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

National Report for

PORTUGAL

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National Report for Portugal
Table of Contents

1. The current housing situation

1.1. General Features
1.2. Historical evolution of the national housing situation and housing policy

- **Please describe the historic evolution of the national housing situation and housing policies briefly.**
  - **In particular: Please describe briefly 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. privatisation or other policies).**

During the sixties and in the first half of the seventies of the last century, the first big influx of dislocated people from the interior of the country to the coast looking for employment took place, mainly to the metropolitan areas of Lisbon and Oporto. Through that period, there were great construction needs, above all related to social housing. Actually, in fact, to avoid the rising problem of the number of shacks and clandestine constructions, the State created some programmes to promote social housing.

Some policies implemented by the State included the approval of new laws in order to boost the rental markets. As an example, during that period, only two types of rental regimes existed, the free rent regime and the controled rent regime. In order to change that, the Decree-Law 321-B/90, of 15th of October was approved and new rent regimes appeared.

RAU	Urban Tenancy Regime, approved by Decree-Law 321-B/90, of 15th of October
Free Rent Regime	The initial rent is stipulated by free negotiation between the parties and its update is done based on “coefficient update” published by ordinance (article 78. º)
Conditional Rent Regime	Rent regime which, after negotiation, cannot exceed, per month, one twelfth of the amount resulting from applying the rate of the conditional rents on the current value of the dwelling, in the year of conclusion of the contract (article 79. º and 81. º)
Regime of supported or social rent	The amount of rent is subsidised; although its determination and update are subject to specific rules. The properties that are subject to this regime are accommodation constructed or acquired for rental housing by the State and its autonomous bodies, public institutes and local authorities and private charities (article 82. º). This regime is subject to specific legislation approved by the Government.

In the mid seventies, after the 25 of April Revolution, in 1974, there was one of the biggest periods of house shortages, determined on one hand by the migration of people from the interior of the country to the coast, and, on the other, by the return of Portuguese from the ex-colonies in Africa. These, in conjunction with an absence of housing policies – generated by the disturbance that took place in the post-revolution period – and the lack of necessary urban infrastructures, sufficient buildings and dwellings for the rising number of population in the big urban centres, made that period one that registered the most serious need for house construction.

Consequently, in that period there was a big number of illegal occupations of houses, illegal construction and the proliferation of run-down city districts. It is estimated that up to 40% of the construction in the seventies was unlicensed and the problems experienced in that period can still be felt in the current housing situation.

After this turbulent period, the State needed to act more effectively in with regard to social housing. However, the social housing programmes never had a substantial impact on Portuguese society. The general policy regarding the housing situation was also focused on urban rehabilitation and on the access to real estate by the families.

The eighties and the nineties were a period of significant changes in the housing situation, in particular in putting an end to the housing shortage. In fact, the period was noticeable for a significant expansion of the housing resources and a big investment in the construction of dwellings, mainly by the state. That was due the entrance of Portugal into the EEC (European Economic Community), which benefited from major structural funds to promote the development of its infrastructures. That had significant repercussions, qualitative and quantitative, on the housing stock.

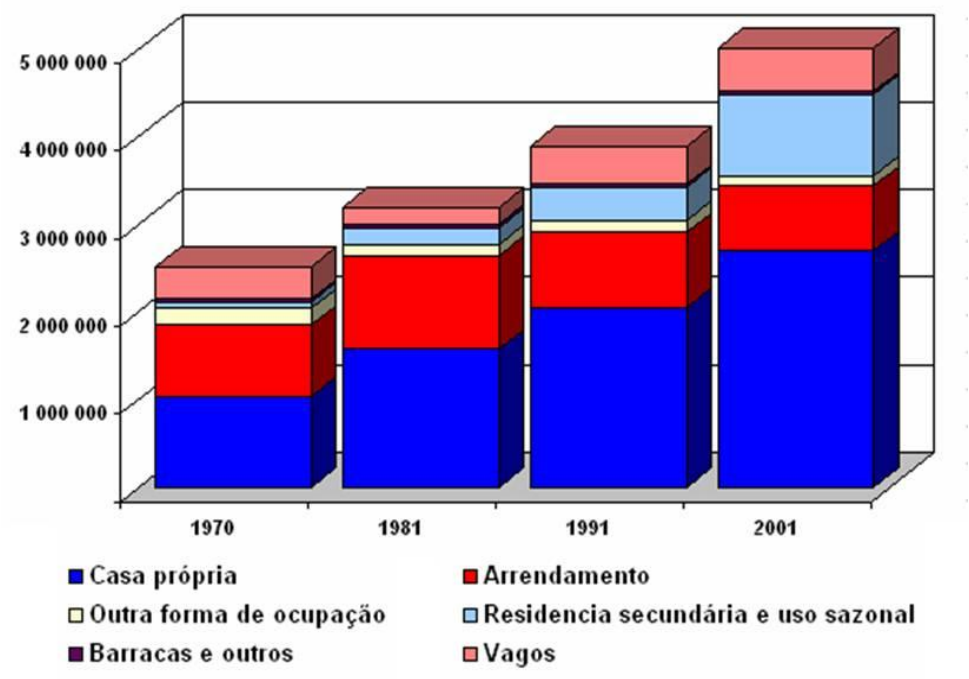
Since 1981, there has been a drop in the direct intervention of the Central State in housing promotion, with the exception of some programmes exclusively intended to find solutions for the most egregious cases of housing need. That responsibility was passed on to the municipal level. The solution to the housing need of the low income households took two major directions. On one side, there were created some dwellings by the Local Authorities, and, on the other, some subsidisation programmes were also created[1].

The State maintained and strengthened the incentives to home ownership by the families through interest subsidies. The State has maintained this policy until the year 2002, having been, the centre of its housing policies, and one that consumed the main resources endowed to this area.

This policy aimed to favour the home ownership tenures, in part because the tenancy law was very strict, not allowing the owners to have a good profitability on their leased properties, and, on the other hand, because of the exponential growth of the civil construction business, accompanied by a period of strong economic growth, with low interest rates coupled with the increase of people in the middle class, which favoured the access to homeownership. The housing policy of the state appears to be in favour of the acquisition of home ownership by the families, which can be attested to by some tax incentives. In fact, the ease of access to housing loans led most families to prefer the option of real estate acquisition instead of rental tenure[2],

[1] *Contributos para o Plano Estratégico De Habitação 2008/2013, Relatório 1*.
[2] *Housing Market: indicators to assess the adjustment programme*, https://novaeconomicsclub.files.wordpress.com/2012/05/report-nec-2-2012-housing1.pdf, (accessed 5 Dez. 2012). 24.

especially because the loan payments were at the same amount or even lower than the rents (in the new leases)[3].



In the last decade, because of decreasing use of public funding by the State in housing credit (mainly on subsidised credit regimes for house purchase), as a result of a restricted monetary policy imposed by the European Central Bank, and a substantial increase in interest rates, there was a situation of over-indebtedness of families, which is also a consequence of a great increase in the unemployment rate[4]. Thus, from 2001 to 2011 we have witnessed an absolute growth of rental housing, although at a slower rate than the growth of the whole housing market[5].

In spite of these changing trends, the rental market was not very attractive for owners and eventual investors. In fact, the tenancy law was very rigid – and, in part, still is – not enabling the landlords to give notice or increase the rents.

In Portugal, after the establishment of the Republic, on the 5th of October 1910, the housing policies prevalent until then experienced a fundamental change. Essentially, two sorts of facts were the basis for that change. Firstly, the political direction of the country motivated by the need of the allegiance of the people and, secondly, the Portuguese socio-economic structure, that was characterized by growing urbanization and the unavoidable effects of the First World War. These facts gave rise to successive legislative interventions regarding tenancy contracts, aimed at a powerful tenant protection regime and a vigorous housing control policy.

Up to that point, the tenancy regime, regulated in the Civil Code (of 1867), had been liberal, the parties could agree on the duration of the contract and the rent was freely agreed by the parties. Even though, for the reasons mentioned above, the successive legislation, with the objective of protecting the most unprotected classes from the negative effects of the economical and financial crisis, set a number of measures that took away the freedom of the landlord. Measures such as the blocking of the increase of rents for a large period of time; the prohibition on the landlord to

[3] *Contributos para o Plano Estratégico De Habitação 2008/2013, Relatório 1*
[4] *Contributos para o Plano Estratégico De Habitação 2008/2013, Relatório 1*, 69-70.
[5] *Housing Market: indicators to assess the adjustment program*, 4.

give notice without a serious reason (lack of payments, use of the premises for illegal activities, etc.), which resulted in an automatic renewal of the contract; practical limitations of the faculty of giving notice by the landlord, for example, in the celebration of new tenancy contract in the same property, that obliged him to fix the same rent as the previous contract he and was also obligated to rent empty buildings[6].

The high inflation in that period of time contributed to create a discrepancy between the values of the rents and the real values of the dwellings. In the twenties, the solution for that was not to let the parties fix the rents by themselves, but rather update the rents based on values fixed by some administrative authorities. Unfortunately, that didn´t solve the problem, because it was based on some old fiscal evaluation (from 1914) of the buildings, which was completely obsolete after the monetary devaluation that followed the war[7].

Portugal would continue to face the so-called "rent problem" for several decades. Increases in the rents had been blocked for several years and this provoked a significant social reaction by the landlords. Successive legislative acts tried to solve this problem, but without success. Only in the final years of the forties, after the Second World War, did some significant legislation emerge, but the panorama remained the same.

Meanwhile, the approval of the new Civil Code of 1966 (hereinafter CC) gathered the majority of the norms about tenancy in the code. Despite the allowance of the free stipulation of rents in new tenancy contracts, the new Code didn´t introduce significant practical changes on the old leases. The right of landlords to give notice was limited, so tenancy contracts started to become non-temporary contracts. The increase and adjustment of rents remained the central problem – a problem that was not resolved by the Civil Code. However, the Code established some rules about rents, in particular, about adjustment – for example, the rent was adjusted every five years, but in the metropolitan areas of Lisbon and Oporto there was no adjustment of rents for the old leases.

The socialist-inspired Revolution of 25 April, 1974, had a strong effect on the tenancy law regime. Much legislation was enacted in order to protect the weakest party in tenancy contracts, namely the tenant.

Immediately after the Revolution of 1974, a social phenomenon of occupying empty houses occurred. Decree-Law no. 198-A/75, of 14th April, allowed such squatting to be legalized, obliging the owner to stipulate compulsorily tenancy contracts, if the dwellings were used for residential purposes.

After the Portuguese Constitution of 1976, the legislator tried, in small steps, to normalize the situation. Sufficient housing availability from private investors would only emerge if the return on investments became profitable and higher rents could be stipulated. Previous state regulation efforts had caused more harm than good to the housing market. Determined to put an end to the housing crisis, the legislature hammered out a new provisional legislation.

For historical reasons, already referred to above, the tenancy market was almost paralysed. The preoccupation with old buildings was one of the main problems. Houses rented 30-40 years ago had never been repaired because

[6] Sandra Passinhas, *Tenancy Law Portugal*, http://www.eui.eu, (accessed 10 Jul. 2012), 2-3.
[7] Luís Menezes Leitão, *Arrendamento Urbano* (Coimbra, Almedina, 2012).

landlords had no economic incentive for doing so: the rents could not be increased, nor would the dwellings be let unoccupied at in a short space of time[8].

So, in the nineties, the Portuguese Tenancy regime was totally renewed, ameliorated and aggregated by Decree-Law no. 321-B/90, of 15th October, which consecrated the Urban Tenancy Regime [*Regime do Arrendamento Urbano*] (hereinafter RAU). RAU revoked the norms of the Civil Code in relation to the urban tenancy, leaving the code with only the norms about the lease contract [*contrato de locação*].

Among the most important innovations of RAU was the admission of a temporary contract of tenancy, with the duration of five years, although the non-temporary tenancy was still the general rule. A fundamental change regarding rents was established. The parties could, by agreement, fix the value of rents.

Despite the legislator's good intentions – the main idea was to increase the offer of dwellings for the tenancy's market – those measures didn´t have a significant impact in the market, because in the old tenancy contract the landlord still could not give notice[9].

In this century, in face of the same old problems that plagued the tenancy market, another reform took place. Law no. 6/2006, of 27th February, approved the New Urban Tenancy Regime [*Novo Regime do Arrendamento Urbano*] (hereinafter NRAU), which was supplemented by some other laws. Amongst the novelties introduced, the following had special relevance: the reintroduction of urban tenancy rules in the Civil Code (the new articles 1064 to 1113); a substantial modification in the regime of eviction (the new articles 930 -B to 930 -E of the Civil Procedure Code); the abolishment of the automatic renewal of the contract, admitting, for the first time, the possibility for the landlord to give notice in a contract of indeterminate duration, although with a notice of five years[10].

NRAU, even though it had created a flexible and more liberal regime for the tenancy contract, didn´t solve the main issue. In the old leases, the landlord still couldn´t give notice and it was still very hard to increase the rents. Even though the new law had established a new regime, the new rules weren't applied to the old contracts. Instead, NRAU created two transitory regimes for the old contracts, one set of rules to be applied for contracts celebrated after RAU became effective, and another for the agreements that were celebrated before RAU.

The latest reform occurred in 2012, with Law no. 31/2012, of 14th August. The biggest reason behind the new reform was the obligation that Portugal assumed to dynamize the rental market, and especially the urban tenancy regime. That obligation was one of the points of the *Memorandum of Understanding on Specific Economic Policy Conditionality* (MoU)[11] agreed upon by the Portuguese Republic, on one side, and the International Monetary Fund, the European Commission and European Central Bank, on the other, commonly known as the Troika's Memorandum.

There are two specific points about measures on the tenancy market that the Portuguese Government has to follow:

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[8] S. Passinhas, *Tenancy Law Portugal*, 2-3.
[9] Maria Olinda Garcia, *O Arrendamento Plural: Quadro normativo e Natureza Jurídica* (Coimbra, Coimbra Editora, 2009), 60.
[10] L. Menezes Leitão, *Arrendamento Urbano*,
[11] http://www.portugal.gov.pt/media/371369/mou_20110517.pdf.

Rental market

6.1. The Government will present measures to amend the New Urban Lease Act Law 6/2006 to ensure balanced rights and obligations of landlords and tenants, considering the socially vulnerable. [Q3-2011] This plan will lead to draft legislation to be submitted to Parliament by [Q4-2011]. In particular, the reform plan will introduce measures to: i) broaden the conditions under which renegotiation of open-ended residential leases can take place, including to limit the possibility of transmitting the contract to first degree relatives; ii) introduce a framework to improve households' access to housing by phasing out rent control mechanisms, considering the socially vulnerable; iii) reduce the prior notice for termination of leases for landlords; iv) provide for an extrajudicial eviction procedure for breach of contract, aiming at the shortening of the eviction time to three months; and v) strengthen the use of the existing extrajudicial procedures for cases of division of inherited property.

Administrative procedures for renovation

6.2. The Government will adopt legislation to simplify administrative procedures for renovation. [Q3-2011] In particular, the specific measures will: i) simplify administrative procedures for renovation works, safety requirements, authorisation to use and formalities for innovations that benefit and enhance the building's quality and value (such as energy saving measures). The majority of apartment owners will be defined as representing the majority of the total value of the building; ii) simplify rules for the temporary relocation of tenants of buildings subject to rehabilitation works with due regard of tenants' needs and respect for their living conditions; iii) grant landlords the possibility to ask for termination of the lease contract for major renovation works (affecting the structure and stability of the building) with a maximum of 6 months of prior notice; iv) standardise the rules determining the level of conservation status of property and the conditions for the demolition of buildings in ruin.

Law 31/2012 (in association with other legal acts) made significant changes in the legal panorama. The most important measures are the following: the landlord has an easier way to give notice in the indefinite duration contracts (also applies to the contracts celebrated after RAU, but the tenant could not have reached the age of 65 years or have total or partial [more than 60% of incapacity] disability, otherwise the landlord could not use this faculty); the possibility of an extraordinary increase of outdated rents; and finally a Special Procedure of Eviction (*Processo Especial de Despejo*), that was created to make a faster procedure for eviction and to ensure the vacancy of the dwelling.

More details about the history and the current situation of urban tenancy will be found in the Part II of this report.

To summarise briefly, the housing policy in Portugal was centred on home ownership tenures, especially because of the difficulties presented by the tenancy law. However, since the early 2000s, with the stagnation of the civil construction market and the growing crisis of housing credit – especially after the economic and financial crisis of 2007/2008 – the policy appears to start to focus more on the rental tenures, even though it is very soon to reach any significant conclusions on those matters, especially on those reflecting the recent reform of 2012.

- **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)?**

From being a country that had a lot of emigration between the 50s (particularly to Brazil, but also to other countries, like the United States of America) and the middle of the 70s (contributing to fill the needs of the North and Central European labour market, particularly of France and Germany), Portugal became, especially in the two last decades, a country that combines the reception of immigrants (dominant during most of the 90s and the first five years of this century) with emigration (which registered a significant increase in the last four or five years).[12]

The first wave of immigrants was composed, mostly, of natives of Portuguese-Speaking African Countries [*Países Africanos de Língua Oficial Portuguesa*] (PALOP), who arrived in a great numbers between 1975 and 1977, due to migratory movements originated by decolonization. This migration had political motives, due to the great instability of the new independent states[13].

In the middle of the eighties, after the accession of Portugal to the European Economic Community in 1986, there was an economic boom, an increase of the construction of infrastructures, namely highways, bridges, dams, *etc*, that led to a great influx of immigration, mainly absorbed by civil construction. In this period, immigrants were not only from PALOP, but there was also a great number from Brazil.

This period of economic expansion continued in the 90s and the labour needs broadened to other economic activities besides construction. Actually, the level of qualifications of Portuguese youth increased and there were needs in the labour market that were not fulfilled by internal offer. After 1998/99, a new migratory wave began, due to a significant and sudden change of the migration cycle, determined by the arrival of thousands of East European immigrants, particularly from Ukraine, Russia, Moldavia and Romania, most of them illegal. In five years, the Ukrainian community became one of the three largest groups of foreign citizens, with Brazilians and Cape Verdeans.

The increase in the number of foreigners registered in 2001 (Figure 1) is the statistical consequence of the implementation of the title of permission to remain, abridged by the changes introduced in the foreigners law 1998 by Decree-Law no. 4/2001, of 10th January. This change allowed the regularisation of more than 183,000 foreigners between 2001 and 2004, mostly from Eastern Europe and Brazil.

In Portugal, the favourable economic environment ended in 2002/2003, therefore it is not possible to dissociate this phenomenon from the significant attenuation in the rhythm of growth of the number of foreigners registered from 2003/2004. In fact, after the latter year, a new immigration cycle seems to emerge. On one hand, the total number of legal foreigners shows signs of stability or very slow increase. On the other hand, the dynamic related to the arrival of hundreds of immigrants from Eastern Europe between 1998 and 2002 disappeared. The

[12]Jorge Malheiros e Lucinda Fonseca (Coord.), *Acesso a habitação e problemas residenciais dos imigrantes em Portugal,* 48, Observatório da Imigração, 30 (2011).
[13] J. Malheiros e L. Fonseca (Coord.), *Acesso a habitação e problemas residenciais dos imigrantes em Portugal*, 31.

aggravation of the economic situation and the reduction of labour market needs are the main causes of the current situation.

Table I: Evolution of Foreign Population in the National Territory

Year	Residents	Residence Permits and Extensions of Residence Permits (2001 - 2007)	Long-stay Visa (2005 - 2011)	Total Foreign Population	Variation (%)
2000	207.587			207.587	8,60
2001	223.997	126.901		350.898	69,04
2002	238.929	174.558		413.487	17,84
2003	249.995	183.655		433.650	4,88
2004	263.322	183.833		447.155	3,11
2005	274.631	93.391	46.637	414.659	-7,27
2006	332.137	32.661	55.391	420.189	1,33
2007	401.612	5.741	28.383	435.736	3,70
2008	436.020		4.257	440.277	1,04
2009	451.742		2.449	454.191	3,16
2010	443.055		2.207	445.262	-1,97
2011*	434.708		2.114	436.822	-1,90

* Provisional data

Source: http://sefstat.sef.pt/evolucao.aspx

According to the Foreigners and Border Service [*Serviço de Estrangeiros e Fronteiras*] (SEF), the current number of the foreign population living in Portugal is 436,822 (2011), which represents a decrease of 1.90% in comparison with 2010. This number exceeds the number from census project 2011 (394,496).

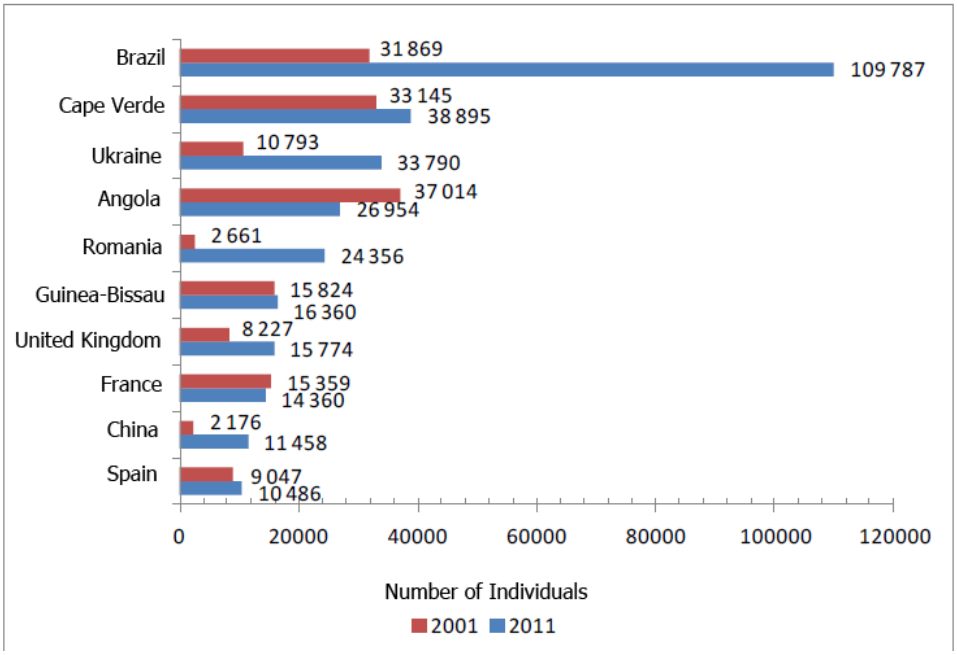
The population living in Portugal, according to the last statistical data from 2011[14], is 10,562,178 people, which represents an increase of 2% (206,061 thousands) in comparison with 2001 (10,356,117)[15]. A great part of that increase was due to a positive migration balance of 188,652, for the natural balance (the number of births less the number of deaths) only contributed with 17,409 to that increase.

Approximately 3.7% (394,496[16]) of the population living in Portugal is foreign. This number represents an increase of about 70%, for, in 2001, the foreign population was 226,715. The largest foreign community living in Portugal was the Brazilian community, with 109,787 people (about 28%), followed by the Cape Verdean, with 38,895 (10%)[17]. The Ukrainian community was the third most

[14] Census 2011, Instituto Nacional de Estatísticas (hereinafter INE).
[15] Census 2001, INE.
[16] SEF numbers are superior, as seen above.
[17] The number of Cape Verdeans in Portugal may be greater than the number from the census. In fact, the change of Law of Nationality in 2006 (Organic Law no. 2/2006, of 17th April), made the acquisition of Portuguese citizenship easier for foreigners living in Portugal, with a significant increase in the number of naturalizations, which reached the unexpected amount of 25,500 in 2009 (seven times more than in 2006). This probably means that part of the reduction of Cape Verdeans in Portugal could be explained by their naturalization.

represented in Portugal, with 9%, followed by the Angolan in fourth, with about 7%, which, in 2001, had occupied first place among the foreign populations living in Portugal, representing 16%. In the last decade, the increase of the Romanian and Chinese population stands out.

