007 autorisant, dans les branches 20, 22, 23 et 26 mentionnées à l'article R. 321-1 du code des assurances, des différences en matière de primes et de prestations fondées sur la prise en compte du sexe 		
<p>Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJEC 19.07.2000 N° L 180/22).</p>	<ul style="list-style-type: none"> • Loi relative à la lutte contre les discriminations n° 2001-1066 du 16/11/2001 • Loi de modernisation sociale n° 2002-73 du 17/01/2002 • Loi n° 2005-843 du 26/7/2005 portant diverses mesures de transposition du droit communautaire à la fonction publique. • Décret n° 2005-215 du 4/3/2005 relatif à la Haute Autorité de lutte contre les discriminations et pour l'égalité. • Loi n° 2008-496 du 27 mai 2008 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations (1) • Loi n° 2004-1486 du 30/12/2004 portant création de la lutte contre les discriminations et pour l'égalité. • Décret n° 2008-799 du 20 août 2008 relatif à l'exercice par des associations d'actions en justice prévues de la loi n° 2008-496 du 27 mai 2008 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations 	Discrimination on grounds of racial or ethnic origin.	Part II 2.c 'Restrictions on choice of tenant - antidiscrimination issues'.
IMMIGRANTS OR COMMUNITY NATIONALS	•		
<p>Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJEU 18.06.2009 N° L 155/17).</p>	<ul style="list-style-type: none"> • Loi n° 2011-672 du 16 juin 2011 relative à l'immigration, à l'intégration et à la nationalité • Décret n° 2011-1049 du 6 septembre 2011 pris pour l'application de la loi n° 2011-672 du 16 juin 2011 relative à l'immigration, à l'intégration et à la nationalité et relatif aux titres de séjour 	Equality of treatment with housing (art. 14.1.g.) However, Member States may impose restrictions (art. 14.2).	
<p>Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) N° 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC,</p>	<ul style="list-style-type: none"> • Loi n° 2006-911 du 24 juillet 2006 relative à l'immigration et à l'intégration (1) • Loi n° 2007-290 du 5 mars 2007 instituant le droit au logement opposable et portant diverses mesures en faveur de la cohésion sociale (1) • Décret n° 2007-371 du 21 mars 2007 relatif au droit de séjour en France des citoyens de l'Union européenne, des ressortissants des autres Etats parties à 	Discrimination on grounds of nationality. Free movement for European citizens and their families.	

<p>90/364/EEC, 90/365/EEC and 93/96/EEC (OJEU 30.04.2004 N° L 158/77)</p>	<p>l'Espace économique européen et de la Confédération suisse ainsi que des membres de leur famille</p> <ul style="list-style-type: none"> • Circulaire du ministère de l'intérieur relative aux conditions d'examen des demandes d'admission au séjour déposées par des ressortissants étrangers en situation irrégulière dans le cadre des dispositions de l'ordonnance du 2 novembre 1945 modifiée • Loi n°79-587 du 11 juillet 1979 relative à la motivation des actes administratifs et à l'amélioration des relations entre l'administration et le public. • Décret n°55-1397 du 22 octobre 1955 instituant la carte nationale d'identité version consolidée au 16 mai 2007 • Loi n° 2000-321 du 12 avril 2000 relative aux droits des citoyens dans leurs relations avec les administrations • Loi no 2007-1631 du 20 novembre 2007 relative à la maîtrise de l'immigration, à l'intégration et à l'asile (1) • Loi n° 2003-1200 du 18 décembre 2003 portant décentralisation en matière de revenu minimum d'insertion et créant un revenu minimum d'activité (1) • Loi no 2006-339 du 23 mars 2006 relative au retour à l'emploi et sur les droits et les devoirs des bénéficiaires de minima sociaux (1) • Décret no 2005-1726 du 30 décembre 2005 relatif aux passeports électroniques • Loi no 2011-672 du 16 juin 2011 relative à l'immigration, à l'intégration et à la nationalité • Décret no 2011-1049 du 6 septembre 2011 pris pour l'application de la loi no 2011-672 du 16 juin 2011 relative à l'immigration, l'intégration et la nationalité et relatif aux titres de séjour 		
<p>Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJEU 23.01.2004 N° L 16/44).</p>	<ul style="list-style-type: none"> • Loi n° 2006-911 du 24 juillet 2006 relative à l'immigration et à l'intégration (1) • Décret no 2007-373 du 21 mars 2007 pris pour l'application de la loi no 2006-911 du 24 juillet 2006 relative à l'immigration et à l'intégration et modifiant le code de l'entrée et du séjour des étrangers et du droit d'asile 	<p>Equal treatment in housing (art. 11.1.f.)</p>	<p>Part II 2.c 'Restrictions on choice of tenant - antidiscrimination issues'.</p>
<p>Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJEU 03.10.2003, N° L 251/12).</p>	<ul style="list-style-type: none"> • Décret n° 2005-253 du 17/3/2005 relatif au regroupement familial des étrangers pris pour l'application du livre IV du code de l'entrée et du séjour des étrangers et du droit d'asile. • Arrêté du 6/7/1999 relatif au contrôle médical des étrangers autorisés à séjourner en France. 	<p>The reunification applicant shall prove to have an habitable and large enough dwelling (art. 7.1.a).</p>	