Figure 1 - Main nationalities of resident foreign population in Portugal, 2011 and 2001



As regards geographic distribution, the region of Lisbon concentrated more than half of the the foreigners living in Portugal (51.6%), followed by the North, the Centre and the Algarve (each about 13%). The regions with fewer foreigners were the Azores and Madeira (0.8% and 1.4%).

Comparing the relative importance of foreigners with the regional population, one can see that the foreign population was more significant in the Algarve (about 12% of the region's population), followed by Lisbon (7%), Alentejo (3%), Madeira and the Centre (2% each), the Azores (1.4%) and the North (1.3%).

With regard to housing access and the dwelling's occupation regime, there are significant differences between Portuguese and foreigners, particularly non-Western immigrants[18]. The PALOP are the only group of non-Western immigrants where the home ownership is slightly greater than rental, since they are included in the national community[19].

Immigrants from the first big immigration wave registered in Portugal, mainly PALOP immigrants, have settled in Lisbon's Metropolitan Area, especially in a significant part of the peripheral neighbourhoods, composed of social housing estates, resulting, to a large extent, from the re-housing of the families living in slums, progressively demolished between the middle of the nineties and the first decade of

[18] J. Malheiros e L. Fonseca (Coord.), *Acesso a habitação e problemas residenciais dos imigrantes em Portugal*, 87.
[19] J. Malheiros e L. Fonseca (Coord.), *Acesso a habitação e problemas residenciais dos imigrantes em Portugal*, 54-55.

this century, under the Special Rehousing Programme [*Programa Especial de Realojamento*] (PER)[20].

With regard to new waves of immigration, during the nineties, there was a deterioration of Brazilians' and Eastern Europeans' housing conditions, due to the incapacity of the property market to face these groups' needs and characteristics, particularly creating a larger and more accessible range of offers in the rental market and, eventually, a more specific offer of collective dwellings, which can be useful in the initial transitional periods and in seasonal migration situations[21].

Most immigrants chose rental tenure, particularly those who arrived in the most recent waves[22]. Such option has several reasons. On the one hand, they are linked to the temporariness of the immigrants' situation, as they want to make as much money as possible to go back to their countries and begin better lives. On the other hand, they are linked to the difficulties of access to housing loans. In fact, banking institutions require more from immigrants than from national citizens, due to the higher risk in granting these loans on account of the danger of them suddenly returning to their country of origin if they can't pay[23]. The banking institutions also require a contract of effective work (that excludes illegal immigrants or those without formal work) and, many times, a Portuguese guarantor[24]. There are other difficulties, particularly labour instability and the lower value of the contracts[25].

As for the rental market, it is the favourite form of tenure for immigrants. Generally, immigrants have a good integration into Portuguese reality and society, and that is reflected in housing access. With reference to housing access conditions, taking account of immigrants' characteristics and the predictable timelines of their stay in Portugal, planning their house acquisition or rental is more difficult for immigrants than for Portuguese[26]. There is, however, some concern from a minority of the landlords towards regarding immigrants (particularly Brazilians[27]), because of the fear of overcrowded dwellings and the possible use of the houses for illegal purposes (mainly prostitution)[28].

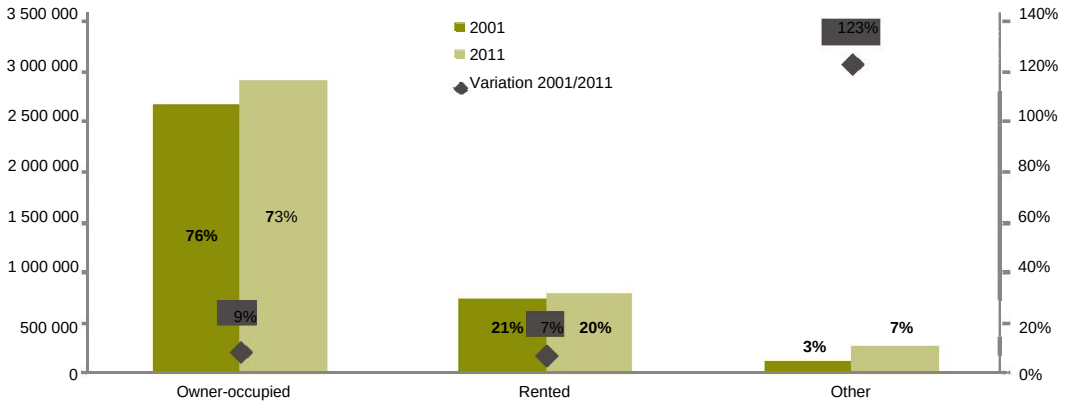
[20] J. Malheiros e L. Fonseca (Coord.), *Acesso a habitação e problemas residenciais dos imigrantes em Portugal*, 54.
[21] J. Malheiros e L. Fonseca (Coord.), *Acesso a habitação e problemas residenciais dos imigrantes em Portugal*, 55.
[22] J. Malheiros e L. Fonseca (Coord.), *Acesso a habitação e problemas residenciais dos imigrantes em Portugal*, 95.
[23] J. Malheiros e L. Fonseca (Coord.), *Acesso a habitação e problemas residenciais dos imigrantes em Portugal*, 94.
[24] *Contributos para o Plano Estratégico De Habitação 2008/2013, Relatório 1*, 148.
[25] J. Malheiros e L. Fonseca (Coord.), *Acesso a habitação e problemas residenciais dos imigrantes em Portugal*, 94.
[26] Emília Rebelo, *Planeamento urbano para a integração de imigrantes*, 18, Observatório da Imigração, 370-371 (2006).
[27] *Report on Racism and Xenophobia in the Member States of the EU*, FRA 2007, pp. 85.
[28] J. Malheiros e L. Fonseca (Coord.), *Acesso a habitação e problemas residenciais dos imigrantes em Portugal*, 107.

1.3. Current situation

- **Give an overview of the current situation.**
- **In particular: What is the number of dwellings? How many of them are rented vs. owner-occupied? What would be the normal tenure structure (see summary table 1)? What is the most recent year of information on this?**

The most recent data refer to 2011 and are registered in the 2011 Census, published in 2012 by National Statistics Institute or Statistics Portugal[29] [*Instituto Nacional de Estatística*] (INE). According to Census data, the housing stock was composed of more than 3.5 million buildings (3,544,389) that concentrated almost 5.9 million housing units (5,878,756). In 2001, according to Census 2001, published in 2002, there were 3,160,043 buildings that concentrated 5,054,922 housing units.

So, from 2001 to 2011, there was an increase of 12.2 % and 16.3% respectively, which means that there are more than 384,346 buildings and 823,834 housing units. Most of the occupied housing units, 73.24 %, are occupied by their landlord. Only 19.91% are rented (sublease included). This means that the normal Portuguese tenure structure is based on home ownership by the households that inhabit them. Rented housing units only represent a small parcel of the housing market, actually, about one-fifth (1/5).



Fonte: INE, Censos 2001 e 2011

1.4. Types of housing tenures

- **Describe the various types of housing tenures.**
  - **Home ownership**

[29] This is the official translation found on the INE website (http://www.ine.pt/) when the search is made in English.

- **How is the financing for the building of homes typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)**

There are no statistics that point precisely to the favourite financing means to the acquisition or building of a house. On the one hand, we are not aware of the importance of the judicical operations used. We only have access to annual numbers of contracts of sale for urban real estate properties. In other words, there are no statistical data about the number or the percentage of all other contracts (financial leasing, donations or an exchange contract, etc.). There are, however, statistical data about the main acts performed by public deed in civil law notaries – presented by INE and by DGPJ (Directorate-General for Justice Policy of the Ministry of Justice) [*Direção-Geral da Política de Justiça do Ministério da Justiça*] – referring to other contracts, among them the real estate donation, but these statistical data don't give an accurate image, for, from 2009, with Decree-Law no. 116/2008, of 4th July, those acts can be done by other entities other than civil law notaries, therefore those data are incomplete since 2009. On the other hand, concerning the financing type related to these contracts, there are only statistical data about loan agreements with conventional mortgages.

However, it is known from daily experience that the standard home acquisition by a private individual is a purchase and sale agreement accompanied by a mortgage loan on the immovable.

According to the last statistical data released by INE and DGPJ[30], the number of urban property contracts of sale celebrated in 2010 was 151,957, reaching the overall amount of 17,983,402 Euros. 86,869 of these 151,957 contracts (with an overall amount of 9 326 286 Euros) were for flats ("horizontal property"). In 2011, only 112,062 contracts of sale were formalised (with an overall amount of 11,285,615 Euros). 61,821 of these 112,062 contracts (for an amount of 6 119,598 Euros) were for flats. In 2011, the number of contracts of sale for real estate in Portugal decreased by 20%, corresponding to 167,496 contracts. The value of real estates decreased by 19.8% in comparison to the previous year.

The number of donation contracts celebrated before civil law notaries in 2010 was 17,695, which reveals an insignificant role in comparison with real estate contracts of sale – including urban estates, rural estate and mixed estates – celebrated before civil law notaries. In 2010, 94,628 were celebrated and, in 2011, 70,567.

With reference to mortgage loan contracts on urban estates, in 2010, 132,340 contracts were celebrated (for a total amount of 16,675,330 Euros). 77,636 of these 132,340 (for a total amount of 8,825,053 Euros) were for flats. In 2011, the number of loans celebrated was 62 28 (for a total amount of 9,162,528). 35,184 of these 62 28 (for a total amount of 3, 991,714 Euros) were for flats[31].

Concerning loan agreements with conventional mortgages, the number of contracts decreased by 52.2% but the mean value increased by 15.2%, leading to a mean value of mortgaged real estate of € 145,862 in 2011.

[30] *Estatísticas da Construção e Habitação 2011*, 92 and ss.
[31] *Estatísticas da Construção e Habitação 2011*.

Mortgage credit granted by loan agreements with conventional mortgages according to nature

Portugal (year)	Total (in €)	Individual (in €)	Credit Institution (in €)	Other legal person (in €)
2005	29.314,211	196,686	29.031,810	85 715
2006	25.198,663	174,701	24.922,233	101 729
2007	28.133,193	123,820	27.080,811	928 562
2008	20.392,147	125,608	19.367,522	899 017
2009	14.286,931	209,534	12.288,429	1 788 968
2010	12.994,565	191,230	11.216,457	1 586 879
2011	5.980,551	119,499	5.043,583	817 468

Intermediate tenures:

- **Are there intermediate forms of tenure classified between ownership and renting? e.g.:**
  - **Condominiums (if existing: different regulatory types of condominiums)**
  - **Company law schemes: tenants buying shares of housing companies**
  - **Cooperatives**

There is, in the Portuguese legal system, a dichotomy between property (a right in rem [*direito real de gozo*]) and a lease (classified by major doctrine as a right *ad rem* [*direito pessoal de gozo*]). However, there are certain judicial figures that can be classified – from an economic and non judicial point of view – as intermediate forms between ownership and renting. There are, for instance, legal concepts such ashire purchase (*locação-venda*), financial leasing (*locação financeira*), time-sharing (*direito real de habitação periódica*). There are other figures which allow other people besides the owner to use the asset and that can serve housing purposes, either through right *ad rem* [*direito pessoal de gozo*]), as lending (*comodato*), or through the right in rem [*direito real de gozo*]), as in usufruct (*direito de usufruto*), the right of use and housing (*direito de uso e habitação*), and the right to build or right of surface (*direito de superfície*). Finally, there are certain legal possibilities that can be classified as intermediate forms between ownership and renting, like condominiums or horizontal property (*propriedade horizontal*) and cooperatives (*cooperativas*).

Hire purchase (*locação-venda*)[32] is established in art. 936, no. 2 of Civil Code. In spite of not regulating every detail of the figure, the law gives some ideas about the regime of the contract through an analysis of art. 104 of the Insolvency and Corporate Recovery Code [*Código da Insolvência e Recuperação de Empresas*]

[32] Luís Miguel Pestana de Vasconcelos, *A Cessão de Créditos em Garantia e a Insolvência. Em particular da posição do cessionário na insolvência do cedente*, (Coimbra, Coimbra Editora, 2007) 730 and ss.

CIRE. This is a lease with a determined timeline in which the property will be transferred *ipso iure* to the "tenant" at the moment of the payment of the last provision. Originally, when this figure came out, the main opinion defended that the retention of title (*pacto de reserva de propriedade*) wasn't allowed. So, the emergence of hire purchase permitted people to overcome this prohibition. The law demands the application of the sale of goods on deferred terms with retention of title (*venda a prestações com reserva de propriedade*) regime. Hire purchase has some of the characteristics of both leases and the sale of goods on deferred terms with retention of title. It's distinguished by the retention of title for the elements of lease, even for changing its social and economical function. Some of those elements are the obligation to repair the dwelling and also the fact that the payment of the seller/landlord includes not only the price of the asset and the profits, but also the charges that the landlord had to make to ensure the enjoyment of the asset.

Financial leasing (*locação financeira*)[33] is a contract in which the lessor [*o locador financeiro*] acquires or builds an asset by request of the lessee [*o locatário financeiro*], giving him, afterwards, the use of the house, and being paid for it, with the clause that, in the end of the cession period, he can buy it for a certain amount (art. 1 of Decree-Law no. 149/95, of 24th June[34], corrected for the last time by Decree-Law no. 30/2008, of 25th February). The aim of the contract is the financing, which is not obtained through a direct concession of an amount of money, but through the house use. Within the legal notion of financial leasing, there is also a *sale and lease back* (*locação financeira restitutiva*), that, unlike financial *leasing*, is not based on a trilateral relationship (seller and constructor, financial lessor and financial lessee). Here, the lessor sells the good to the lessee. This institute is not a true lease contract, as seen in the legal regime, different from the lease regime, nor does it lead to a sale purchase with reservation of title agreement. In financial leasing, the most important element is the concession of the use of the house, the transfer of the house has a secondary role.

In Portugal, time-sharing (*direito real de habitação periódica*) is regulated by Decree-Law no. 275/93, of 5th August, amended by Decree-Law no. 180/99, of 22nd May, by Decree-Law no. 22/2002, of 31st January, by Decree-Law no. 76-A/2006, of 29th March, by Decree-Law no. 116/2008, of 4th July and by Decree-Law no. 37/2011, 10th of March (which transposed Directive 2008/122/EC of the European Parliament and of the Council of January the 14th 2009). Despite being known as an *ius* in rem (*direito real*) the law does not give a time-sharing notion. Yet, it has been defined as the right of use for housing purposes, for one or more previously determined periods in each year, of one tourist resort housing unit, by paying a fee to the resort's administration or its owner[35]. Therefore, the partition of the using time is

[33] About financial leasing, Pinto Duarte, *A Locação Financeira (Estudo Jurídico do* Leasing *Financeiro)*, Escritos sobre *Leasing* e *Factoring* (Cascais, 2001), 29 and ss.

[34] Which revoked Decree-Law no. 171/79, de 6 of June, which was the first legislation establishing the financial leasing as a typical contract.

[35] António Santos Justo, *Direitos Reais*, (Coimbra, Coimbra Editora, 2006), 429.

the fundamental item of this contract, whose legal regime has several similarities with that of condominiums.

The right of usufruct (*direito de usufruto*) is provided by articles 1439 to 1483 of the Civil Code. In article 1439 we have the definition of usufruct as the right to use and enjoy (*direito de gozar*) fully but temporarily an asset or a right from someone else, without damaging or diminishing his property. It's a temporary right as it is extinguished at the time of the death of the usufructuary (article 1444 CC), and a restricted one, because the usufructuary does not have the kind of powers that the landlord has. Actually, he can only use and enjoy the asset.

The right of use and housing (*direito de uso e habitação*) is established in the Civil Code, in articles 1484 to 1490. Point 1 of article 1484, the right of use, grants the holder the right to use someone else's property and reap the harvest, if any, on the same, due to his and his family's needs. However, in point no. 2 of the same article provides that when the object of this right is a residence this is called right of housing, instead. In the first situation, the right holder is called user (*usuário*), while in the second he is called resident user (*morador usuário*). This is a legal instrument which came from Roman law, but nowadays has an almost irrelevant economic importance. As with usufruct, this is a right in rem, restricted and temporary. However, both are distinguished as the usufruct is limited by the right holder's and his family's needs[36].

The right to build or right of surface (*direito de superfície*) is established in articles 1524 to 1542 of the Civil Code. Article 1524 CC describes the right to build as the possibility of construction or maintenance, temporarily or perpetually, for a construction in someone else's property, or keeping plantations on it. This right holder is known as superficiary (*superficiário*). The subject of this right can be split into two moments. In the first moment, the right concerns another's land and involves everything needed for the construction. In the second moment, it respects the building or plantations made or acquired[37]. Despite the possibility of this right having habitation purposes, its main purposes overcome that aim.

Condominiums, or horizontal property (*propriedade horizontal*), are regulated in articles 1414 to 1438-A of the Civil Code, in the Decree-Law no. 268/94, 25th of October (regulatory standards of condominiums [*normas regulamentares do regime da propriedade horizontal*]) and the Decree-Law no. 269/94, 25th of October (Condominium Savings Account [*Contas poupança-condomínio*]). There is no legal notion of condominium, but, according to doctrine, the right holder of a single unit (*fracção*) has property rights on that single unit and a common property right (*direito de compropriedade*) on common areas, along with the other owners of that multi-unit building. The condominium requirements are: several independent single units

[36] Santos Justo, *Direitos Reais*, 379-380.
[37] Santos Justo, *Direitos Reais*, 387 and 390.

located in just one building; single unit's partition and isolation; each single unit must have its own exit; at least two or more single units must belong to different owners[38].

The cooperatives (*cooperativas*) legal regime is fragmented and intricate. The right to freely form cooperatives is a fundamental right, established in article 61, no. 2 of the Constitution of the Portuguese Republic (CRP). Article 4 of the Cooperative Code (*Código Cooperativo*), approved by Law no. 51/96, of 7th September, enables the forming of cooperatives with a housing and construction finality. This kind of cooperative is regulated by Decree-Law no. 502/99, of 19th November (*cooperativas do ramo de habitação e construção*), amended by Decree-Law no. 76-A/2006, of 29th March. According to article 2 of Decree-Law 502/99, the housing and construction cooperatives are those which have as their main purpose to promote, construct or acquire dwellings intended for their members' habitation, as also their maintenance, repairing and re-arrangement. The dwellings property regime is provided by articles 16 et seq. and can be about individual property or collective property. In the case of collective property, the property belongs to the cooperative and the dwellings are provided to cooperators (*cooperadores*) through a housing right (similar to that established in no. 2 of article 1484 of the Civil Code) or a lease (*Inquilinato cooperativo*), regulated by the rules onurban tenancy. In the individual property, the cooperators acquire the property through a sales contract.

- **Rental tenures**
  - **Are rental tenures with and without a public task distinguished? If so, how are they called and what is their share in the housing stock?**

Besides the rules on urban lease proposed in Civil Code and Law 6/2006 (NRAU), there are several types of rental tenures with a public task, especially in social housing. We will approach the specifications and regime for each figure in **sections 2** and **3.**

There are several state programmes that allow municipal authorities to obtain financing targeted at social housing, to construct social housing dwellings, with the possibility to rent them. In Lisbon and Oporto Metropolitan Areas there is the Special Rehousing Programme [*Programa Especial de Realojamento*] (PER), created by Decree-Law no. 163/93, of 7th May, which underwent its latest change by Decree-Law no. 271/2003, of 28th October. This programme aims to obtain financial support destined for the construction, acquisition or lease of houses to reallocate households from shacks and similar non-conventional dwellings and the Access to Housing Financing Programme [*Programa de Financiamento para Acesso à Habitação*] (PROHABITA), which regulates financing to resolve the extreme situations of housing need of the households.

There is also the supported rent regime [*renda apoiada*] approved by Decree-Law no. 166/93, of 7th May, intended for tenants of social housing, as well as any

[38]Santos Justo, *Direitos Reais*, 317-318.

social housing supported by autonomous regions, municipal authorities and Social Solidarity Private Institutions (IPSS) that enjoy State non-refundable grant contributions.

Social rent regime [*renda social*] established in Ministerial Order (Portaria) no. 288/83, of 17th March.

There is also the "Porta 65 — Jovem" programme, for Renting by young people [*Arrendamento por Jovens*], approved by Decree-Law no. 308/2007, of 3rd September, an instrument of financing support for rental by young people aged between 18 and 30 years old, aimed at the promotion of their civic and familiar emancipation. The State only contributes to the lease of the young tenant with a private landlord.

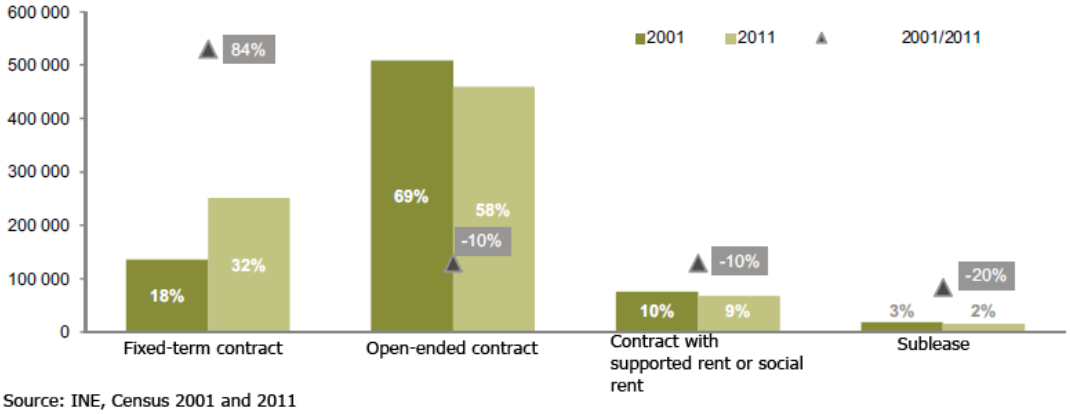
Finally, recently, in 2012, the programme Social Market for Tenancy [*Mercado Social de Arrendamento*] (MSA) was created as one of the several measures of the Social Emergency Plan [*Plano de Emergência Social*] (PES), based on a programme promoted by the *Câmara Municipal de Vila Nova de Gaia* and *Grupo Caixa Geral de Depósitos*[39], called "Programa Arco-íris. Novos horizontes para o arrendamento". MAS creates a new segment of the lease market and represents a change of paradigm, opening a market gap between the free lease market and social housing, which results from a partnership between the State and municipal and bank entities. This makes it possible to use real estate seized by banks through mortgages at a price 30% lower than the regular market. It is aimed at people who can't access social housing, but don't have enough income to buy their own house. MSA aims, in a first phase, to achieve the release of 2000 houses in more than 100 municipalities until the end of 2012.

With reference to a share in the housing stock, 19.91% of the dwellings are occupied by a tenant, according to 2011 Census. Among these almost twenty per cent, homes with contracts of indefinite duration (58%) stand out, followed by the housing with fixed-term contracts (32%). The housing with social leases or supported leases and with situations of sublease contracts represented, respectively, 9% and 2%. Housing with open-ended contracts kept their importance, similarly to what happened in 2001 (69%).

In comparison to 2001, in 2011 there was a variation of about +84% in the number of classical familiar dwellings leased with fixed term contracts. On the other hand, subleasing registered a fall of approximately 20%.

Figure 2 – Number and variation of conventional dwellings of usual residence by the type of tenancy, 2001-2011

[39] It's a state-owned banking corporation.



Source: INE, Census 2001 and 2011

The total number of housing units with rental tenure is 794,465. 250,840 are dwellings with fixed term contracts, 459,683 with open-ended contracts, 68 360 with social or supported leases, and 15,582 with subleases.

- **How is the financing for the building of rental housing typically arranged?**

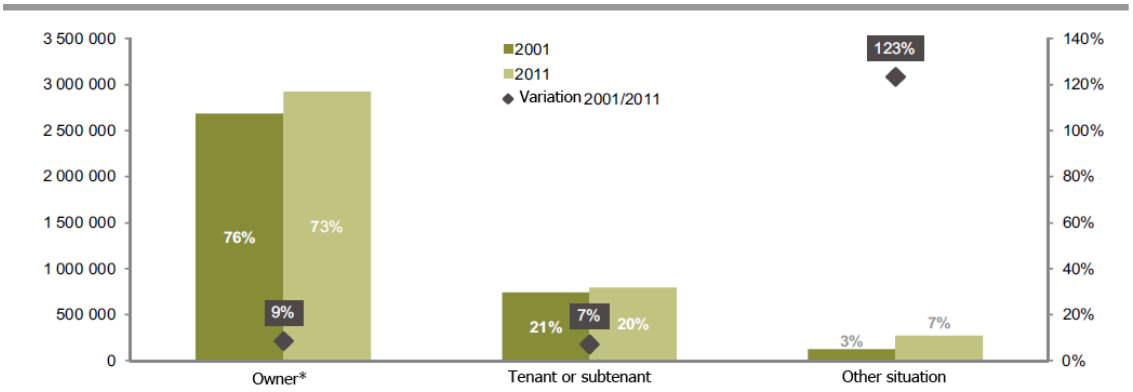
For building construction intended for rental housing, one can use the same kind of financing used for construction or acquisition for ownership. The State has programmes (referred to in the previous question and that will be developed in **section 2.3.**) to finance the construction of social housing.

- **What is the market share (% of stock) of each type of tenure and what can be said in general on the quality of housing provided?**[40]

In Portugal, according to data from the 2011 census, 73% of conventional dwellings occupied as usual residences were occupied by the owners, 20% by tenants or subtenants and 7% were related to other kinds of occupation. The rented houses only represent less than 1/5 of the market.

[40] In this question we will refer, mainly, to data from the 2011 Census. In the absence of a source, that is because the information is from the Census data.

Figure 3 – Number, proportion and variation of conventional dwellings of usual residence by tenure status, 2001-2011



Source: INE, Census 2001 and 2011
*Includes: Owners, Co-owners and owners in regime collective property in housing cooperatives

The statistical information available only indicates three kinds of situations. The last one (other kind of occupation) includes all the tenures that aren't owner-occupied or occupied by a tenant (or subtenant). This includes, for example, free housing concession situations, usufructs, or even those working contract clauses with housing concession situations.

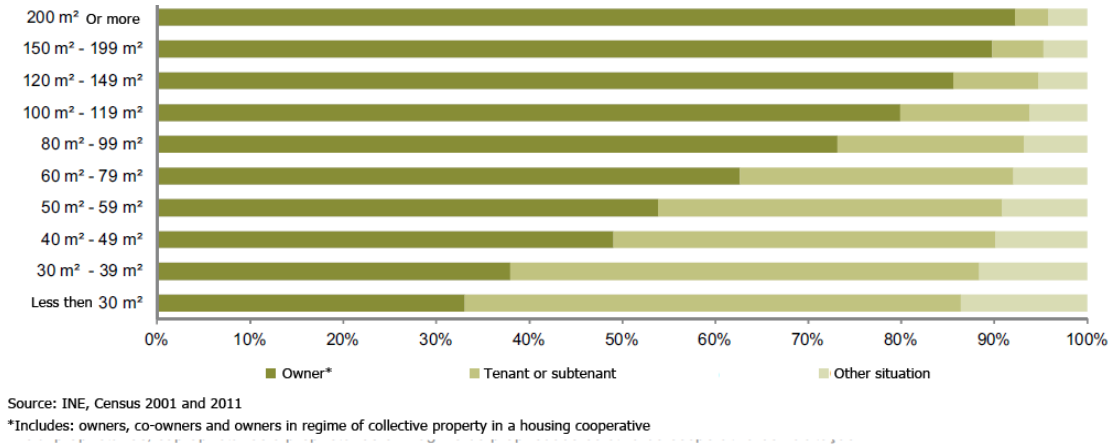
The continued recourse to credit for housing acquisition and the leasehold market stagnation were the main characteristics of the real estate industry in the last decades. Actually, there was a governmental policy promoting housing acquisition, always accompanied by a hard and daunting legal structure for those owners who want to rent their real estate. So, there has been a major increase in the percentage of owner-occupied dwellings since the eighties up to the present. In 1981, about 57% of housing units were owner-occupied. This value increased in 1991, reaching 65%, and in 2001, reaching 76% of the overall housing units. This increasing trend stopped in 2011, the year that registered a decrease of 3 percentage points (in other words, 73% [2,923,271 of housing units] of dwellings occupied by their own landlords) when compared to 2001, even though there was an increase of 9%, equivalent to more than 235 thousand houses in this property regime. The remaining 27% represent houses with another kind of owner (not their occupants).

In reference to the remaining housing units (not occupied by their owners), which, as seen, are 27% of dwellings (1,067,841), the largest number of this kind of landlords is represented by private citizens or private companies (67%), representing 718,163 housing units, which is followed by the owners' ancestors and descendants (21%), representing 221,058. Public entities only have 12%. Of that total, public companies have 6,185, the State, self-governing public institutes and non-profit institutions have 32,784, local authorities have 84 189, and, finally, housing cooperatives have 5 46. From what has been said, one can see, referring to the intermediate tenure types, that housing cooperatives only represent a very small portion of the market. From 6.8% (273,376 housing units), which is the percentage of the other kinds of occupation, housing cooperatives only represent 2% of housing units and 0.14% of the overall inhabited housing units.

The number of rented or subleased dwellings increased about 7% compared with 2001 (more than 54 thousand dwellings), although there has been a decrease of 1 percentage point on the relative weight (from 21% in 2001 to 20% in 2011). In 2011, from 795 thousand dwellings occupied without being rented only 2% were subleased.

The housing units related to other kinds of occupation registered an increase of 123% between 2001 and 2011 (more than 151 thousand dwellings), and an increase of 4 percentage points on the relative weight.

Figure 4 – Proportion of conventional dwellings of usual residence by size class of useful area and property regime, 2011



Source: INE, Census 2001 and 2011

*Includes: owners, co-owners and owners in regime of collective property in a housing cooperative

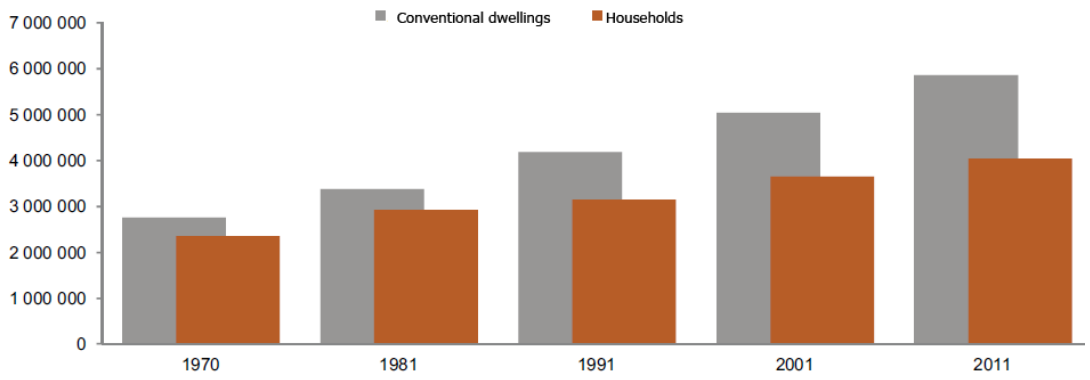
With regard to the dwellings' rentable space[41] listed by property regime, one can see a progressive increase in the ratio of owner-occupied familiar dwellings associated with an increase in rentable space. Looking at the ratio of tenure types by rentable space, for example, one can see that while dwellings with less than 30 m^2 were owner-occupied in a percentage of 33% and 53% by tenants (or subtenants), dwellings with 200 m^2 or more rentable space were owner-occupied in a percentage of 92% and only 4% were occupied by tenants (or subtenants). Dwellings occupied by other forms of tenancy represented the largest number for homes with a surface area up to 50 m^2 (up to 10%), progressively reducing these values as the homes get larger.

Now we shall look at the subject of the quality of housing.

Referring to types of buildings, the relationship between the numbers of family dwellings and the number of families in society is actually very close, given that each dwelling tends to accommodate only one family. In Portugal, the number of family dwellings almost doubled in the last three decades, representing a larger increase than the increase in the number of classic families. In 2011, 10.6 million people were living in Portugal, representing 4 million families. The housing stock was composed of 3.5 million buildings that concentrated 5.9 million dwellings, of which 68.1% were occupied as usual residences and 31.9% were secondary residences or were vacant.

Figure 5 – Evolution of conventional dwellings and households, 1970-2011

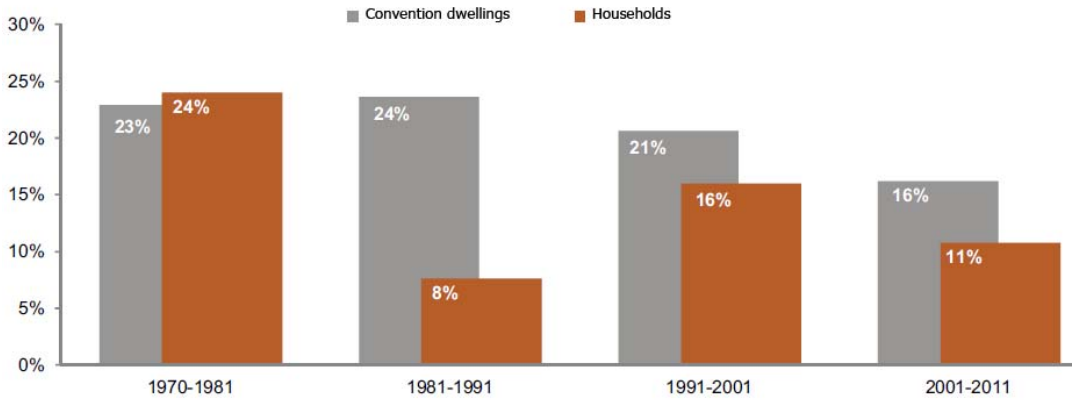
[41]This variables appeared, for the first time, in *Recenseamento da Habitação* 2011 (included in 2011 Census), therefore is not possible to promote the comparison with 2001 (2001 Census).



Source: INE, Census 1970, 1981, 1991, 2001 and 2011

From 1981 to 2011, the housing dynamics exceeded the evolution in the number of families. In fact, from an initial situation of reasonable balance in the 1981 census, it has been evolving towards a state of over-capacity in 2001 and clear over-capacity in 2011. Indeed, from a reality in which the number of dwellings was slightly higher than the number of families (more than 458 thousand more dwellings than families – more than 16% **-** in 1981), emerged an actuality in which the number of houses was much higher than the overall number of resident families (in 2011 there were 1.822 million more dwellings than families, which represents more than 45%).

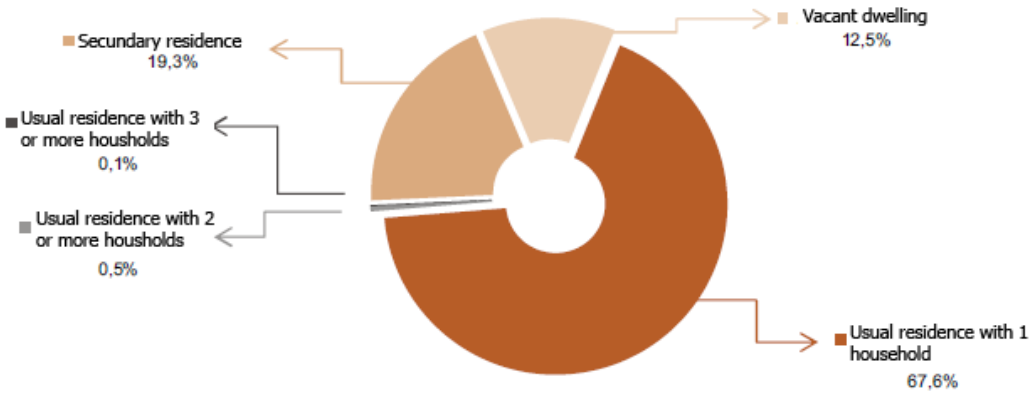
Figure 6 - Growth rates of conventional dwellings and households in Portugal, 1970-2011



Source: INE, Census 1970, 1981, 1991, 2001 and 2011

It's important to attend to the high number of secondary residences. Actually, in the last decade, the number of secondary residences rose over one million housing units. The 2011 Census revealed the existence of 1,133,300 secondary residences, which represents 19.3% of the national housing stock. In comparison with the last decade, one can see a relevant increase of 22.6%, which took place in every region of the country.

Figure 7 – Conventional dwellings by tenures by occupancy status

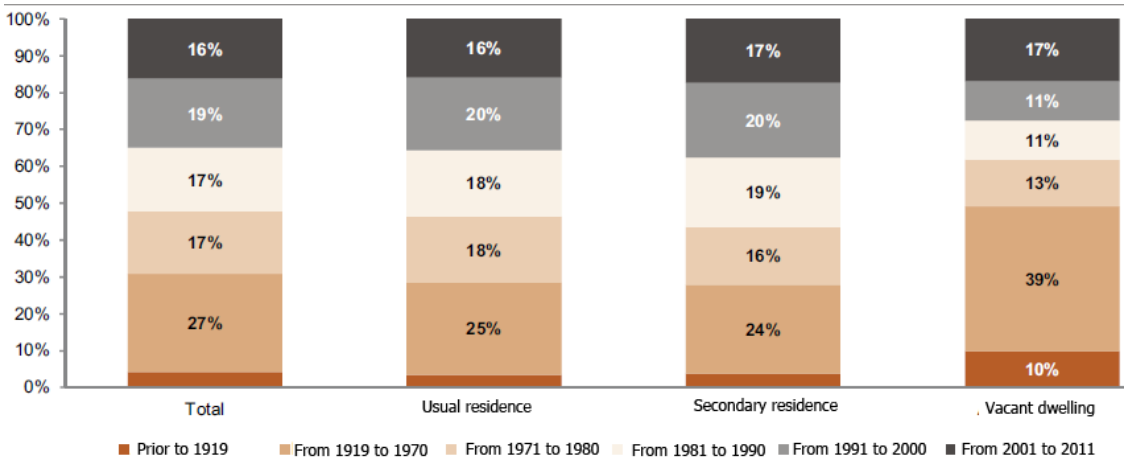


Source: INE, Census 2011

In 2011, permanent residence dwellings with one family represented 67.6% of all family dwellings. Only 0.5% were occupied as permanent residences by two families and 0.1% by three or more. Of the total amount of family dwellings, 19.3% were used as secondary residences and 12.5% were vacant.

As regards the different periods of construction in Portugal, an analysis of conventional dwellings in existence in 2011, by date of construction, reveals a housing boom in the last decade. About 52% of conventional dwellings were built after 1981 and 35% were built during the last two decades (1991-2011), as can be seen in figure 8.

Figure 8 – Distribution of conventional dwellings by occupancy status and construction period, 2011



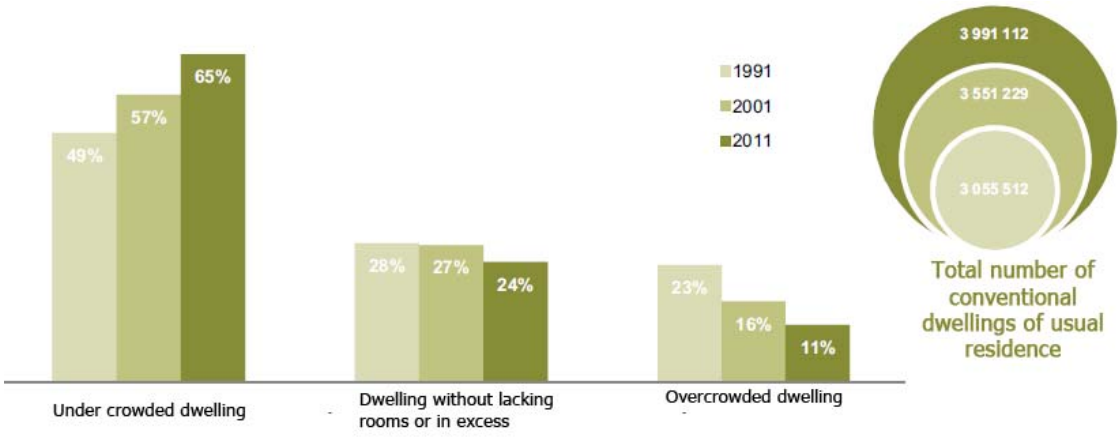
Source: INE, Census 2011

An analysis of the capacities of the dwellings over the last decade reveals an increase of the living area and the disposable space per person. In 1991, about 708 thousand conventional dwellings of usual residence (23% of the total) were seen as overcrowded dwellings. In fact, in 66% of the cases these homes were lacking one room, in 23% two and in 11% three or more rooms per house. The average capacity was only verified in 28% of permanent residence conventional dwellings. On the

other hand, in the case of under crowded dwellings, 1,506 households were under crowded. Actually, 54% had a superfluous room, 27% had two superfluous rooms and 19% had three or more rooms left. In 2001, the proportion of overcrowded households decreased by 7% when compared to 1991, registering 569 thousand dwellings (16% of the total). Those lacking three or more rooms decreased to 7% (down 4%), while those in which only two rooms were missing decreased to 20% (down 3%). This resulted in the increasing of the households in which only one room was lacking to 73% (up 7%). The average capacity was verified in 27% of permanent residence conventional dwellings (961 thousand dwellings)[42].

According to the final results of the Housing Census 2011, the proportion of overcrowded households represented 11% of the total households occupied as usual residences (-5% compared to 2001), 5% of which were related to not having three or more rooms. As for under crowded dwellings, between 2001 and 2011, there was an increase of 5% in the proportion of dwellings with three or more rooms in excess (from 19% in 2001 to 24% in 2011)[43].

Figure 9 – Evolution of conventional dwellings of usual residence by dwelling occupancy index

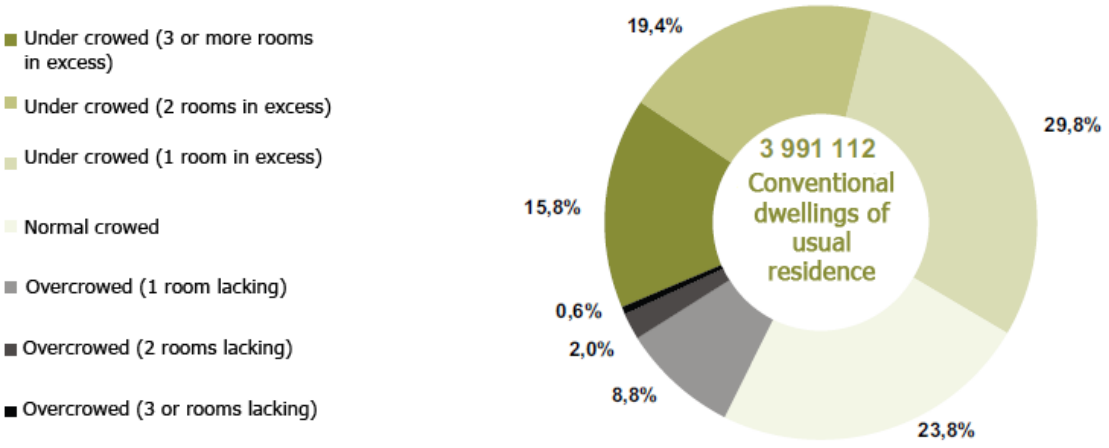


Source: INE, Census 1991, 2001 and 2011

According to the disaggregated index of capacity, in 2011, more than a half of permanent residence conventional dwellings (54%) show one superfluous room or a normal capacity (based on the dwelling's and its residents' characteristics). On the other hand, there was a decrease in overcrowded households with three or more rooms missing (0.6%) and with two rooms missing (2%).

[42] *Evolução do Parque Habitacional em Portugal 2001-2011*, (Lisboa, INE 2012), 23-24.
[43] *Evolução do Parque Habitacional em Portugal 2001-2011*, 24.

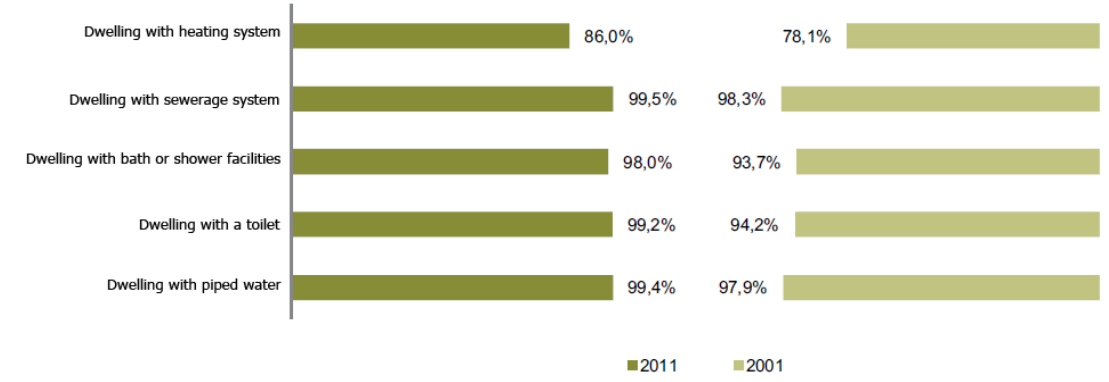
Figure 10 – Distribution of conventional dwellings of usual residence by occupancy index



Source: INE, Census 2011

As regards housing conditions, in 2011, nearly 85% of households had all the basic infrastructures, namely toilets, bath or shower, piped water and heating system. Only 0.2% of permanent resident dwellings didn't have any kind of infrastructures. Of those 0.2%, 80% were conventional dwellings. It's important to point out that, in the 2001 Census, 99.5% of familiar dwellings had electricity, whereas in the 2011 Census this wasn't specified.

Figure 11 – Proportion of conventional dwellings of usual residence by type of existing infrastructure/equipment, 2001-2011



Source: INE, Census 2001 and 2011

In a more accurate analysis for each kind of infrastructure, one can see that, in 2011, 99.4% of permanent residence conventional dwellings had supplied water (+1.5% compared to 2001) and only about 10% of this percentage was connected to private systems.

In Portugal in 2011, less than 1% of conventional dwellings of usual residence didn't have a toilet (down 5% compared to 2001). Of the dwellings that didn't have this kind of infrastructures, 92% were conventional dwellings.