	<ul style="list-style-type: none"> • Loi relative à la motivation des actes administratifs et à l'amélioration des relations entre l'administration et le public. • Loi n° 2006-911 du 24 juillet 2006 relative à l'immigration et à l'intégration (1) 		
Regulation (EEC) N° 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJEC 17.04.1964 N° L 257/2).	•	Equal treatment in housing and access to the housing applicants' lists (Art. 9 and 10.3).	Part II 2.c 'Restrictions on choice of tenant - antidiscrimination issues'.
INVESTMENT FUNDS	•		
Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) N° 1060/2009 and (EU) N° 1095/2010 (OJEU 01.07.2011, N° L 174/1).	<ul style="list-style-type: none"> • Loi no 2012-1559 du 31 décembre 2012 relative à la création de la Banque publique d'investissement • Ordonnance no 2013-676 du 25 juillet 2013 modifiant le cadre juridique de la gestion d'actifs • Décret no 2013-687 du 25 juillet 2013 pris pour l'application de l'ordonnance no 2013-676 du 25 juillet 2013 modifiant le cadre juridique de la gestion d'actifs • Arrêté du 25 juillet 2013 relatif aux dépositaires de fonds d'investissement alternatifs • JORF 30/07/2013 	Real estate investment funds	

8 Typical national cases (with short solutions)

Case 1 Civ. 3rd 25 June 2008 n°07-14341

Due to the nature of the lease, the lessor has to prove he delivered the object of the lease. There is no need of any specific mention in the contract. For an apartment lease, he has to prove he gave the keys.

Case 2 Civ. 3rd 1 June 2005 n°04-12200

The lessor cannot include a provision in the contract to avoid the deliverance of the object of the lease because of works in the building.

Case 3 Civ 3rd 15 December 2004 n° 02-20614

The lessor has to deliver a decent housing, including water supply.

Case 4 Civ. 3rd 29 April 2009, n° 08-12261

The obligation of the owner to provide to the tenant a quiet enjoyment of the rented property can only be excluded in case of force majeure.

Case 5. Civ 3rd 7 February 1978 n° de pourvoi: 76-14214

It is possible to include a provision in the tenancy contract in order to derogate from article 1720 of the Code civil which makes the lessor responsible for all the repairs except rental repairs.

Case 6 Civ 3rd 10 June 2009 n° 08-13797

A provision very flexible concerning the opportunity for the landlord to terminate the contract is considered as abusive and not legal.

Case 7 : Civ 3rd 4 February 2009 n°07.20-980

Once the landlord received the registered letter from the tenant announcing he will leave the apartment, the tenant owe the rent only for the legal duration, in that case one month.

Case 8 : Civ 3rd 26 November 2008 n° 07-17.728

If the tenant leaves the rented place, the contract must be continued for the benefit of the people listed in article 14 of the law of the 6th of July 1989. If the tenant goes to a retirement home the judges considers it as a case of “abandon de domicile” which means the contract must be continued in the benefit of one of the listed person. The judges no more ask for a sudden departure from the tenant.

Case 9 : Civ. 3rd 16 April 2008 n°07-12.264

The article 24 of the law of the 6th July 1989 (including the changes of the law of the 13 December 2000), deals with the proceeding concerning the statement of the termination of the contract.

Case 10 Civ. 3rd 6 March 1996, n93-11113

Considering art 8 of the European convention, provisions that do not allow the tenant to invite family or friends are forbidden.

Case 11 Civ. 3rd 17 October 1968

When he disagrees with the amount of the rent and even if he asks a judge to fix the issue, the tenant cannot decide to stop to pay the rent.

Case 12 Civ 1st 27 February 1961

If the tenant stopped paying the rent, the judges can decide the end of the contract.

Case 13. Civ 3rd 31 October 2006

In case of “force majeure” the tenant is not supposed to pay the reparation except if a provision of the contract says so.

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4) List of abbreviations

AJD: Journal Actualité juridique de droit immobilier

Ass. Plén.: Assemblée Plénière: highest chamber of the Cour de cassation

Bull. civ. : Bulletin civil, register of the decision of the Cour de cassation

CA: Cour d'appel, i.e. Court of Appeal

Civ.: Civil Chamber of the Cour de cassation

Com.: Commercial chamber of the Cour de cassation

D.: Journal called Dalloz

GAJC: Grands arrêts de la jurisprudence civile (book of comment of the main French cases)

Gaz. Pal.: Journal called Gazette du Palais

JCP: Juridical encyclopedia Jurisclasseur Periodique.

Loyers et copr: Journal called Loyers et copropriété

Obs.: Observation

Rev.: Revue (Journal)

Rev. huiss.: Revue des huissiers (journal of the judicial officials/bailiffs)

Rev. Loyers: Revue loyers (journal called rent)

RTcom. : Revue trimestrielle de droit commercial

Somm. : sommaire, (short explanation in some journals)

TI: Tribunal d'Instance: 1st degree Tribunal