98% of permanent residence conventional dwellings had bath or shower facilities (+4% compared to 2001).

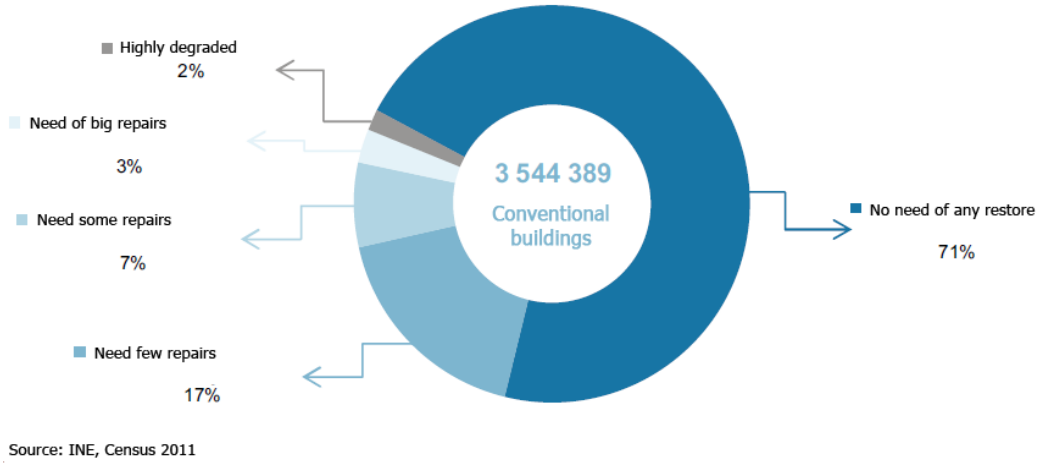
Only about 0.5% of households didn't have a sewerage system (-1.2% compared to 2001).

In reference to the heating of households, there was an increase of 8% in comparison with 2001 (from 78% to 86%, in 2011). Actually, a significant part of this increase (6%) is explained by the appearance of central heating. In the more temperate areas (Autonomous Region of Madeira, Autonomous Region of Azores and Algarve) this number is clearly lower. For example, in the Autonomous Region of Madeira the proportion of dwellings without heating was higher than 80%[44].

With regard to the need for repairs, in 2001, around 59% of classic buildings didn't need any restoration, 32% needed a few or some repairs and 8% had great need of major repairs or were highly degraded.

Of the 3,544 conventional buildings in 2011, nearly 71% did not need repairs (+12% compared to 2001), 24% needed small or medium repairs (-8% compared to 2001) and nearly 5% needed major repairs or were highly degraded (-3% compared to 2001). As seen on the pie chart below.

Figure 12 – Distribution of conventional buildings by preservation state, 2011



Source: INE, Census 2011

[44] *Evolução do Parque Habitacional em Portugal 2001-2011*, 26.

Which actors own these dwellings (private persons, profit or non-profit organisations, etc.)?

Most of the dwellings are owned by private individuals. The State, on a central level, and on a local level, as a landlord, does not have a significant impact in the housing market. From the 80s, with the so called "fiscal crisis" (*crise fiscal*) and the need to balance public accounts, strengthened by more liberal policies, the *IGAPHE (Instituto de Gestão e Alienação do Património Habitacional do Estado)* – now called *IHRU (Instituto da Habitação e da Reabilitação Urbana)* – began a decentralization movement, giving its real estate to the autarchies and selling them to the dwellings occupants[45]. This movement reduced the IHRU's stock by around 1/3 (from 39,197 to 12,549 dwellings) from its initial value. In fact, while about ¼ was sold to occupants (10,213 dwellings), the remaining was given to the autarchies (16,435 dwellings)[46].

In 2011, public entities had around 102,330 dwellings, of which 78,116 belonged to municipalities (representing 76.34% of total dwellings), 19,478 belonged to national entities (19.03%) and 4,736 (4.63%) to regional entities (especially to the Autonomous Regions of Madeira and Azores)[47].

There are several profit and non-profit organizations with an important role in the housing dynamics. Decree-Law no. 64/2007, of 14th March, amended by Decree-Law no. 99/2011, of 28th September, regulates the social support establishments, which may be companies or self-employed entrepreneurs, private social security institutions or legally equivalent organisations and private entities devoted to the development of social support activities, the provision of social support services and activities related to children, young, disabled and elderly people related, as well those which are devoted to the prevention and repair of deprivation, dysfunction and social marginalisation.

In 2011, the number of institutional households[48] with social support was 3,129. Compared to 2001, in which the number was 2,162, there has been a significant increase of as much as 49%.

The increase in the number of families living in social support institutions expresses society's answer to the increase of the older population. The former model of elderly people living with their children or other relatives has been increasingly replaced by their institutionalization.

Actually, of 90,637 people living in social support establishments (in 2001 there were 65,852), most of them are old people and women. The segment of the population that is older than 70 years old makes up the greater part of the residents in this kind of establishments.

[45] *Contributos para o Plano Estratégico De Habitação 2008/2013, Relatório 2,* 45 and ss.
[46] *Contributos para o Plano Estratégico De Habitação 2008/2013, Relatório 2,* 45.
[47] http://www.portaldahabitacao.pt/opencms/export/sites/ohru/pt/ohru/documentacao/anexos/ohru/revisao_regime_renda_apoiada.pdf, p. 15.
[48] According to the 2011 Census, this is a group of people residing in a collective living quarter who, regardless of any family ties between them, abide by common discipline, are beneficiaries of an institution and are governed by an entity within or outside the group.

	2001	2011
Famílias institucionais de apoio social		
Portugal	2 162	3 219*
População que vive em estabelecimentos de apoio social		
Portugal	65 852	90 637

Source:INE, Censos 2011 Resultados Definitivos

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, how are they called, how many members, etc.?**

Nowadays, there are 61 registered companies/organisations in the Transparency Register[49], although none of them are mainly devoted to handling housing issues. However, there are plenty of associations, organisations and companies whose prime activity is the housing market. The following are the groups that have a more relevant role in this area[50]:

- The *AdUrbem (Associação para o Desenvolvimento do Direito do Urbanismo e da Construção)*[51]. This is a scientific and technical Portuguese non-profit association, whose goal is to promote the advancement of theoretical and practical knowledge in the area of Construction and Urban Law at a national level.

- The *AECOPS (Associação de Empresas de Construção e Obras públicas e Serviços)*[52]. This is an association of public works constructions and services undertakings, whose main purpose is representing those undertakings' interests.

- The *AICCOPN (Associação dos Industriais da Construção Civil e Obras Públicas)*[53]. This is an association, headquartered in Oporto, which represents at a national level about 8,000 companies of civil and public works construction.

- The *AICE (Associação dos Industriais da Construção de Edifícios)*[54]. Established in 1975, this is an association that represents at a national level natural and legal people, who are holders of companies with a construction and/or property development activity.

- The *AIL (Associação dos Inquilinos Lisbonenses)*[55]. This is a cooperative of Lisbon tenants, whose fundamental purpose is to intervene in habitation issues and

[49]http://europa.eu/transparency-register/index_en.htm (updated for the last time on the 12th of January of 2012).
[50] The chosen order is not related to the group's importance, but its the alphabetic order.
[51]http://www.adurbem.pt/.
[52]http://www.aecops.pt/Home/MenuInstitucional/AAecops/tabid/58/language/pt-PT/Default.aspx.
[53]http://www.aiccopn.pt/.
[54]http://www.aice.pt/.
[55]http://www.ail.pt/.

to offer services to its members (tenants), such as condominium administration services.

- The *ALP (Associação Lisbonense de Proprietários)*[56]*.* Established on February the 3rd of 1888, this is a national association, currently with roughly 10,000 members. Its major purpose is to represent and to serve urban building owners, including horizontal properties. This association contributed to the creation of *CAV (Centro de Arbitragens Voluntárias da Propriedade e Inquilinato)* in 2001, a voluntary arbitration centre, especially devoted to rental contract disputes.

- The *APEMIP (Associação dos Profissionais e Empresas de Mediação Imobiliária de Portugal)*[57]. This is an association of real estate agencies and professionals.

- The *APHM (Associação Portuguesa de Habitação Municipal)*[58]. This is a non-profit association which deals with municipalities' social housing developments and/or manages municipal undertakings, to promote the execution of studies and seminars, as well as to disclose all the interesting information in the area of municipal social habitation.

- The *APPII (Associação Portuguesa de Promotores e Investidores Imobiliários)*[59]. This is an association of property developers and investors established in 1991.

- The *CECODHAS.P (Comité Português de Coordenação da Habitação Social*)[60]. *CECODHAS.P* is the Portuguese representative in *CECODHAS HOUSING EUROPE*, a European association, a social partner of the European Commission, and one that brings together about 41 thousand entities, which manage more than 27 million dwellings in 21 European Union countries. The *CECODHAS.P* is constituted by five members (*IHRU – Instituto de Habitação e Reabilitação Urbana, APHM – Associação Portuguesa de Habitação Municipal, FENACHE – Federação Nacional das Cooperativas de Habitação Económica, UMP – União das Misericórdias Portuguesas* and *IHM – Investimentos Habitacionais da Madeira*), which manage over 100 thousand social dwellings in Portugal.

- The *DECO (Associação Portuguesa para a Defesa do Consumidor)*[61]. This is an association for the defence of consumers. It was established in 1974 and has been formally considered an institution with public interest since 1978.

- The *EPUL (Empresa Pública de Urbanização de Lisboa)*[62]. This is a company - in this case a legal person governed by public law, but with administrative and financial autonomy – that aims to assist and to develop the municipal action in the study and execution of urban developments in the Lisbon Metropolitan Area.

[56]http://www.alp.pt/.
[57]http://www.apemip.pt/.
[58]http://www.aphm.pt/.
[59]http://www.appii.pt/.
[60]http://www.cecodhasp.org/.
[61]http://www.deco.proteste.pt/.
[62]http://www.epul.pt/.

-The *FENACHE (Federação Nacional das Cooperativas de Habitação Económica)*[63]. This is a national Federation of Housing Cooperatives and it's the only representative structure for Housing Cooperatives in the country, bringing together 72 of the 100 or so Housing Cooperatives with regular promotional activity.

- The *IHM (Investimentos Habitacionais da Madeira)*[64]. This is a Public Enterprise of the Autonomous Region of Madeira and has the responsibility of implementing the Regional Government's policies concerning housing support for the most disadvantaged families.

- The *IHRU (Instituto de Habitação e Reabilitação Urbana)*[65]. The IHRU is a public institution, born of the restructuring and redesignation of the former Instituto Nacional de Habitação (INH), as well from the integration of Instituto de Gestão e Alienação do Património Habitacional do Estado (IGAPHE) and part of Direcção-Geral dos Edifícios e Monumentos Nacionais (DGEMN). Nowadays it is regulated by Decree-Law no. 175/2012, of 2nd August. IHRU's mission is to ensure the execution of the Government housing and urban rehabilitation policies, combining this pursuit with the cities' policies and with other social and of heritage preservation and enhancement policies, always protecting the memory of the buildings and their evolution.

- The *InCI (Instituto da Construção e do Imobiliário)*[66]. This is a public institution with legal personality. It was created by Decree-Law no. 158/2012, of 23rd July, and is the national regulatory authority for the construction and real estate sector. Its activity aims to improve the construction and real estate market, making it more competitive and modern, due to its enforcement activity.

- The *OHRU (Observatório da Habitação e da Reabilitação Urbana)*[67]. This is an observatory, which belongs to IHRU and whose mission is setting up and managing an organised information system with the purpose of publicising the housing and urban rehabilitation sector, as well keeping abreast of its developments. It has to promote the disclosure of this sector's information in a systematic, regular and periodic way, supporting the housing and urban rehabilitation public policy and all the agents working in the market.

- The *UMP (União das Misericórdias Portuguesas)*[68]. This is an association of *Santas Casas de Misericórdia* (Holy Houses of Mercy), which are charitable organisations. One of their finalities is providing accommodation for ill and disabled people. Nowadays, the UMP aggregates and coordinates approximately 400 *Santas Casas de Misericórdia* in Portugal.

[63]http://www.fenache.com/.
[64]http://www.ihm.pt/.
[65]http://www.portaldahabitacao.pt/pt/ihru/.
[66]http://www.inci.pt/.
[67]http://www.portaldahabitacao.pt/pt/ohru/.
[68]http://www.ump.pt/.

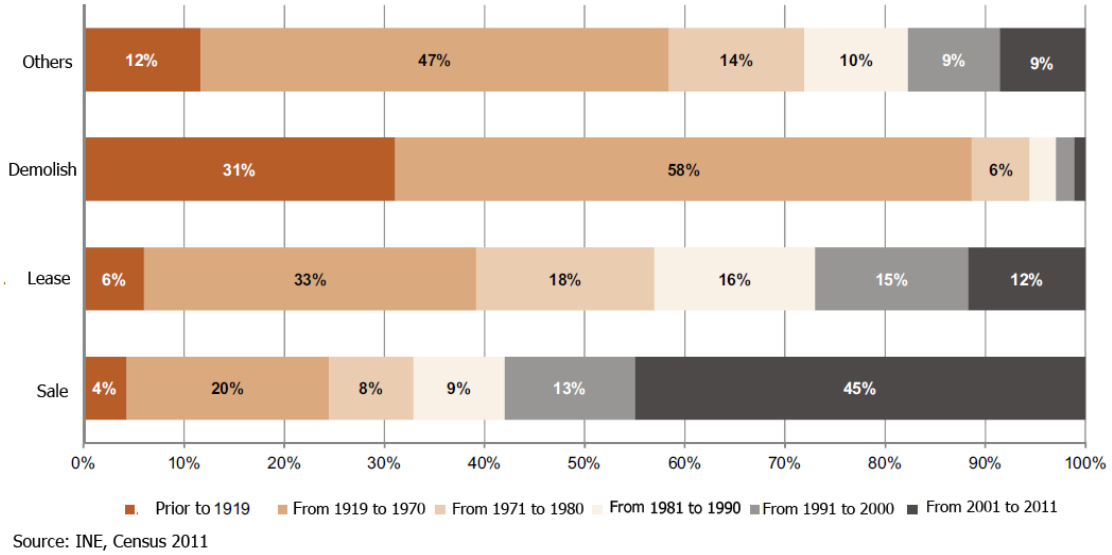
- **What is the number (and percentage) of vacant dwellings?**

According to Census 2011, the number of vacant dwellings is 735,128. In comparison with the last ten years, this indicator has increased 35% (in 2001 there were 543,927). In 2011, the percentage of vacant dwellings (for a total of 5,878,756) was 12.55%, up 10.83% compared to 2001.

The vacant dwellings represented nearly 12.6% of total dwellings. The regions of the Centre, Alentejo, Algarve and Madeira showed values slightly above the national average, around 13%, while the North region registered the lowest value, with 11%.

Of 735,128 vacant dwellings, 164,745 were for sale, 110,221 were for rent, 28,388 were destined for demolition and 431,774 for other finalities.

Figure 13 – Vacant conventional dwellings by finality and construction period



Source: INE, Census 2011

Of the total number of vacant conventional dwellings, 45% of those intended to be sold were constructed in the last decade (between 2001 and 2011). Looking at the previous decade (1991-2000), one can see that more than half (58%) of for sale vacant dwellings were constructed from 1991.

With regard to rental dwellings, most of them were located in buildings constructed between 1919 and 1980 (51%). Nearly 12% of vacant dwellings for rent were located in more recent buildings (constructed after 2001).

The dwellings destined for demolition were located in buildings constructed before 1970 (89%). In fact, dwellings located in buildings constructed between 1919 and 1970 represented 58%.

- **Are there important black market or otherwise irregular phenomena and practices on the housing market (especially the rental market)?**

There is no statistical information, or any study (promoted by governmental entities or from any academic institution) about the importance of the black market in the housing market. Although, the parallel rent market may be increasing significantly, due to the increased tax and contributory burden. This phenomenon is ordinarily called rent "without (tax) receipt"[69].

Beyond tax evasion, there are other areas where this parallel rental market has a significant role. Immigrants, as seen above, have a lot of difficulties in gaining access to housing, which contributes to generate and increase a parallel market, mainly characterised by high costs and overcrowding[70]. Another case is that of university students, where we find a large number of rents "without (tax) receipt"[71].

Summary table 1 Tenure structure in Portugal, 2011

Home ownership	Renting			Interme-diate tenure	Other	Total
		Renting with a public task, if distinguished	Renting without a public task, if distinguished			
73%	20%	2%	18%	7%		100%

2. Economic factors

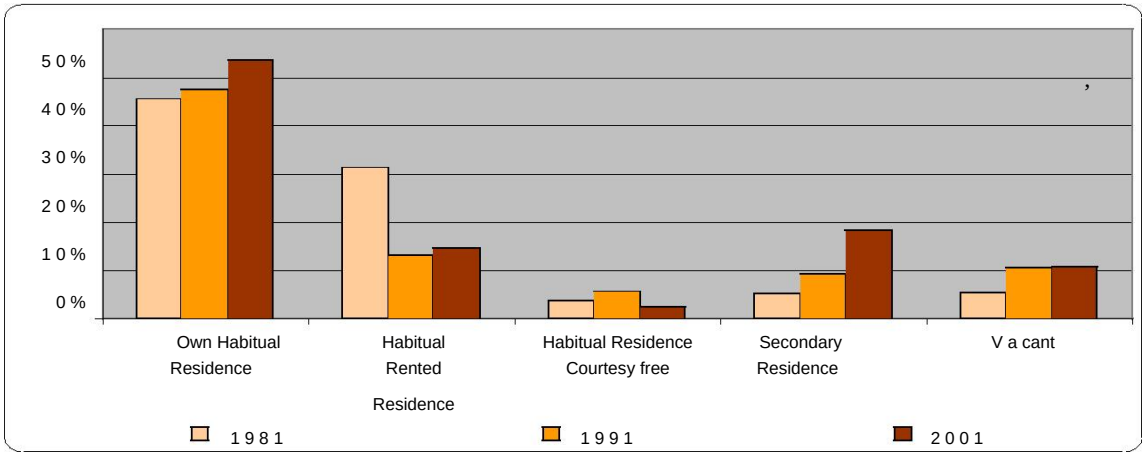
2.1. Situation of the housing market

- **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?**

As seen above, 31.9% of roughly near 6 million dwellings were secondary residences or were vacant. Of 274,966 vacant dwellings that were market available,

[69]http://www.gold-team.pt/noticia/Mercado-de-Arrendamento-Desacelera/?id=757.
[70]http://www.acidi.gov.pt/noticias/visualizar-noticia/4cdbf6d163edf/dificuldades-de-acesso-a-habitacao-geram-mercado-paralelo.
[71]Bruna Filipe, et al., *Fraude E Evasão Fiscais No Arrendamento Estudantil*, 16, Revista dos Algarves, 16-22, (2007).

about 164,745 were for sale and 110,221 for rent. In 2001, there were 80,094 vacant dwellings for rent, which means that there has been an increase of 38%.



Source: INE, Censos 1981, 1991, 2001

According to Census 2011, the housing needs in quantity terms were 132,656 dwellings, 22% less than in 2001[72]. The calculating of the cover tax for housing needs [*taxa de cobertura de carências habitacionais*] corresponds to the quotient between the vacant dwellings available on the market and the totality of the housing needs. In 2011, the vacant dwellings available on the market covered 207% of the housing needs, i.e., there were, in Portugal, more than double the needed dwellings to respond to the housing necessities. This value had a significant increase between 2001 and 2011, due to the addition of 48% of vacant dwellings available on the market[73].

Generally speaking, one can say that in terms of population sectors, those who are in a housing need situation could be both poor households and people in a weak economic situation, who cannot access home ownership acquisition loans, but whose income is not low enough to access state promoted social housing (especially at the municipal level). In this situation are most young people. In fact, according to the Eurostat study, roughly 58% of Portuguese with ages between 18 and 34 years old still live with their parents, mostly due to unemployment or temporary contracts of employment, which contribute to a later departure from the parental home[74].

With regard to the scarcity of dwellings, as seen before, in Portugal, there are twice as many vacant dwellings as are needed to fulfil the housing needs.

Looking at the construction and real estate market statistics, referred to in the previous question, we see that all the regions presented annual negative variations in terms of the number of licensed buildings. However, the region of Azores was remarkable for presenting a variation of -31.4%.

[72] *Evolução do Parque Habitacional em Portugal 2001-2011*,46.
[73] *Evolução do Parque Habitacional em Portugal 2001-2011*, 47.
[74] *51 million young EU adults lived with their parent(s) in 2008* - Issue number 50/2010.

With regard to the number of licensed dwellings in new constructions for family housing, every region registered average negative variations, especially, Azores (-47.8%) and Lisbon (-44.2%), but with the exception of Algarve (+2.3%).

As regards the overall number of concluded buildings (new constructions, extensions, amendments and rebuilding), as seen in Table II, the North and Centre regions presented average annual positive variations of 7.1% and 0.7%, respectively. All the other regions presented average annual negative variations. The lowest values were registered in Lisbon (-16.6%), Alentejo (-11.5%) and Algarve (-11.3%).

As for concluded buildings in new constructions for family housing, the average annual variation was -5%. The North region exceptionally registered an annual positive variation of 5%. All the other regions presented negative variations, especially Lisbon with -21.8%.

The average annual variation of concluded dwellings in new constructions for family housing was -22%. Every region presented negative variations, especially Madeira (-38.9%) and Lisbon (-33.9%)

Table II – Licensed and concluded buildings

Construction: licensed and concluded buildings	Licensed Buildings**			Concluded Buildings		
	2.ºT - 2012	3.ºT - 2012	Annual variation*	2.ºT - 2012	3.ºT - 2012	Annual variation*
	Number		%	Number		%
Portugal						
Number of buildings	5 232	5 133	-14,4	6 164	6 445	-1,1
In new construction	2 951	2 870	-23,4	4 383	4 619	-4,0
For households	2 034	1 981	-28,5	3 422	3 592	-5,0
Dwellings	2 814	2 649	-32,4	4 729	5 341	-22,0
Total Area (m2)	1 951 183	1 975 968	-20,6	2 522 953	2 736 446	-6,8
Norte						
Number of buildings	1 941	1 801	-12,5	2 408	2 559	7,1
In new construction	1 163	1 092	-21,0	1 788	1 899	4,9
For households	860	780	-26,6	1 472	1 551	5,0
Dwellings	1 161	1 127	-26,7	1 915	2 027	-15,3
Total Area (m2)	707 547	635 528	-16,2	980 714	1 076 782	-4,2
Centro						
Number of buildings	1 633	1 607	-15,4	1 974	2 050	0,7
In new construction	877	895	-25,8	1 382	1 428	-3,1
For households	533	570	-30,8	1 007	1 044	-4,0
Dwellings	772	656	-34,6	1 361	1 483	-19,7
Total Area (m2)	579 866	629 684	-18,9	820 502	787 522	1,1
Lisboa						
Number of buildings	663	761	-9,3	600	620	-16,6
In new construction	340	366	-21,3	438	447	-20,5
For households	272	302	-22,7	370	384	-21,8
Dwellings	399	422	-44,2	671	788	-33,9
Total Area (m2)	348 667	414 266	-21,1	299 053	383 474	-22,4
Alentejo						
Number of buildings	501	480	-17,4	585	595	-11,5
In new construction	299	267	-22,3	388	419	-13,8
For households	177	158	-31,9	267	277	-16,2
Dwellings	188	205	-36,0	304	416	-19,5
Total Area (m2)	184 218	142 690	-25,1	192 748	277 924	-7,9
Algarve						
Number of buildings	242	219	-12,4	284	293	-11,3
In new construction	118	91	-13,3	176	187	-17,1
For households	94	64	-8,6	151	159	-17,8
Dwellings	176	93	2,3	288	328	-29,2
Total Area (m2)	77 009	72 442	-19,4	100 656	103 937	-22,5
R.A Açores						
Number of buildings	152	181	-31,4	160	196	-3,0
In new construction	94	111	-37,4	105	145	-3,9
For households	47	61	-51,9	68	95	-9,8
Dwellings	58	68	-47,8	68	185	-15,6
Total Area (m2)	33 958	53 039	-39,4	72 142	66 126	4,4
R.A Madeira						
Number of buildings	100	84	-19,4	153	132	-3,7
In new construction	60	48	-32,7	106	94	-3,8
For households	51	46	-33,2	87	82	-11,3
Dwellings	60	78	-32,9	122	114	-38,9
Total Area (m2)	19 918	28 319	-59,0	57 138	40 681	-7,4

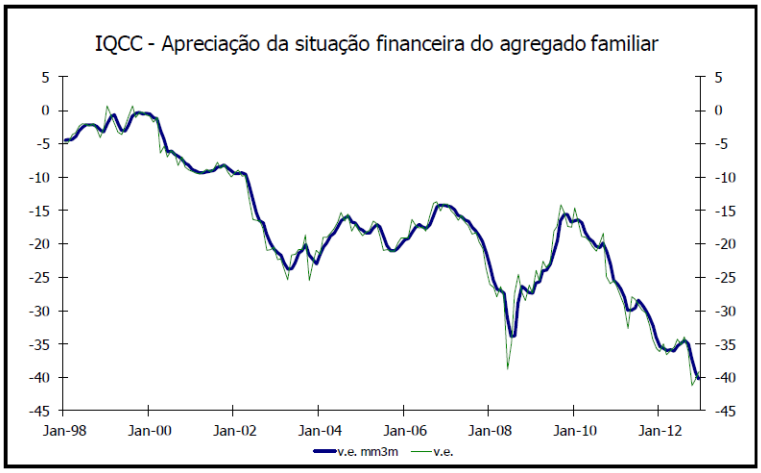
Note: * Annual variation - average variation of the last four quarters compared to the same period of the previous year
** Preliminary data

- **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? Is there a year forecasted where growth in number of households will stabilize or will start declining?**

There is no precise data about this question either. There are no forecasts available about any increase or decrease in the number of households. However, it can be predicted, through other indicators, that the number of households should not increase. The consumer confidence indicator has been continuing to fall and reached a historical low in December of 2012. The expectations about the evolution of the country's economic situation presented the most negative contribution to the confidence indicator's behaviour, which decreased significantly in the last four months. The opinion about families' financial situation and the country's economic situation registered, in December, the lowest values, given the negative trends that have been observed since the end of 2009[75].

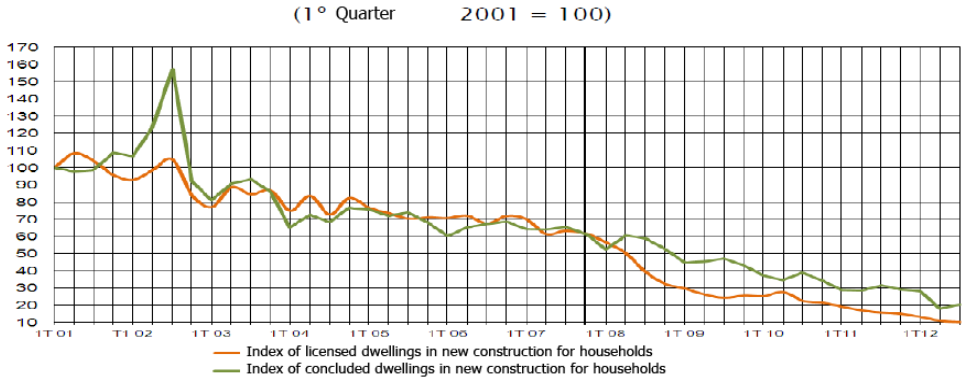
[75] *Inquéritos de Conjuntura às Empresas e aos Consumidores*, INE, Dezembro de 2012.

Figure 14 - Evaluation of the financial situation of households



As regards the construction and real estate market, there are no forecasts available for the evolution of this market in the near future. However, we can assume that the number of buildings and dwellings will continue to decrease, as this has been the trend for several years. In Portugal, in the last quarter of 2012, 5.1 thousand buildings have been licensed, and 6.4 thousand have been concluded. These values correspond to average annual variations of -14.4% and -1.1%, respectively. The licensed dwellings in new constructions for family housing are decreasing, which has been verified for several quarters. In the last quarter of 2012, the number of licensed dwellings in new constructions for family housing registered an average annual negative variation of 22%[76]. The evolution of licensed dwellings and built dwellings in the last decade can be seen below:

Figure 15 – Index of licensed and concluded dwellings in new construction for households



[76] Construção: Obras licenciadas e concluídas, INE, 3º Trimestre de 2012- Dados preliminares.

- **What is the number/percentage of families/households depending on rental housing (vs. owner-occupancy and other forms of tenure)? What is the number/percentage of immigrants among them?**

According to the results of *Inquérito às Condições de Vida e Rendimento* (Statistics on Income and Living Conditions - EU-SILC), performed in 2011, the resident population at risk of poverty, in 2010, was 18%. Based on the housing overcrowding rate, which compares the number of available divisions with the family's dimension and composition, is estimated that, in 2011, 11% of people lived in exiguous spaces[77].

In 2011, in comparison with the totality of housing stock (about 3.99 million permanent residence conventional dwellings), the overcrowded households corresponded to 11%. There were 450,729 overcrowded households, of which 349,713 lacked 1 room, 78,568 lacked 2 rooms and 22,448 lacked 3 or more rooms.

There is no statistical information about the number or percentage of immigrants with housing needs. As mentioned in **section 1.1**, in the question about immigrants, there are problems in access to housing and there are some issues related with the housing conditions of several dwellings, especially the problem of the overcrowded dwellings.

2.2. Issues of price and affordability

- **Prices and affordability:**
  - **What is the typical cost of rents and its relation to average disposable income (rent-income ratio per household)? (Explanation: If rent is 300€ per month and disposable household income 1000€ per month, the rent-to-income ratio is 30%).**

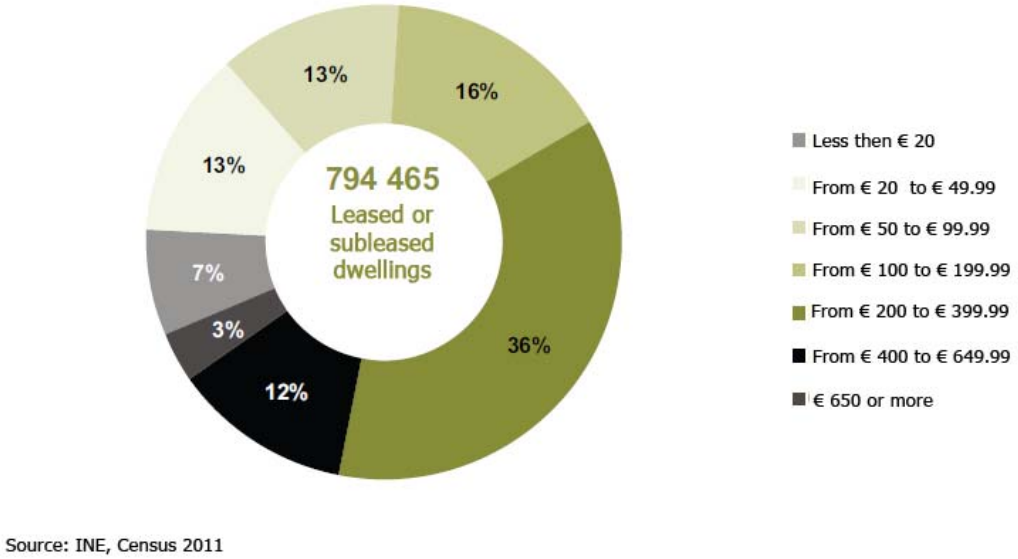
According to the available statistical information, the average rent in Portugal is as different as its source.

From the statistics provided by Census 2011, one can see that the average monthly rent values in Portugal were close to 250€. Analysing the monthly rents in ranges, it turns out that 52% of dwellings had rents whose values were between 100€ and 400€ and dwellings with rental values under 20€ only represented 7%, with the exception of Alentejo region, with 11% of dwellings with rental values under 20€. On the other side of the spectrum, dwellings with rental values above 650€ represented 3% of the total rented and subleased dwellings, with the region of Lisbon

[77] *Rendimento e Condições de Vida*, INE, 2011 (Dados Provisórios).

standing out with 6.5% (considering the regions' dwellings distribution by the several rent ranges[78].

Figure 16 – Distribution of conventional dwellings of usual residence by monthly rent size class



Source: INE, Census 2011

According to the Survey into Households' Financial Situation [*Inquérito à Situação Financeira das Famílias*] (ISFF) performed in 2010 - integrated in the European project known as Household Finance and Consumption Survey (HFCS) - under the responsibility of Banco de Portugal (BdP) and INE's, and which analyses the households' expenses, the Portuguese average monthly rent was 428€[79]. In Lisbon metropolitan area the rent was much closer to 757€ per month.

According to several studies carried out by companies, associations or real estate market consultants, the average rent was close to 750€ per month, in the case of the real estate available for renting.

In turn, a study by Associação dos Profissionais e Empresas de Mediação Imobiliária de Portugal (APEMIP) concluded that, in Portugal, the average rent value fell from 834€, in 2010, to the current 726€, which represents a 13% correction[80].

The real estate consultant Worx revealed another study, in which the monthly average rent was about 750€ in the case of two-room dwellings (T2), while for three-room homes (T3) the monthly values were above 1.000€[81].

According to the webiste "Lar Doce Lar"[82], in the last quarter of 2011, there were about 23 185 properties available for rent in mainland Portugal. 85% of the

[78] *Evolução do Parque Habitacional em Portugal 2001-2011*, 63.
[79] *Inquérito às Despesas das Famílias 2010-2011,* (Lisboa, INE, 2012), 29.
[80] http://casa.sapo.pt/Noticias/Rendas-medias-em-Portugal-caem-13-nos-ultimos-dois-anos/?ID=20817(accessed 10 Jan. 2013).
[81] http://economico.sapo.pt/noticias/rendas-de-casa-em-lisboa-sao-40-mais-caras-do-que-no-porto_133639.html.

site's total offer was concentrated just in the Lisbon metropolitan area (58%) and in Oporto (26%). Trying to reach an average rent value for mainland Portugal, bearing in mind the dwelling value, the average price would be 9.6 €/ m² for the properties offered on the site[83]. Thus, the rent for an 80 m^2 dwelling would be 768€.

These average values are very influenced by the prices applied in the metropolitan areas of Lisbon and Oporto, as the larger number of leases is concentrated there. For example, in 2011, of the 794,465 rented dwellings existent in Portugal, 307,940 were located in Lisbon's metropolitan area. This means that about 39% of the rented dwellings were located there[84]. According to the rent index of *Confidencial Imobiliário*, in the Municipality of Lisbon, homes are rented for an average of 9.16€/m², which means that the dwellings' value is 768€[85].

In 2012, the Minimum Monthly Guaranteed Wage, commonly known as National Minimum Wage, was 485,00€, which corresponds to an annual national minimum wage of 6,790.00€[86]. According to the Employment Survey [*Inquérito ao Emprego*], performed by INE, the average monthly net income for employees in the last quarter of 2012 was 805€ per person. According to ISFF, the average annual household net income in 2009 was 23,811€, which means, an average of nearly 1,984€ per month[87].

So, if we considere that the average monthly rent value was 250€ (according to 2011 Census), and the average monthly disposable household income was 1,984€, the rent-to-income ratio has to be 13%. For minimum wage, the rent-to-income ratio will be 52%.

- **To what extent is home ownership attractive as an alternative to rental housing**

The real estate market has restrictions, as a result of the rent freeze for many decades and of the rigidity of the urban lease legal regime, that have limited the private rental sector. As consequence, these circumstances make the rents in new leases higher than the loan payments for home acquisition. Besides, with all the difficulties in access to social housing, Portuguese families started to choose to buy their own homes[88].

With regard to home ownership, in 2011, there were nearly 1.253 million classic familiar permanent residence dwellings occupied by their owners, who had monthly charges with their acquisition. However, more than half of the owners

[82] http://www.lardocelar.com/.
[83] Ana Cristina Borges, *O Enquadramento Legal do Arrendamento Urbano e o Mercado de Arrendamento*, (Lisboa, Associação dos Industriais da Construção de Edifícios, 2011) 88.
[84] Census 2011.
[85] Ana Cristina Borges, *O Enquadramento Legal do Arrendamento Urbano e o Mercado de Arrendamento* 90.
[86] http://www.pordata.pt/Portugal/Ambiente+de+Consulta/Tabela.
[87] *Inquérito às Despesas das Famílias 2010-2011*, 44.
[88] *Retrato da Habitação em Portugal: Características e Recomendações*, (Lisboa, Associação Lisbonense de Proprietários, 2011), 11.

(tenants) didn't have, at the time of the census, financial charges with the home acquisition (57%, in a universe of 1,670 dwellings). 43% of dwellings were occupied by owners with buying charges, meaning that 51% of these dwellings had monthly fees between 250€ and 500€. On average, the charges paid to buy homes in Portugal were close to 400€ per month[89].These charges include depreciation and interests on amounts due. In 2011, the average monthly charges for home purchases was nearly 395€. In 2001, this value was only 291€, which means that in the last decade the home acquisition charges increased almost 36%, representing an average increase of 104,50€[90].

In November of 2012, in reference to housing credit for the purpose of home ownership, the average value of instalments was 276€. In the same month, in reference to contracts signed in the past three months, the average instalment was 361€[91].

Of 343,001 leases signed between 2006 and 2011 (under NARU rules), 102,874 (30%) of these leases had rents between 300€ and less than 400€, and 81,452 (24%) had rents between 200€ and less than 300€. Considering these amounts, one can say that home ownership is more attractive than tenancy. In fact, for roughly equal amounts, you can have ownership. However, it's important to keep in mind that nowadays the access to housing credit is increasingly restrained – the borrower has to have a solid financial standing or to provide good securities – and frequently requires a commitment for many years to come (20, 30, 40).

- **What were the effects of the crisis since 2007?**

The current evolution of the housing real estate sector cannot be understood without its context in Portugal's economic, financial and monetary integration process in the euro area, which democratized families' access to the debt market. With the major decrease in the price of money and with the accessibility to the credit market provided by the liberalization of the finance markets during the 1990s, thousands of Portuguese, even those who had low incomes, chose home ownership[92].

Up to until 2002, a low-interest credit facilities regime prevailed, which allowed families, especially the most deprived, to acquire their own home. The increase in interest rates and all the changes introduced in the credit regime in the late 90s influenced the decrease in the number of loans granted in 2000 and 2001. This situation got even worse after the termination of the low-interest credit facilities regime in 2002 and had a severe impact in 2003 and 2004[93].

From 2007, as result of the global financial crisis, the banks started to implement more stringent criteria for the approval of private home loans. This change

[89] *Evolução do Parque Habitacional em Portugal 2001-2011*, 60.
[90] *Censos 2011, Resultados Definitivos*, (Lisboa, INE, 2012), 76.
[91] *Taxas de Juro Implícitas no Crédito à Habitação*, (Lisboa, INE, November 2012).
[92] *Retrato da Habitação em Portugal: Características e Recomendações*, 7-8.
[93] *Relatório Dinâmica do Mercado*, (Lisboa, OHRU, Abril de 2009), 31.

was mostly reflected in the increased spreads in the case of riskier loans and in a higher requirements in several other contractual conditions, namely in the ratio between the loan value and the security value, in the required securities and in the charged commissions[94].The banks' conditions and terms for approving loans became slightly more restrictive, which translated into an increase in spreads (most notably in the case of riskier loans), but also into a slight tightening of other conditions and terms[95].

The housing bubble didn't affect Portugal (and Germany) as much as other countries, which suffered a fall in house prices resulting from the crisis in the US sub-prime mortgage market, the financial crisis and the sovereign debt crisis, with recessive effects on an international level since 2007[96]. However, in spite of the non-existence of a housing bubble, the absence of concrete actions and housing policies and the facilities for home ownership caused an increasing over-indebtedness of households and incommensurably encouraged the construction market, where there was a very high number of vacant dwellings[97].

Recently, the OCDE (2010) identified Portugal and Germany as the two countries in the euro area where the real house prices hadn't "shot up" since 1980[98]. Portugal wasn't affected by the excess of real estate on offer in its efforts to correct a speculative bubble, which is, for example, a factor that nowadays forces the drop in prices in the Spanish and Irish markets. In the national market, it's the falling demand that contributes to lowering house prices[99].

The CI-Confidencial Imobiliário/Lar doce Lar statistics analyse the discount rate increase, an indicator that compares the final sale price and the last market offer value. The comparison between 2007 and the last quarter of 2010 shows an increase in the discount applied by owners and developers when negotiating the sale of new houses in both metropolitan areas (Lisbon and Oporto), from nearly 2% to 5%. Meanwhile, with regard to the sale of used dwellings, the discount rate increased from about 2% to 11% in AMP and remained stable at nearly 5% in AML. The price is not the only house market adjustment variable. The Confidencial Imobiliário residential information system, which also measures the time between the dwelling's becoming part of the national housing stock and the time when it is no longer part of said stock, reveals that between 2007 and the end of 2010, there was an increase in the absorption time of used homes on the market in AML (from 7 to 16 months) and of new homes in AMP (from 19 to 27 months)[100].

The financial crisis effects are mainly noticed on the demand side, provoked by a reduced credit supply policy implemented by banks, by the significant increase

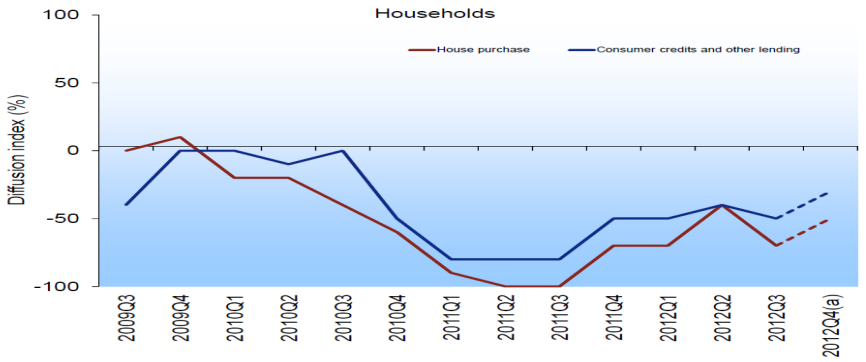
[94] *Relatório Dinâmica do Mercado*, 34.
[95] *Bank Lending Survey*, (Lisboa, BdP, October 2012), 1.
[96] *A Actualidade do Sector Imobiliário Residencial: Ajustamentos e Desafios*, (Lisboa, Nota Temática CGD # 2, Novembro 2011), 12.
[97] *Retrato da Habitação em Portugal: Características e Recomendações*, 9.
[98] *A Actualidade do Sector Imobiliário Residencial: Ajustamentos e Desafios*, 13.
[99] *A Actualidade do Sector Imobiliário Residencial: Ajustamentos e Desafios*, 13
[100] *A Actualidade do Sector Imobiliário Residencial: Ajustamentos e Desafios*, 14.

of the tax burden and by the high level of unemployment. The estimated unemployment rate for the last quarter of 2012 was 15.8%. This value is 0.8% higher than in the quarter before and 3.4% higher than in the last quarter of 2011. The unemployed population was 870.9 thousand people, which represents an annual increase of 26.3% and a quarterly increment of 5.3% (more than 181.3 thousand and 44.0 thousand people, respectively)[101].

According to the Bank Lending Survey (October 2012), carried out by BdP, a decrease in the demand for loans during the last quarter of the year, in the case of households, affected the house buying segment more severely. The identified main factors underlying this decrease were the decline in consumer confidence, the deteriorating outlook for the housing market, the evolution of non-housing related consumption expenditure and the downturn in spending on durable consumer goods. According to all surveyed banks, loan demand for house purchase decreased in the last quarter of 2012 (two banks reported a considerable decrease). Underlying this evolution was the deteriorating outlook for the housing market and consumer confidence and, to a lesser extent, an increase in non-housing related consumption expenditure[102].

Evolution of credit demand by the households:

Figure 17 - Evolution of credit demand by the households



[103]

2.3. Tenancy contracts and investment

- **Is the return (or Return on Investment (RoI)) for rental dwellings attractive for landlords-investors?**
  - **In particular: What were the effects of the crisis since 2007?**

The current situation in the national rental market results from the fact that home ownership has been seen as the first option in the housing market. Actually, this option seemed much more effective, allowing the return of investment and in

[101] *Estatísticas do Emprego*, (Lisboa, INE, 3º trimestre de 2012)
[102] *Bank Lending Survey*, 2.
[103] *Bank Lending Survey*, 4.

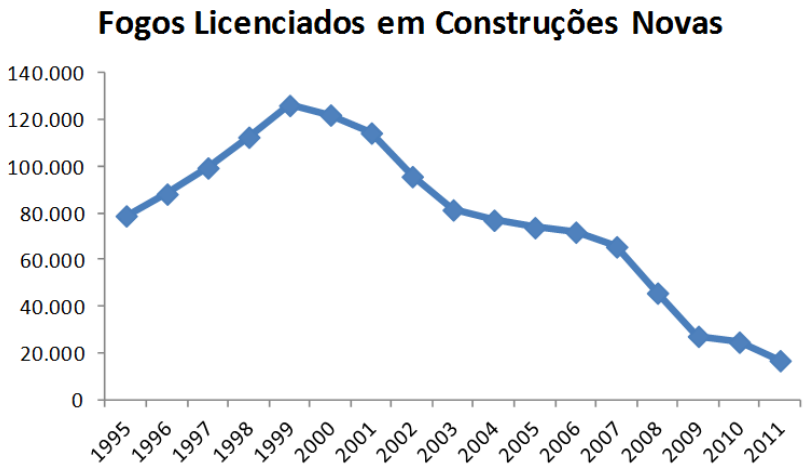
comparison with the multiple rent regimes that, during the best part of a century, had been conceived for a particular economic and political context[104].

After the 1990's, with all the transformations imposed by RAU, and especially after the entry into force of NRAU, which brought more flexible patterns to the renting regime, the renting market started to have the possibility of becoming attractive to the investment sector. Those rules were implemented with the purpose of reaching an equilibrium price between the offer (stock of dwellings) and the demand. Five years after NRAU, this market balance had not been achieved, given the fact that there is a long way to go until all of the rents for older contracts (signed more than 30 years ago) are updated, these being rents that were frozen for many years[105].

The revitalization of the rental market could be the solution to the current real estate sector crisis. To do so, it's necessary to correct some situations that were prevalent in the past. The "rent freeze" provoked a strong break and a lack of dynamism, which made this market much less competitive in comparison with the home ownership market[106].

The home ownership market is in severe recession. In Portugal, in the last decade (2001-2011), the investment in the construction sector fell 4.7%. The evolution of the number of dwellings built annually can be seen in the chart below. This clearly demonstrates a negative evolution of the construction market.

Figure 18 – Licensed dwellings in new construction



The licensing of works also experienced the downward trend in the last quarter of 2012, with new lows being recorded in this regard. The number of licensed buildings registered an average annual reduction of 14.4%, settling at 5.1 thousand buildings. All of the analysed variables registered quarterly figures lower since the first quarter of 2001. The number of concluded buildings has registered an average annual variation of -1.1%, reaching 6.4 thousand buildings. In comparison with the

[104] *Retrato da Habitação em Portugal: Características e Recomendações*, 12.
[105] *Retrato da Habitação em Portugal: Características e Recomendações*, 14.
[106] *Retrato da Habitação em Portugal: Características e Recomendações*, 16.

previous quarter, the number of licensed buildings registered a decrease of 1.9%, while for concluded buildings the estimated data point to an increase of 4.6%[107].

Therefore, the current crisis is creating a new opportunity for the rental market[108]. Due to the stagnation in the home ownership market and to the difficulty in obtaining a fixed-term deposit above 4%, the real estate agencies are seeking investors to acquire properties intended to be put up for rent. This is nothing more than an attempt to ensure a high possibility of increased investment through real estate acquisition in areas of great rental demand. For example, one of the most important real estate agencies in the Portuguese market, Era, launched a project named "Era de Agarrar", offering rates of return that range between 5.09% and 12.53% to investors who acquire houses to rent. The reasons behind the home renting demand are related to the decrease of families' income, to the mortgage credit access restrictions, which had led to a larger demand in the rental market by households, and the loosening of the new tenancy regulations, which allow a more accurate exploration of the real estate rental marketing[109]. However, it's important to keep in mind that the high taxation of income will decrease that rate of return. As an example, if the landlord's income were at the 49% IRS (income tax) step, the profits will vary between 1.3% and 2.5%[110].

- **To what extent are tenancy contracts relevant to professional and institutional investors?**

In Portugal, the private housing for tenancy purposes sector, instead of being led by professionals, is mostly run by individuals who negotiate directly as lessor and lessee. So, it can be said that the Portuguese private sector is suffering from a lack of professionalization.

- **In particular: may a bundle of tenancy contracts be included in Real Estate Investment Trusts (REITS) or similar instruments?**

With the exception of the free zone of Madeira (*Zona Franca da Madeira*), trusts cannot be created under Portuguese law. They are seen as incompatible figures in relation to the property law. The figure of a trust is not typified in the legal framework – Decree-Law no. 352-A/88, of 3rd October allows for the creation of trusts, but only in the free zone of Madeira – and it collides with some of the basic principles that rule property law, especially the principle according to which real rights must have a proper legal basis (*ius* in rem), contemplated in article 1306 (CC) and

[107] *Construção: Obras licenciadas e concluídas*, (Lisboa, INE, 3º Trimestre de 2012 (Dados preliminares)).
[108] *Retrato da Habitação em Portugal: Características e Recomendações*, 16.
[109] http://www.ionline.pt/dinheiro/mediadoras-apostam-casas-alta-rentabilidade-arrendar.
[110] http://www.dinheirovivo.pt/Mercados/Artigo/CIECO046438.html?page=1.

the prohibition of temporary property outside the cases expressly contemplated in the law (art. 1307, no. 2 CC)[111].

However, in Portugal we have some similar instruments to trusts. The Collective investment schemes (CIS), notably for investment in transferable securities or in real estate assets, have been an important tool in the Portuguese financial system for the last 20 years. CIS may be defined as an undertaking having the purpose of collectively investing capital obtained from investors, which is managed under a principle of risk sharing and exclusively aimed at the investors' best interests. Decree-Law no. 252/2003, of 17th October 2003, sets out the general legal framework on Undertakings for Collective Investment (UCI) [*Organismos de Investimento Colectivo*], while Decree-Law no. 60/2002, of 20th March 2002, (amended for the last time by Decree-Law no. 71/2010, of 18th June of 2010)[112] established the general regime on Real Estate Investment Funds (REIF) [*Fundos de Investimento Imobiliário*]. From the beginning on, Portuguese UCI law determined that UCIs may adopt the legal structure of either an investment fund (contractual structure) or an investment company (corporate structure). An investment fund corresponds to an autonomous pool of assets, owned by the unit-holders but managed by the respective fund manager, while an investment company is owned by its shareholders and is managed by itself, even though it may have an investment adviser or outsource its management[113].

Article 2 of Decree-Law 60/2002 gives us a notion of REIF: 1. Real estate funds are collective investment undertakings, whose sole objective is investment, under the terms set down in this document and in the applicable regulatory provisions, of capital obtained from unit-holders and the operations which are subjected to a principle of risk spreading. 2. Investment funds constitute stand-alone assets, and, in the special system of communion of assets regulated by this document, belong to a group of natural persons or legal persons, known as "unit-holders". Without prejudice to the provision set forth in Article 48, funds are not, under any circumstance, answerable for debts incurred by these unit-holders or by entities that, under the terms of the law, are responsible for their management[114].

Law 64-A/2008, of 31st December, established the Legal Regime of the Real Estate Investment Funds for Tenancy with Housing Purposes (*Regime Jurídico dos Fundos de Investimento Imobiliário para Arrendamento Habitacional* - FIIAH) in article 104 no. 1. The legal framework applicable for this type of funds is the Legal Regime of the Real Estate Investment Funds and the Securities Code, with the exception of specific regulations provided by the referred article. The intention of this

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[111] Afonso Patrão, *Reflexões sobre o Reconhecimento de Trusts Voluntários sobre Imóveis Situados em Portugal*, LXXXVII, Boletim da Faculdade de Direito, 355-356 (2011).

[112] An English version (without the amendments made in 2010) of the law can be found here: http://www.cmvm.pt/EN/Legislacao_Regulamentos/Legislacao%20Complementar/Gestao%20Activos/Fii/Documents/fbe3f896d4c145d088ea896aba62ca57DL602002RJFIIENGCons211A2008.pdf.

[113] Pedro Simões Coelho, Ricardo Seabra Moura and Orlando Vogler Guiné, *Portugal: Investment Funds Update*, 2010, http://www.financierworldwide.com/.

[114] Some statistics about real estate funds can be found here: http://www.cmvm.pt/en/estatisticas/indicadores%20fundos%20imo/pages/20130118.aspx.

regime is to allow the defaulted households with financial difficulties, to make a kind of conversion of the mortgage payments into rents (of a lesser value). The legal mechanism is for the owner (debtor) to alienate the immovable to the fund, and simultaneously to celebrate a tenancy agreement with the fund. By doing so, the debtor changes the respective contractual position from owner to lessee. However, there is established an option to purchase for the tenant until 2020. At least 75% of the assets of the FIIAH had to consist of immovable properties.

- **Is the securitization system related to tenancies in your country? Are commercial (or other) landlords allowed to securitize their rental incomes? If yes: Is this usual and frequent?**

Article 4 no. 1 of Decree-Law no. 453/99, of 5th November, (last amended by Decree-Law no. 211-A/2008, of 3rd November), establishes that only the credits that cumulatively fulfil the following prerequisites shall be granted for securitisation purposes: a) Their transmissibility is not subject to legal or conventional restrictions; b) They are of a pecuniary nature; c) They are not subject to any conditions; d) They are not subject to litigation and are not given as a guarantee nor are they judicially pledged or apprehended. Point no. 3 determines that future credits may also be granted for securitisation purposes, provided that they arise from established relations and are for a known or estimable amount. In this regard, a landlord could transfer the credits (both the overdue or future rents) derived from a tenancy agreement.

According to the statics of the BdP[115], about securitised assets, at the end of 2011, 72% of the securitised loans granted by Monetary Financial Institutions were credits originally granted to private individuals, 92% of which were mortgage loans.

2.4. Other economic factors

- **What kind of insurances play 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)?**

Law no. 32/2012, of 14th August, established in article 10 that an insurance policy should be taken out (*contrato de seguro de renda*). The main purpose of a rent insurance contract is to cover possible breaches of contract, namely the tenant's obligation to pay a certain number of rents to the landlord, besides the additional hedging of other risks that the landlord may be subject to, such as damages caused by tenants, costs and charges supported by the landlord with a possible eviction procedure of the tenant and the payment of eventual rents and compensations. This Law has not been ratified yet, wherefore rent insurance contracts are not directly regulated. However, the landlord may celebrate this kind of contract with any

[115] *Estatísticas de fundos e sociedades de titularização de créditos*, (Lisboa, BdP, Nota de Informação Estatística, 21 March 2012).

insurance company, as the Civil Code establishes the principle of freedom of contract in its article 405. Fire insurance, for example, is the tenant's responsibility.

- **What is the role of estate agents? Are their performance and fees regarded as fair and efficient?**

Real estate agents develop an intermediary role between the seller and the buyer. Their activity is regulated by Decree-Law no. 211/2004, of 20th August of 2004, and is supervised by InCI (Instituto da Construção e do Imobiliário).

There is no information that permits us to reach any conclusion on the fairness or efficiency of their fees. The standard fees normally are roughly 4% or 5%, if the estate agent is a large real estate company or 3% if it is a small real estate company.

2.5. Effects of the current crisis

- **Has mortgage credit been restricted? What are the effects for renting?**

Mortgage credit has been restricted by the financial entities, which increasingly require more and more conditions. On the one hand, the bank entities are requiring more securities and establishing higher spreads in home ownership acquisition credit. Since 2007, the banks started to apply more demanding criteria to approve loans to private individuals for home ownership acquisition. This change led to an increase of higher risk loan spreads and to higher requirements in the other contractual conditions, namely in the ratio between the loan value and the security value, in the securities requested and in the charged commissions[116]. On the other hand, there has been a decrease in the demand for loans to buy homes. The most relevant factors in this decrease are the deterioration of housing market perspectives and of the consumers' confidence and, to a lesser degree, the increase of non-home ownership acquisition related consumer spending[117].

The number of mortgage loans for home purchases have been significantly decreasing in the last decade, especially since the subsidised credit regime is ended in 2003 (by virtue of article 1 of Decree – Law no. 305/2003, of 9th December).

[116] *Relatório Dinâmica do Mercado*, 34. *Bank Lending Survey*, 2.
[117] *Relatório Dinâmica do Mercado*, 34.

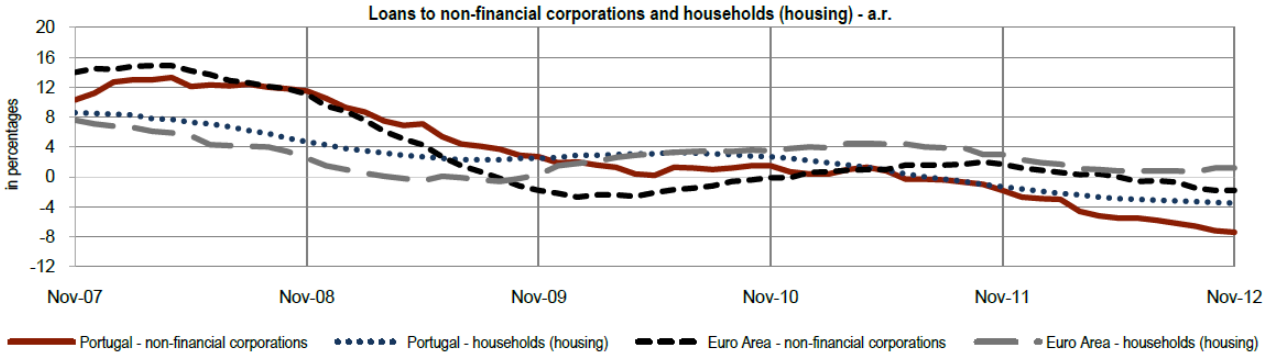
Table C - Contracted loans from 2000 to 2007

	Number of contracted loans from 2000 to 2007							
	2000	2001	2002	2003	2004	2005	2006	2007
Subsidised regime - Youth	42.690	41.112	41.418					
Subsidised regime - Others	30.086	26.239	23.758					
Subsidised regime - Total	72.776	67.351	65.176					
General regime	102.337	85.783	102.659	139.878	145.075	156.405	148.957	148.235
Total	175.113	153.134	167.835	139.878	145.075	156.405	148.957	148.235

Source: DGTF, Informação Estatística sobre Operações de Crédito à Habitação[118]

Since 2007, there is no additional statistical information about the annual number of contracted loans. However, according to the Bank of Portugal's statistics about the annual rate of change, one can see that in November of 2008, households' loans for housing purposes had an annual rate of change of +8% and in November of 2012 the annual rate of change was -3.5%[119].

Figure 19 – Loans to non-financial corporations and households (housing)



120

It cannot be known exactly what the effect on the housing market will be. However, the private rental market is growing, not only due to the restriction on access to home loans, but also on account of the new law of urban tenancy, which made the rules on tenancy contract less strict.

- **Indicate the current figures on repossession (seizures of houses in case of mortgage credit default of the buyer). Have repossessions affected the rental market?**

[118] *Relatório Dinâmica do Mercado*, 31.
[119] *Statistical Bulletin*, 1, (Lisboa, BdP, 2013), 36.
[120] *Statistical Bulletin*, 1, 36.

The banks cannot confiscate real estate, even in the case of debtor default. The legal regime for mortgages (*hipotecas*) in Portugal does not allow the creditor to appropriate the asset. This is known as agreement of forfeiture (*pacto comissório*) and is established in article 694 of the Civil Code. However, current practice provides for the proposal by the banks to the housing credit debtors of a lieu of payment (*dação em cumprimento*), the object of which is the house that is being bought with the loan. This repossession procedure is based on debtor cooperation.

At the end of 2013, there were circa 8% of mortgage arrears in Portugal, according to the statistics of the Bank of Portugal[121].

There is no official data available to say that bank repossessions have affected the rental market.

- **Has new housing or housing-related legislation been introduced in response to the crisis?**

In 2012 new draft legislation relating to housing issues was approved, in order to respond to the economic crisis, and especially to observe the memorandum of understanding.

Law no. 30/2012, of 14th August, which amends Decree-Law no. 157/2006, of 8th August, which regulates the works in renting buildings.

Law no. 31/2012, of 14th August, which amends the Civil Code and Law no. 6/2006, of 27th February (NRAU). This law aims to change the urban leases regime.

Law no. 32/2012, of 14th August 2012, which amends Decree-Law no. 307/2009, of 23rd October 2009, which establishes the legal regime of urban regeneration (*reabilitação urbana*).

Law no. 58/2012, of 9th November of 2012, which creates an extraordinary regime of housing credit debtors in need protection. This extraordinary regime aimed at families with economic difficulties (in which at least one of the borrowers has to be unemployed or lost 35% or more of his/her gross annual income); the household effort rate must be increased to 45% or more (with dependants) or 50% or more (without dependants) on account of the loan.

Decree-Law no. 1/2013, of 7th January, which approves the *Balcão Nacional do Arrendamento*, which, in turn, regulates the special procedure for eviction (*Procedimento especial de despejo*). The main idea is for out-of-court eviction procedures to become speedier.

Summary table 2

	Landlord	Tenant
Crisis effects	+	
Return on investment	+	

[121] https://www.bportugal.pt/pt-PT/Estatisticas/Paginas/BPStat%E2%80%93Estatisticasonline.aspx

Affordability		+
Local differences (in need, RoI and affordability)	+	+
Insurance	+	

2.6. Urban aspects of the housing situation

- **What is the distribution of housing types in the city scale (e.g.: are rented houses mainly in the city centres and owner occupied in the suburbs?) vs. the region scale (e.g.: more rented houses in the big cities, less in the villages?)**

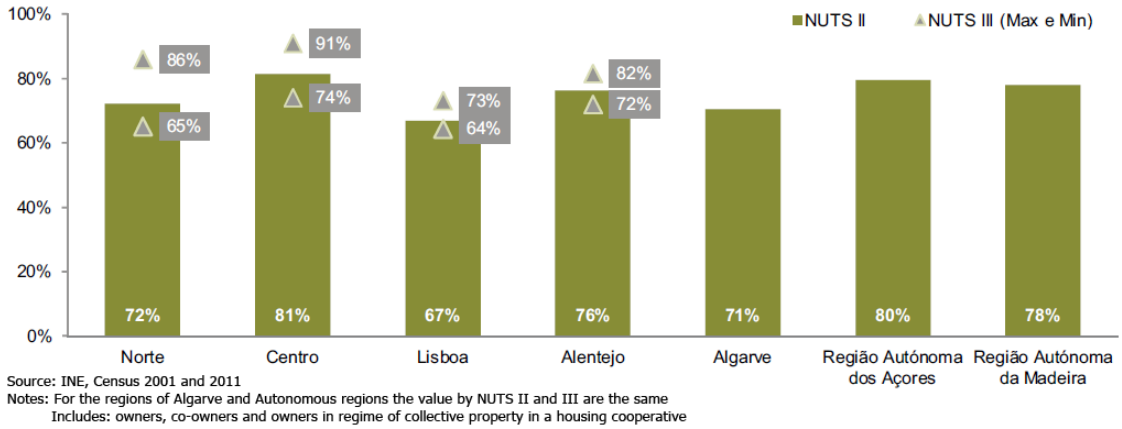
Concerning the regional scale and the distribution of housing types, the proportion of owner-occupied dwellings in big cities and in the regions with higher population tend to be lower than in small cities, villages, and regions with less population.

In 2011, as in 2001, owner-occupied dwellings could be found all over Portugal[122]. The NUTS II regions with a larger owner-occupied dwelling percentage were the Centre (81%, -4% when compared with 2001) and the Autonomous Region of Azores (80%, -5% in comparison with 2001). On the other hand, the NUTS II region with the lowest proportion of owner-occupied dwellings was Lisbon, with 67% (-1% compared to 2001). As regards NUTS III, particularly remarkable is the Pinhal Interior Sul region, with 91% of owner-occupied dwellings (-4% compared to 2001), while the sub-regions of Great Lisbon and Great Oporto stood out for having the lowest proportions of owner-occupied dwellings (64% and 65%, respectively, representing a reduction of 1% when compared to 2001)[123].

[122] In Portugal there are used, for statistical purposes, three levels of NUTS (Nomenclature of Territorial Units for Statistics), which are: NUTS I (Mainland Portugal, Azores and Madeira), NUTS II (Regional Coordination Commissions plus Autonomous regions [Azores and Madeira]) and NUTS III (Groups of Municipalities).

[123] *Evolução do Parque Habitacional em Portugal 2001-2011*, 58.

Figure 20 – Conventional dwellings for usual residence occupied by the owners by NUTS II, 2011



Source: INE, Census 2001 and 2011
Notes: For the regions of Algarve and Autonomous regions the value by NUTS II and III are the same
Includes: owners, co-owners and owners in regime of collective property in a housing cooperative

On the one hand, on a municipal scale, it is possible to verify that the proportion of owner-occupied dwellings was always higher than 50%. The municipalities with the lowest proportion of owner-occupied dwellings were Oporto (51%), Lisbon (52%) and Espinho (60%). On the other hand, the municipalities where the owner-occupied dwellings were most prevalent were Vinhais, Alcoutim and Oleiros, all roughly near 94%[124].

The NUTS II region with the highest percentage of classic dwellings in the rental regime (or subleasing) was Lisbon (27%, -2% compared with 2001). The Autonomous Regions of Azores and the Centre registered the lowest proportions of rented/subleased dwellings (both regions with 13%, when in 2001 they had presented proportions of 11% and 12%, respectively). Referring to NUTS III, we should mention the Great Lisbon sub-region, with 30% of occupied dwellings in rental or subleasing (-2% compared with 2001), while the Pinhal Interior Sul region had the lowest percentage of occupied dwellings in this regime (5%, -1% compared with 2001). On a municipal scale, the tenant or subtenant occupied dwellings registered the highest proportions in Lisbon and Oporto, 42% and 44% respectively. Alcoutim presented the lowest percentage of occupied dwellings in the rental or subleasing regime (2%). Alentejo and Algarve were the NUTS II regions with the highest proportions of occupied dwellings in other situations (both with 9%, +4% compared with 2001), which include the cases of free of charge tenures, usufruct, or other situations in which the dwelling occupation was associated with a work contract. Among the NUTS III regions, Alentejo Litoral distinguishes itself with 11% of occupied dwellings in other situations (+3% compared with 2001). Monchique registered in 2011 the highest percentage of occupied dwellings in other situations (16%).

Looking at matters on a city scale, one can verify that in the city centres there is a higher proportion of rental tenures than in the suburbs. We will focus our analysis of this matter on the Greater Lisbon and Greater Oporto sub-regions.

[124] *Evolução do Parque Habitacional em Portugal 2001-2011*, 59.

In the Greater Lisbon sub-region (includes the counties of Amadora, Cascais, Lisbon, Loures, Mafra, Odivelas, Oeiras, Sintra and Vila Franca de Xira) there were, in 2011, a total of 821,036 dwellings, of which 529,341 (64.5%) were home ownership tenures, 243,134 (29.6 %) rental tenures and 48,561 (5.9 %) represented other situations. The city of Lisbon had 237,247 dwellings, which corresponds to 28.9% of the total number of homes in the Greater Lisbon area. Of those 237,247 dwellings, 42.3% were rental tenures and 51.8% were home ownership tenures. In the suburban areas there were a total of 583,789 dwellings, but only 24.5% were rental tenures, as 69.6 % were home ownership tenures.

In the Greater Oporto sub-region (includes the counties of Espinho, Gondomar, Maia, Matosinhos, Oporto, Póvoa do Varzim, Santo Tirso, Valongo, Vila Nova de Gaia[125]) there were, on the date of Census 2011, 484,280 dwellings, of which 315,868 (65.2%) were home ownership tenures, 137,292 (28.3%) were rental tenures and 31,120 (6.4%) represented other situations. The city of Oporto had 98,669 dwellings, which corresponded to 20.4% of all of the Greater Oporto dwellings. From that stock, 43.9% were rental tenures and 50.7% were home ownership tenures. In the suburban areas there were 385,611 dwellings, of which 24.4% were rental tenures and 69% were home ownership tenures.

- **Are the different types of housing regarded as contributing to specific "socio-urban" phenomena, e.g. ghettoization and gentrification?**

The "socio-urban" phenomena of ghettoization is related, especially in metropolitan areas, with the so called "*bairros sociais*" (social housing estates), which consist of aggregated conventional dwellings for usual residence with a rental tenure with a public task. The State usually owns these, but they can also belong to autonomous public institutions, to the Social Security or to other non-profit organisations, as well to local authorities or public companies[126]. These areas commonly suffer from multiple, interlinked problems of high unemployment and mortality rates, ethnic divisions, high levels of crime, and poor access to quality services (housing, education and health care).

With regard to the phenomenon of gentrification has been widely noted in the historical centre district of Lisbon, , especially after the urban rehabilitation project undertaken in the 90s, due to Expo '98 (1998 Lisbon World Exposition)[127]. Ever since the end of the 70s there has been a migratory movement of people living in the centre of the city towards the suburbs, in part due to an exponential growth of house prices, but also due to the demand for home ownership. The city centre has been suffering degradation, manly inhabited by people who couldn't afford to live in the

[125] When the 2011 Census took place, the municipalities of Trofa and Santo Tirso weren't included in the Greater Oporto region.
[126] *Contributos para o Plano Estratégico De Habitação 2008/2013, Relatório 1*, 159.
[127] Khadija Benis, *Vielas de Alfama: Entre Revitalização e Gentrificação*, (Lisboa, Faculdade de Arquitectura Universidade Técnica de Lisboa, 2011), 25-27.

suburbs. However, with this rehabilitation process, two decades later, several areas of Lisbon were improved, acquiring a great residential quality. This has largely contributed to the middle and upper classes returning to the historical centre of the city[128]. Most of these neighbourhoods' residents are the owners of their dwellings. However, there is also a significant number of tenants, particularly young people and those who recently moved to the city for work-related purposes. Nowadays, these are areas with very high-rent leases[129].

The phenomenon of gentrification does not have a very important role, due to the difficulties faced by many of the landlords in rehabilitating their buildings or houses, as there is upon their property an old tenancy contract that does not allow them to terminate the contract. In fact, the new law does not apply to these situations, which remain under the old law.

- **Do phenomena of squatting exist? What are their – legal and real world – consequences?**

The phenomenon of squatting is not so relevant in the Portuguese scenario, with the exception of small groups in protest movements anarchy -related and in defence of political ideologies of State suppression – people who defend the right to difference and the right to occupy uninhabited or abandoned houses, living in an alternative life-style and who are known as "*ocupas*" (squatters)[130]. Besides these movements there are also isolated cases of marginality and vandalism.

Immediately after the Revolution of 1974, a social phenomenon of occupying empty houses occurred. Decree-Law no. 198-A/75, of 14th April, allowed such squatting to be legalised, obliging the owner to stipulate tenancy contracts, if the dwellings were used for residential purposes[131].

With the recent financial crisis many households could no longer afford their home expenses, either the mortgage payments, or otherwise the rent stipulated in their leases. However, there's no signs in society of the relevance of the phenomenon of squatting, even as an effect of the financial crisis, maybe due to the delays of the judicial proceedings, the attachment and eviction, meaning that the defaulting households can stay for a longer period in their dwellings, even without being able to meet their payment obligations.

The Criminal Code establishes the crime of usurpation of real estate [*usurpação de coisa imóvel*] in its article 215, punishing with imprisonment of up to 2 years or a fine of up to 240 days anyone who by means of violence or serious threat, invades or occupies another's real estate, with the intention of exercising the right of property, possession, use or easement, not entitled by law, judicial decision or an

[128] Walter Rodrigues, *Globalização e gentrificação: teoria e empiria*, 29, Sociologia, Problemas e Práticas, 113-119 (1999).
[129] K. Benis, *Vielas de Alfama: Entre Revitalização e Gentrificação*, 71-73
[130] http://www.apagina.pt/?aba=7&cat=1&doc=7086&mid=2.
[131] See, for all, Luís Moitinho de Almeida, *As ocupações dos imóveis perante o Direito (Face e Reverso do «25 de Abril»)*, 36, ROA, 225-244 (1976).

administrative act. Civil law provides the owner with an exclusive right of use of his property (article 1305 CC) and a right of replevin or reclaim [*direito de reivindicação*] (article 1311 CC) in the event that his property is in the hands of a third person. Also in the event of the existence of damage, caused with fault on the part of the squatter, the owner has a right of reparation (civil liability), established in article 483 CC (general principle of tort law).

2.7. Social aspects of the housing situation

- **What is (are) the dominant public opinion(s) towards certain forms of rental types or tenure forms? (e.g. is renting considered as socially inferior?) In particular: Is only home ownership regarded as a safe protection after retirement?**

There's no fixed public opinion about rental tenures. There was, during several decades, a state policy favouring home ownership, which led most households, even the less affluent ones (through preferential loans), to prefer a home ownership tenure over a rental tenure. This option was preferred, not due to notions of social inferiority or any kind of social stigma regarding renting, but for economic motives, as the monthly instalments for home purchase have a similar value to rents.

For many years (until the entry into force of RAU in 1991 and only for contracts signed after its effectiveness), lease contracts were necessarily open-ended and the landlords' special right to terminate was restricted, so, in practical terms, there were several lifetime duration contracts. Thereby, even the rental tenures ensured the tenant's security after retirement.

- **What is the typical attitude of tenants towards different forms of tenure? (e.g. owners of privatised apartments in former Eastern Europe not feeling and behaving as full owners)**

The home ownership tenure is regarded as a tenure that offers greater stability to people. Normally, people who can afford a house purchase are those who have stable employment (and in the present times, who also have what could be considered a well-paid job) and, at the same time, who also have a stable emotional relationship, as a housing acquisition implies in most cases a loan to be repaid over several decades (20, 30 years) and a single person does not always have the financial resources for a home purchase.

The rental tenure normally is seen as a temporary demand for work-related reasons or during the time a person is displaced in another city. For a tenant, renting is seen as a more flexible solution, because it does not require a long term commitment (even in the open-ended contract cases, the lessee can terminate the contract as long as he/she gives notice to the landlord 120 days in advance.

	Home ownership	Renting **with a public task**	Renting **without a public task**
Dominant public opinion	Associated with stability, autonomy and personal fulfilment	Associated with poverty and social exclusion	Associated with temporary need and lack of family stability
Tenant opinion	The goal to reach, if economic and family stability are achieved.	For people with limited resources	A temporary option, until economic and family stability are achieved
Contribution to gentrification?	Principal factor	Inapplicable	Unrepresentative factor
Contribution to ghettoization?	Minor contribution	Main factor	Main factor
Squatting?	The squatter acts like he/she is the real owner	A significant problem	Not a factor

3. Housing policies and related policies

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?**

Housing policies depend on the economic scenario, being, for that reason, connected to general welfare policy, as well as to the tax system itself.

In more concrete terms, the housing policy of the state in recent decades, as mentioned before, was to allow households to buy a home by conferring access to credit facilities, especially through low interest loans (*crédito bonificado*).

Social housing policies have always been restricted to households with severe needs.

It does not allow public initiative to be subsidiary and complementary to the private initiative. In fact, the State has an elementary responsibility to promote and build low-cost and social dwellings, as has been decided by the Constitutional Court [*Tribunal Constitucional*][132].

- **What is the role of the constitutional framework of housing? (in particular: does a fundamental right to housing exist?)**

The housing policy is provided by the constitutional level only as concerns the right to housing *per se*. This is a social right, part of the economic, social and cultural rights, that are protected in the Portuguese Constitution as fundamental rights but have a lower protection than personal rights, freedoms and guarantees (which are

[132] J. J. Gomes Canotilho/Vital Moreira, *Constituição da República Portuguesa Anotada*, Vol I, 4.ª ed., (Coimbra, Coimbra Editora, 2007), 833-837.

also established as fundamental rights), due to the fact that they are enshrined in programmatic provisions. As a result, they cannot give rise to the same obligations of fulfilment. Actually, they are not immediately enforceable and their fulfilment depends on the availability of favourable social and economical conditions. Moreover economic, social and cultural rights are not generically enforceable, as they are essentially addressed to public authorities, binding them to the realisation of the existing constitutional programme on economic and social matters[133].

The right to housing is established in Article 65 (Housing and urbanism) of the Constitution of the Portuguese Republic (CRP) [*Constituição da República Portuguesa*], especially in numbers 1, 2 and 3, of Part I (Fundamental rights and duties), Title III (Economic, social and cultural rights and duties), Chapter II (Social rights and duties): '1. Everyone has the right for himself and his family to have an adequately sized dwelling that provides hygienic and comfortable conditions and preserves personal and family privacy. 2. In order to ensure the right to housing, the state is charged with: a) Programming and implementing a housing policy that is incorporated into general town and country planning instruments and supported by urbanisation plans that guarantee the existence of an adequate network of transport and social facilities; b) In cooperation with the autonomous regions and local authorities, promoting the construction of low-cost and social housing; c) Stimulating both private construction, subject to the general interest, and access to owned or rented housing; d) Encouraging and supporting local community and popular initiatives that work towards the resolution of the respective housing problems and foster the formation of housing and self-building cooperatives. 3. The state shall adopt a policy that works towards the establishment of a rental system which is compatible with family incomes and provides access to individual housing'[134].

The right to housing is regarded as a right with a double *nature*. On the one hand, it consists of a right of not being arbitrarily deprived of a dwelling or of not being prevented from acquiring a dwelling. In this sense, the right to housing is viewed as a *negative right*, a right of defence against the state or any other person, like a real personal right, freedom and guarantee, such as for example, legal norms for family residence protection or limits for the eviction process, etc. But on the other hand, it consists of the right to acquire, by ownership, lease or any other legal form, a place to live. That requires that the state has certain measures and some programmes to reach that goal. In this sense, the right to housing is a true *social right*, as it requires state action. It demands, for example, the construction of sufficient dwellings for all households. The Constitutional framework does not directly require a public policy of housing promotion.

Besides the Portuguese Constitution, the right to housing is also established in international law instruments ratified by the Portuguese State or by international

[133] Jorge Bacelar Gouveia, *Fundamental Rights*, in Carlos Ferreira de Almeida, Assunção Cristas, Nuno Piçarras (Ed.), Portuguese Law – an Overview, (Coimbra, Almedina, 2007), 96-97.

[134] Official Translation on the Constitutional Court website: http://www.tribunalconstitucional.pt/tc/en/crpen.html.

institutions belonging to member States: article 25 of the Universal Declaration of Human Rights of 1948 (ratified by the Portuguese State on 9 March 1978); article 31 of the European Social Charter (ratified on 30 May 2002); and article 34 of the Charter of Fundamental Rights of the European Union.

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?**

There is not a specific competence in the constitutional or legal Framework as regards housing policy. Thus, all levels of government could be involved. At the national level (commonly referred to as the central administration [*administração central do Estado*]), we have the government, which is the entity that conducts the country's general policy and the senior organ of the public administration (article 182 CRP), which has normal legislative power (article 198 CRP); and the public administration (article 266 CRP).

At the regional level, there are the autonomous regions of Azores and Madeira (article 225 CRP), both islands in the North Atlantic, which have competences in their respective regions. They have political and legislative powers, because their insular positions require a larger degree of self-government. Mainland or continental Portugal does not have an administrative power at the regional level.

The local authorities are bodies of local self-government with administrative powers. There are two different levels of local authorities. The municipalities (article 249 CRP), which have two organs, the municipal assembly and the municipal executive (*câmara municipal*), and the parishes (*freguesia*), established in article 244 CRP, which have the parish assembly and the parish executive (*junta de freguesia*).

- **Which level(s) of government is/are responsible for designing which housing policy (instruments)?**

According to the framework of legislative jurisdiction, it's the Assembly of the Republic (parliament) and the Government that should legislate about housing matters. The right to housing (article 65 CRP) is an economic, social and cultural right, so the Government also has normal legislative powers, that is to say, the Assembly of the Republic does not have exclusive competence about those matters (article 198, no. 1, al. *a*), articles 164 and 165, all from the CRP). But in the bases of town and country planning and urbanism, the Assembly of the Republic has exclusive competence to legislate, unless it also authorises the Government to do so (articles 165, no. 1, al. *z*) and article 198, no. 1, al. *b*) CRP).

The autonomous regions also have legislative powers. In fact, they can produce regional legislative decrees, which are legislative acts that possess a

regional scope and address matters set out in the political and administrative statute of the respective autonomous region that are not the exclusive competence of entities that exercise sovereignty (Assembly of the Republic and the Government) (article 112, no. 4 and article 227, no. 1, al. *a*) CRP). They can also legislate on matters that are within that Assembly's partially exclusive legislative competence, with authorisation by the Assembly of the Republic (article 227, no. 1, al. *b*) CRP).

- **Which level(s) of government is/are responsible for which housing laws and policies?**

The responsible entity for the coordination of housing policies is the IHRU (Housing and Urban Rehabilitation Institute) [*Instituto de Habitação e Reabilitação Urbana*][135]. As was mentioned in the question about the lobby/umbrella groups, the IHRU is a public institution, subordinated to the Ministry of Agriculture, Sea, Environment and Spatial Planning**,** regulated by Decree-Law no. 175/2012, of 2nd August. IHRU's mission is to ensure the execution of the Government housing and urban rehabilitation policies, combining this pursuit with the cities' policies and with the other social and of heritage preservation and enhancement policies, always protecting the memory of the buildings and their evolution. The main competencies of the IHRU are: planning the Social Housing Policy Strategic Plan [*Plano Estratégico para uma Política Social de Habitação*], as well the annual and multi-annual investment plans for the housing and urban rehabilitation sector; supporting the Government in the definition and evaluation of housing policies, rental and urban rehabilitation execution; and developing or supporting the development of legislative and regulatory projects related with housing, urban rehabilitation, renting and housing stock management (article 3, no. 1, al *a*), *b*) and *c*) Decree-Law 175/2012).

The IHRU has the responsibility of supervising the more significant programmes with housing purposes: the Special Rehousing Programme (PER) [*Programa Especial de Realojamento*] in the metropolitan areas of Lisbon and Oporto created by Decree-Law no. 163/93, of 7th May of 1993, which was last amended by Decree-Law no. 271/2003, of 28th October of 2003. This programme aims to obtain financial support for the construction, acquisition or rental of houses and for reallocating households from shacks and similar non-conventional dwellings. The programme operates through the concession of funds to the owners of dwellings or buildings that need rehabilitation or through the acquisition of dwellings or buildings by the municipalities when those dwellings are to be used for the re-housing of the households listed in the programme. The beneficiary entities are the municipalities, municipal public enterprises, private social security institutions and housing or construction cooperatives. The form of occupation by the households of the dwellings is a social lease, with supported rent [*renda apoiada*][136].

[135] http://www.portaldahabitacao.pt/pt/ihru/.
[136] To see the results of programme for the years: *Contributos para o Plano Estratégico De Habitação 2008/2013, Relatório 2*, 29-42.

As explained in the beginning (point 1.1), the supported rent regime consists of a rental in which the amount of rent is subsidised, although its determination and update are subject to specific rules. Accommodation constructed or acquired for rental housing by the State and its autonomous bodies, public institutes and local authorities and private charities is subject to this regime (article 82. º).

This regime is subject to specific legislation approved by the Government.

The main programme controlled by the IHRU is the Access to Housing Financing Programme [*Programa de Financiamento para Acesso à Habitação*] (PROHABITA), which regulates the financing to help in extreme situations of housing need throughout the national territory. The legal regime is established by Decree-Law no. 135/2004, of 3rd June, modified by the Decree-Law no. 54/2007, of 12th March. The concept of serious housing need (*carência habitacional*) is more extensive than the PER programme, not being limited to people living in shacks or other non-conventional dwellings. Other situations, such as households living in unsafe buildings, with a lack of basic living conditions, situations of urgent need of a home (due to natural catastrophe, for example), are also covered by the programme. The PROHABITA focuses more on the rehabilitation of dwellings, but also has financing means for house acquisition, and/or the payment of rent. The programme is implemented through cooperation agreements between the municipalities or associations of municipalities and the IHRU[137].

Another programme supervised by the IHRU is the Controlled Cost Housing (*Habitação a Custos Controlados*) programme. The developers of the cost-controlled houses have access to a number of special lines of credit. The maxim amount of financing could reach up to 80% of the sale price of dwellings, with a subsidised interest rate up to 1/3 of the reference rate to calculate the subsidy. The entities that can promote the construction of cost-controlled houses are the municipalities, municipal public enterprises, private social security institutions, housing and construction cooperatives and also private enterprises[138].

The Controlled Cost Housing is built or acquired with financial support from the state, which grants tax and financial benefits for its promotion, and is intended to be the permanent residence of buyers or tenants.

[137] For futher informations about the programme: *Contributos para o Plano Estratégico De Habitação 2008/2013, Relatório 2*, 65-72.

[138] For more informations about the different programmes: http://www.portaldahabitacao.pt/pt/portal/habitacao/programasapoio/custoscontrolados.html.

3.3. Housing policies

- **What are the main functions and objectives of housing policies pursued at different levels of governance?**

The Strategic Housing Plan 2008/2013 (*Plano Estratégico de Habitação*) establishes some recommendations in the pursuit of social housing improvement, in order to support the population with market access difficulties[139].

The purpose is to rethink housing policies and rearrange the State's role in housing issues, due to severe social adjustments and significant changes to the housing dynamics imposed by the modifications of the financial market, the population's social and cultural needs and lifestyle, as well as the persistently high level of housing problems and needs. Thus, from the point of view of the Strategic Plan, the State strengthens its planning, regulation, supervision, monitoring and evaluation functions, reorganising its role as a fundamental partner – with the local authorities, the social organisations, the cooperatives and private entities – to the execution of political measures, clarifying the roles and relationships and also the expectations and responsibilities[140].

The need for housing is seen as a problem that belongs to the past, therefore nowadays the housing policies are perceived not as overall home access strategies, but instead as solutions for specific social groups. Its concerns are mainly urban regeneration oriented and, according to the severity, also directed at current attempts to stabilise an unbalanced private market, which created serious housing needs, especially provoked by the informality of construction and the weakness of the public intervention. It's important to facilitate access to low cost housing and adjust and maximise the profits of the existing housing stock[141].

In relation to social housing, the State acts now as a regulator instead of providing the dwellings themselves. There are new trends defending the reduction of direct State intervention in social housing provision, reinforcing the housing access supports, meanwhile the means through which the State interferes are changed, namely through tax policies, public-private partnership policies and financial support aimed at several agents[142].

The main objectives and measures to put in place are: to provide advantages in the renting regime, both in the public and private markets, creating easier and more flexible geographic mobility and housing conditions; efforts to achieve cost-controlled housing construction by companies and cooperatives for sale or lease, intended for middle class and lower middle class population strata[143];

[139] *Contributos para o Plano Estratégico De Habitação 2008/2013, Relatório 3*, 7.
[140] *Contributos para o Plano Estratégico De Habitação 2008/2013, Relatório 3*, 9.
[141] *Contributos para o Plano Estratégico De Habitação 2008/2013, Relatório 3*, 10-13.
[142] *Contributos para o Plano Estratégico De Habitação 2008/2013, Relatório 3*, 14.
[143] *Contributos para o Plano Estratégico De Habitação 2008/2013, Relatório 3*, 16-17.

- **In particular: Does the national policy favour certain types of tenure (e.g. rented housing or home ownership (owner-occupation)?**

One of the *Memorandum of Understanding on Specific Economic Policy Conditionality* (MoU) conditions was to approve some laws in order to stimulate the tenancy market. Law no. 31/2012, of 14th August, which amends the Civil Code, and Law no. 6/2006, of 27th February (NRAU), were the legal mechanisms set to accomplish that obligation of the Portuguese State. The idea behind the law was to create a new set of rules to allow the tenancy contract to be more agile, and, by so doing, to let the private market use the tenancy framework to fulfil the current housing needs. The reasoning behind this was to create a viable alternative to the home ownership tenures, and by so doing, to help reduce the indebtedness of the households and combat unemployment by encouraging the mobility of persons, as well as striving for the regeneration and revitalisation of urban centres (normally associated with old leases with outdated rents)[144].

- **Are there measures against vacancies (e.g. fines or forced assignments of vacant houses)?**

Owners of vacant dwellings pay higher taxes. In fact, they pay double the tax they would pay for a non-vacant dwelling.

- **Are there special housing policies targeted at certain groups of the population (e.g. migrants, Sinti and Roma etc)?**

There are no special housing policies targeted at a certain group of the population, except for young people (18 to 30 years old), who have access to a subsidised programme for tenancy contracts, known as "*Porta 65*", which will be analysed **section 2.3**.

As for the Roma population, despite the insistence of some Roma households on rejecting permanent residences, living in deteriorated dwellings or segregated neighbourhoods and having all of the difficulties associated with access to the home rental market, there are no specific measures or policies for the Roma[145].

3.4. Urban policies

- **Are there any measures/ incentives to prevent ghettoisation, in particular**
- **mixed tenure type estates[146]**
- **"pepper potting"[147]**

[144] *Proposta de Lei n.º 38/XII. Exposição de Motivos*.
[145] *Contributos para o Plano Estratégico De Habitação 2008/2013, Relatório 1*, 150-152.
[146] Mixed tenure means that flats of different tenure types: rented, owner-occupied, social, etc. are mixed in one building, it is the simplest way of avoiding homogenised communities, and to strengthen diversification of housing supply.

- **"tenure blind"[148]**
- **public authorities "seizing" apartments to be rented to certain social groups**

Other "anti-ghettoisation" measures could be: lower taxes, building permit easier to obtain or, in especially attractive localisation - as a condition to obtain building permit, condition of city contribution in technical infrastructure.

There are not any specific policies at national level as regards the execution of anti-ghettoisation measures. The policies and the measures are thought out at a local level, with the financial support of their own funding or of some state programmes that will be approached in **section 2.3**.

In 2007 the government established a programme called 'Critical Urban Areas Initiative' (*Iniciativa "Bairros Críticos"*)[149] coordinated by the Institute for Housing and Urban Rehabilitation (IHRU). This programme is the result of an innovative planning process in 2005 and 2006, based on strong participation methodologies and territorial approaches. It is being implemented in three specific neighbourhoods (Cova da Moura and Vale da Amoreira, situated in the Lisbon Metropolitan Area, and Lagarteiro, located in the Porto Metropolitan Area)[150]. The goals of the programme are to: (i) contribute to the social, economic, educational and cultural development of disadvantaged neighbourhoods, and (ii) develop the organisational and methodological framework as part of a national learning process. To accomplish such goals, the urban requalification and the rehabilitation of buildings and public spaces is needed.

- **Are there policies to counteract gentrification?**

There are no national policies to counteract gentrification.

- **Are there any means of control and regulation of the quality of private rented housing or is quality determined only by free market mechanisms? (does a flat have to fulfil any standards so that it may be rented? E.g.: minimum floor area, equipment, access to technical and/or social infrastructure and/or public transport, parameters such as energy efficiency, power/water consumption, access to communal services such as garbage collection. If so: how are these factors verified and controlled?)**

[147] This mechanism is locating social housing flats among open market ones, so as not to gather the lowest income families in one place. The concept is quite controversial, however in England the affordable housing system was used for a long time to minimize the modern city ghettos problem.
[148] This is a mechanism for providing social housing in a way that the financial status of the inhabitants is not readily identifiable from the outside. It is used to avoid/minimize stigmatization and social exclusion, which could be caused by living in (openly identifiable) social housing stock.
[149] http://www.portaldahabitacao.pt/pt/ibc/.
[150] For more information about the programme: Einar Braathen, Elsa Lechner, Marit Ekne Ruud and Susanne Søholt, *The 'Critical Urban Areas' Programme in Portugal*, (Oslo, Norwegian Institute for Urban and Regional Research, 2008).

The legal regulation of the licence of use is contemplated in the General Law on Urban Construction, adopted by Decree-Law no. 38 382, of 7th August of 1951. The licence of use is issued by the City Council of the place where the real state stands and its finality is to certify which use the building or building unit will have and if they are able to meet that purpose.

According to article 5 of Decree-Law no. 160/2006, of 8th August, only buildings or building units whose aptness to fulfil the purposes of the contract is proven by a licence for use (*licença de utilização*) can be the object of an urban tenancy. If the cause is imputable to the landlord, the failure to meet such requirements leads to the enforcement of an administrative fine with a value of at least one year of rent in favour of the municipality (no. 5 and 6 of art. 5).

For the acquisition of an urban building or apartment for housing purposes it is necessary to obtain the Technical Document of Housing (*Ficha Técnica da Habitação*), which is a descriptive document on the urban building's main technical and functional characteristics, stating its construction, reconstruction, expansion or amendment conclusion dates. It was created by Decree-Law no. 68/2004, of 25th March, and aims to strengthen the consumer rights to information and protection of their economic rights as far as the acquisition of an urban building or apartment for housing purposes is concerned. The property developer has to present a document with all the specifications of the building (numbers of rooms, how many reparations, type of materials, type of floor, etc.) to the consumer.

- **Does a regional housing policy exist? (in particular: are there any tools to regulate housing at regional level, e.g.: in order to prevent suburbanisation and periurbanisation? Is it possible to distribute local taxes so that villages can afford the limitation of housing areas?)**

The regulation and land planning at the regional and local level is provided by the Legal Regime of the Instruments for Territorial Management (*Regime Jurídico dos Instrumentos de Gestão Territorial*), approved by Decree-Law no. 380/99, of 22nd September. The spatial planning is done by the Municipal Master plan (*Plano Director Municipal*), which is an element of the Municipal Plan of Territorial Planning (*Plano Municipal de Ordenamento Do Território*), i.e., a document that regulates the land planning of a certain municipality. This document defines the municipal organisation of the land and establishes the space references of municipal soil uses and activities through a space-related class and category definition, identifying urban areas, roads, transportation and equipment, capture, telecommunication systems, water treatment and supply, among other aspects.

3.5. Energy policy

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

The National Action Plan for Energy Efficiency – Portugal Efficiency 2015 (PNAEE) is an aggregating action plan for a series of energy efficiency programmes and measures, with a 2015 timeline. This plan is oriented towards management of energy demands, according to the scope of the document on which it is based, European Directive 2006/32/CE of the European Parliament and Council, of 5 April, regarding efficiency in the final use of energy and energy services, being coordinated with the National Programme for Climate Change (PNAC), approved by the Council of Ministers Resolution no. 119/2004, of 31 July, and reviewed by the Council of Ministers Resolution no. 104/2006, of 23 August, and the National Plan for Attribution of Emission Licenses (PNALE), approved by the Council of Ministers Resolution no. 1/2008, of 4 January.

The PNAEE encompasses four specific areas, for which guidelines of an essentially technological nature will be issued: Transports, Residential and Services, Industry and State. Additionally, three transversal action areas are also defined – Behaviours, Taxes and Incentives and Financing – which were subject to complementary analysis and guidelines. The Residential and Service area includes three large energy efficiency programmes: Home Renewal Programme, which defines various energy efficiency measures involving lighting, electrical appliances, consumer electronics and area rehabilitation; Energy Efficiency System in Buildings, which groups measures resulting from the process of energy certification in buildings, namely insulation, improvement of glass surfaces and energy systems; Renewable at the Time Programme, oriented towards increased penetration of own-production energies in the residential and service sectors.

The Council of Ministers' Resolution no. 29/2010 approved the National Strategy for Energy (ENE 2020), in relation to the renewable energies, which, although it may be more directed to the industrial area, also has consequences in the housing sector.

The legal framework on energy matters in the residential area is constituted by the following legal acts, that partially apply, between them to the Directive 2002/97/CE of the European Parliament and of the Council, of 16 December: the Regulation for Energy Systems related to Building Climate Control (RSECE), approved by Decree-Law no. 79/2006, of 4th April, which defines a group of applicable requirements for service and housing buildings equipped with climate control systems, and which, apart from the surroundings and energy consumption restriction related issues, also embraces the buildings' climate control systems' efficiency and maintenance, by imposing the accomplishment of periodic energy audits for service buildings, the Regulation on Thermal Insulation in Buildings (RCCTE), approved by Decree-Law no. 80/2006, of 4th April, that establishes quality requirements for new housing buildings and small service buildings without climate control systems, namely at the surrounded characteristics level, restricting thermal loss and controlling the excessive solar gains. The National Energy Performance Certification System and Indoor Air Quality in Buildings (SCE), approved by Decree-Law no. 78/2006, of 4th April, concerning buildings' energy performance**.**

These legal acts are mainly aimed at the new constructions, but there is an unequivocal national policy in rehabilitation determined to achieve the energy efficiency goals to access to Energy Efficiency Fund (regulated by the Decree-Law no. 50/2010, of 20th May and Ministerial Order no. 26/2011, of 10th January).

One of the main consequences is the demand of an Energy Certificate, both for the sale of real estate and for the leasing of the same, under penalty of administrative fines (*coimas*).

Summary table 4

	National level	2nd level: Autonomous regions (Azores, Madeira)	3rd level: Municipality
Policy aims	1. Urban rehabilitation and improvement of edification 2. Solve extreme cases of housing needs 3. Financial aid for defaulting or struggling households 4. Energy efficiency and invests on renewable energies	1. Spatial planning 2. Social Housing	**1.** Spatial planning. **2.** Municipal management **3.** Local housing policy (especially in the big cities)
Laws	**1.** Decides the housing policy to apply at all levels **2.** Establish the policy on access to mortgage credit **3.** Social housing programmes **4.** Urban rehabilitation and edification **5.** National spatial planning 5. Establish the cooperation and divisions of competence at the local level (e.g. Metropolitan areas and their municipalities)	Have autonomous powers to regulate housing matters in compliance with law of the Republic	Spatial planning, social housing promotion and local taxation competences.
Instruments	**1.** Laws **2.** Decree-Laws **3.** Ministerial Orders **4.** Regulations	**1.** Regional Legislative Decrees **2.** Regulations	**1.** Regulations **2.** Municipal Director Plans

3.6. Subsidisation

- **Are different types of housing subsidized in general, and if so, to what extent? (give overview)**

The existing subsidies, not counting the state programmes that finance the construction or rehabilitation of houses for households in need, that were mentioned above in **section 2.2. A**, are subsidies to finance the acquisition of home ownership, designated as subsidised housing credit (*crédito à habitação bonificado*), regulated by the articles 8 to 17 of Decree-Law no. 349/98, of 11th November – despite being revoked by Decree-Law no. 305/2003, of 9th December, a significant number of contracts celebrated before 2003 are still in execution – and a number of legal instruments provide subsidies for tenants or landlords.

This home loan, although revoked, consisted of a home loan in which part of the interests, owed to the bank, were supported by the State, according to the gross annual household income and its composition, within certain parameters. It was intended for people below 35 years old, in order to make it easier for them to buy or rent a dwelling or do works on the dwelling.

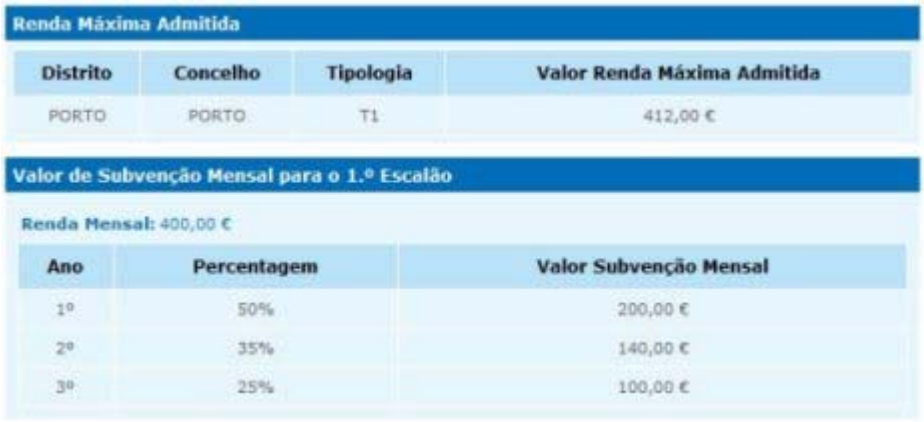
- **Explain the different forms of subsidies for tenants, (certain) landlords and, if relevant, housing associations or similar entities acting as intermediaries (e.g. direct, by means of investment loans, tax privileges). Which level of government is competent to assign the subsidies? Is there a right to certain subsidies or does the public administration have discretion in whom to assign the subsidy?**

In relation to the tenant, the PROHABITA programme establishes in article 23 -E, no. 1, al. *b*) of Decree-Law 135/2004 a direct financing, without the need to enter into a cooperation agreement between the municipality and the IHRU of the household with housing need, in case of urgent and temporary need motivated by the lack of a place to live for people not listed on the PER programme, but who lost their home due to the demolitions made under of said programme. Also article 23 -H allows, within a temporary lease, direct financing (up to 2 years) with a supported rent regime for displaced persons (due to natural catastrophe, for example).

The main subsidy for tenants is the program “Porta 65 — Jovem”, which involves renting by young people [*Arrendamento por Jovens*], approved by Decree-Law no. 308/2007, of 3rd September.

“Porta 65” is intended for people with an age between 18 and 30 years old and for married couples (or life partners) up to 32 years old (just one of the components of the couple needs to be that age). Article 7 establishes the requirements for a young person to benefit from this subsidy: he/she must have permanent residence in the dwelling that is the subject of the subsidy; he/she must not be a relative of the landlord; he/she cannot be an owner or a tenant of another dwelling (for housing purposes [*para fins habitacionais*]); the gross monthly income cannot be more than four times the maximum value of rent admitted; the maximum

effort rate is 60%; the gross monthly income cannot be more than four times the minimum monthly guaranteed remuneration; and there must be a lease contract or a firm promise of a lease.



Renda Máxima Admitida

Distrito	Concelho	Tipologia	Valor Renda Máxima Admitida
PORTO	PORTO	T1	412,00 €

Valor de Subvenção Mensal para o 1.º Escalão

Renda Mensal: 400,00 €

Ano	Percentagem	Valor Subvenção Mensal
1º	50%	200,00 €
2º	35%	140,00 €
3º	25%	100,00 €

The table above is an example of the amount of subsidy provided. In fact, in Oporto's district, for a typology 1 dwelling, the maximum rent allowed is 412,00€. In this case, the rent is 400,00€ and in the first year the State subsidizes 50% of the rent, while in the second and third years it subsidizes 35% and 25% respectively.

In relation to landlords, housing associations or similar entities acting as intermediaries (for example the municipalities), PROHABITA, provides in article 12, no. 1 al. *f*) that the cooperation agreement could provide funding to the beneficiary entities with the finality of creating leases for households in need. The legal framework is based on the celebration of a programming contract between the IHRU and the beneficiary, in which the beneficiary appears as the tenant (for a lease with a third party, possibly an investment fund), with the obligation to celebrate a sublease and to give express consent for that, foreseen in the article 14. The lease is funded through a contribution to the rent for a maximum period of 12 years and up to a limit of 40% between the lesser of: the value of rents that the beneficiary has to pay or the technical rent which would be applicable in the case of a supported rent regime (article 15).

- **Have certain subsidies been challenged on legal grounds (in particular: on the basis of competition law or budget law)?**

With the exception of some judicial procedures of the Court of Auditors (*Tribunal de Contas*) against some municipalities that over drafted the local budget law when availing of the PROHABITA programme (especially to finance new construction of houses), those subsidies haven't been challenged by (any) judicial procedures.

- **Summarise these findings in tables as follows:**

Subsidisation of landlord	Tenure type 1
Subsidy before start of contract (e.g. savings scheme)	1. Aid for restoration work on deteriorated dwellings 2. Aid for the purposes of urban rehabilitation (specially on historical centres) 3. Aid to improve energy conservation or to guarantee the accessibility to the building.
Subsidy at start of contract (e.g. grant)	None
Subsidy during tenancy (e.g. lower than market interest rate for investment loan, subsidised loan guarantee)	1. Aids established in points 1 to 3 of the previous section '*Subsidy before start of contract'.*

Summary table 6

Subsidisation of tenant	Tenure type 1
Subsidy before start of contract (e.g. voucher allocated before finding a rental dwelling)	A rental aid may be requested, but the right is not recognised until the contract is formalised.
Subsidy at start of contract (e.g. subsidy to move)	None
Subsidy during tenancy (e.g. housing allowances, rent regulation)	1. Social housing, through a lease, for severe housing need 2. "Porta 65", contributed with an allowance on the value of the rent for young people. RBE for young people that it had recognised before 31-12-2011.

Summary table 7

Subsidisation of owner-occupier	Tenure type 1
Subsidy before start of contract (e.g. savings scheme)	Housing savings accounts (*contas poupança-habitação*) – Decree-Law no. 27/2001, of 3rd February
Subsidy at start of contract (e.g. grant)	1. Aid to improve energy conservation or to guarantee the building accessibility. 2. Aid to carry out joint rehabilitation works.
Subsidy during tenancy (e.g. lower than market interest rate for investment loan, subsidised loan guarantee, housing allowances)	**1.** Low interest loans for housing purposes until 2003. Decree-Law no. 349/98 2. Extraordinary regime of housing credit debtors in need of protection. Law 58/2012

3.7. Taxation

- **What taxes apply to the various types of tenure (ranging from ownership to rentals)?**

If a person wants to buy a property, that operation is subject to municipal tax for the onerous transfer of property (Municipal Real Estate Transfer Tax Code [*Código do Imposto Municipal sobre Transmissões Onerosas de Imóveis* - IMT], approved by Decree-Law no. 287/2003, of 12th November), which is levied on the value of the sale.

After the purchase, the now owner must pay another municipal tax, namely, the municipal tax over real estate property (Municipal Real Estate Transfer Tax Code [*Código do Imposto Municipal sobre Imóveis* - IMI], also approved by Decree-Law no. 287/2003, of 12th November), which is levied on the taxable value of any building located in a municipality. This tax doesn´t take on consideration if the real estate is used by the owner or by a lease, the owner always being the person who is liable for the tax.

As for tax deductions, these are deductible from taxable income (IRS), in the proportion of 30% of the charges mentioned below, relating to property situated in Portuguese territory:

Bank Loans:

Interest and repayments of debts for the acquisition, construction and improvement of property for permanent residence or rental, provided it's proven that the property is the permanent home of the tenant, with the exception of depreciation incurred by the mobilization of the balances of housing savings accounts, up to € 574.

Housing Cooperatives and Group Purchasing

Profits payable as a result of contracts or cooperative housing under the scheme of group purchases, to acquire property for permanent residence or permanent home for rent, in part to respect the interest and amortization of the related debt, up to € 574.[151]

- **In particular: Do tenants also pay taxes on their rental tenancies? If so, which ones?**

Tenants do not have any fiscal responsibility for their rental tenures.

- **Is there any subsidisation via the tax system? If so, how is it organised? (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)**

[151] https://www.portaldahabitacao.pt/pt/portal/habitacao/programasapoio/beneficiosfiscais.html

With regard to the landlord, the municipal tax over real estate property mentioned above is deducted from income tax (tax on revenue). The rent is viewed as an income, but that tax is viewed as an expense of the property itself that the owner has to bear, and therefore he is able to benefit from a deduction. If the landlord is an individual (*pessoa singular*) he is taxed according to the Personal Income Tax Code (*Código do Imposto sobre o Rendimento das Pessoas Singulares* [IRS]), approved by Decree-Law no. 442-A/88, of 8th November). In article 85 no. 1 al. *a*) of the code it is established that there is a deduction of 15% of expenses derived from the interest of loans intended for the acquisition (construction or improvement) of their own home or for a lease celebrated up to 31 of December of 2011, up to the limit of € 296.

If the dwelling is located in a new building, an old building that was subjected to renewal works or a building that has been bought (only in case of a first transfer) and is destined for a lease with housing purposes, the owner is exempted from paying the municipal property tax for a period of 3 years, except in cases where the taxable value of the immovable exceeds €125,000 (article 46, no. 3 and 5 of the Tax Incentives Statute, approved by Decree-Law no. 215/89, of 1st July).

When a dwelling is subject to a process of a phased update of rents under the NRAU (process that will be addressed in **part II**) and has undergone works framed as urban rehabilitation, the Tax Incentives Statute provides a partial deduction of 30% under IRS, under the limit of € 500, of the expenses made to rehabilitate the immovable (article 71, no. 4, al. *a*)). Also the income from a lease on a dwelling situated in an "urban rehabilitation area" that has been reconditioned according to the terms of the rehabilitation strategy or a leased real estate subjected to the regime of the phased update of rents that has undergone rehabilitation works is taxed at a rate of 5% (article 71, no. 5 al. *a*) and *b*)).

The tenants are able to deduct the rent from taxable income. Article 85, no. 1 al. *d*) of the Personal Income Tax Code established a deduction of 15% of the effective expenses (minus the value of the subsidies or other official benefits, like for example "Porta 65") deriving from rent or urban tenancy contracts with housing purposes if the RAU or NRAU regimes apply to those contracts, that is to say, this excludes the leases celebrated before 1991, up to the limit of € 502.

- **In what way do tax subsidies influence the rental markets?**

As we can see, there are some benefits – which used to be more expressive, but reasons related to the budget deficit made the government significantly decrease those benefits – that are planned to encourage the owners to rent their properties instead of selling them. But there are no studies, or specific statistics that can definitively prove a link between those fiscal measures and the rise of the numbers of leases, especially in the urban centres (normally homes in need a greater number of rehabilitation works).

- **Is tax evasion a problem? If yes, does it affect the rental markets in any way?**

Tax evasion is relevant in the rental market, especially because if the tenant demands a payment receipt, certain landlords tend to raise the rent. This happens because, if the landlord gives the payment receipt to the tenant, he/she has to pay taxes over the rent received, so he/she raises the rent to compensate the taxes to pay, if he/she does not give a receipt to the tenant, the rent will be lower since the landlord does not have to pay more tax. This phenomenon is not supported by any statistical evidences that prove it, but it is a sociological factor known by the general public.

Summary table 8

	Home-owner		Landlord	Tenant
Taxation at point of acquisition	IMT		IMT (when the landlord bought the house, not when he agrees to rent)	None
Taxation during tenancy	IMI, garbage collection tax, sewage and special contributions, all at the municipal level		IRS (natural person), IRC (legal person), both at the national level. IMI, garbage collection tax, sewage and special contributions, all at the municipal level	Legally none, but could have fiscal responsibility, if agreed upon by parties to the contract.
Taxation at the end of tenancy	None	None	None	None

4. Regulatory types of rental and intermediate tenures[152]

4.1. Classifications of different types of regulatory tenures

[152] **I.e. all types of tenure apart from full and unconditional ownership.**

- **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 1)?**

In the rental sector we can distinguish between tenancies involving rent without any direct intervention by the state, managed by the private sector, despite a great number of legal restrictions, and rent at a reduced price, with some sort of subsidy or other kind of public intervention.

The rental tenures had a share in the dwelling stock of 20%, with the rental tenures with a public task having a stock quota of 2% and the private sector 18%.

4.2. Regulatory types of tenures without a public task

- **Please describe the regulatory types in the rental sector in your country that do not have a public task. This category may be called private or market rental housing.[153]**
  - **Different types of private regulatory rental types and equivalents:**
    - **Rental contracts**

The general lease regime (*locatio*) can be found in the Civil Code, Book II [Obligations], Title II [Specific Contracts], Chapter IV [Leases], from Articles 1022 to 1063. The basic structure of the legal regime lays in a fundamental distinction between movable and immovable property. For immovable property the agreement is called tenancy (*arrendamento*), and there are three specific regimes of tenancy: the Rural Tenancy Regime (RAR), provided by Decree-Law no. 385/88, of 25th October; Forester Tenancy Regime (RAF), provided by Decree-Law no. 394/88, of 8th November; and tenancy of urban properties, regulated in Section VII of Chapter IV [Leases], in articles 1064 to 1113 CC and in the New Urban Tenancy Regime (*Novo Regime do Arrendamento Urbano* - NRAU), provided by Law no. 6/2006, of 27th February, amended by the Law no. 31/2012, of 14th August.

Urban tenancy involves another fundamental distinction between tenancy with residential and non-residential purposes (art. 1067 CC). The first has a specific set of rules (article 1092 to article 1107 CC), which normally have more mandatory than dispositive rules, especially aimed to protect the tenant. The specific rules for tenancy without a residential purpose (commercial, for liberal professions, etc.) are few (article 1108 to article 1113), so the parties can stipulate the content of the agreement based on the freedom of contract (art. 405).

[153] 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.

Are there different inter-temporal schemes of rent regulations?

Articles 26 to 58 (Title II [Transitional rules]) of Law no. 6/2006 lay down a set of transitional rules only applicable to contracts concluded before the entry into force of this law (27 of June 2006). This transitional regime distinguishes between older contracts and more recent contracts and also between tenancy with or without residential purposes. Title II of this Law does not give the complete legal framework of contracts concluded before 2006, it just establishes some special rules that are only applicable to those contracts. The rules that are in force by virtue of the new law apply to the new contracts but also to the old ones (by virtue of article 12, no. 2 CC), with the exception of the rules that are in conflict with the specific rules of the transitory regime [154]. As we will see in **Part II,** this is a very complex regime.

We can talk of four different inter-temporal frameworks of urban tenancies that are coexistent with the current regime (contracts celebrated after June 26th 2006):

a) Contracts with residential purposes concluded before November 14th, 1990 (before the entry into force of RAU). The applicable regime is contained in articles 27 to 29, articles 30 to 49 (articles 38 to 49 were revoked by Law no. 31/2012) and article 57 of Law no. 6/2006.
b) Contracts with residential purposes concluded before June 26th, 2006 (before the entry into force of NRAU) but after November 14th, 1990 (after the entry into force of RAU). The applicable regime is contained in article 26 of Law no. 6/2006.
c) Contracts without residential purposes concluded before September 30th, 1995 (before the entry into force of Decree-Law no. 257/95, September, 30th). The applicable regime is contained in articles 27 to 29, articles 50 to 56 (article 55 and 56 were revoked by Law no. 31/2012) and article 58 of Law no. 6/2006.
d) Contracts without residential purposes concluded before June, 6th, 2006 (before the entry into force of NRAU) but after September, the 29th, of 1995 (before the entry into force of Decree-Law no. 257/95, of 30th September). The applicable regime is contained in article 26 of Law no. 6/2006.

The main reason for the differentiation of regimes among the old contracts resides in the possibility (or not) of drafting contracts limited in time (*contratos com duração limitada*), in which the landlord has the faculty to terminate the lease by simple opposition to a renovation. Before RAU (and Decree-Law no. 257/95 for the non-residential leases) all leases were open-ended contracts (*contratos de duração indeterminada*). The possibility of formalising a contract limited in time only appeared with RAU (and Decree-Law no. 257/95)[155].

[154]Maria Olinda Garcia, *Arrendamento Urbano Anotado: Regime Substantivo e Processual (Alterações introduzidas pela Lei n.º 31/2012)*, (Coimbra, Coimbra Editora, 2012), 123-125.
[155] M. O. Garcia, *Arrendamento Urbano Anotado. Regime Substantivo e Processual (Alterações introduzidas pela Lei n.º 31/2012)*, 124.

Are there regulatory differences between professional/commercial and private landlords?

If renting houses is one of the landlord's professional activities (or the only one) and the tenant is a consumer (the lease is intended for something other than for his professional activity, manly for housing purposes), the lease is considered a lease of consumer goods, and Decree-Law no. 67/2003, of 8th April (later changed by the Decree-Law no. 84/2008, of 21st May), transposing Directive 1999/44/EC of the European Parliament and of the Council, of 25th May, 1999, on certain aspects of the sale of consumer goods and associated guarantees applies. Despite the fact that the Directive only obligates Member States to create legislation on the sale of consumer goods and associated guarantees, the Portuguese legislator had extended this regime to leases, works contracts (*empreitada*) and service agreements (*contrato de prestação de serviços*) (article 1, no. 2). All the obligations that the seller has, like the obligation to deliver goods to the consumer, which are in conformity with the contract, are also applicable to the lessor.

The civil regime for leases (articles 1032 and following of the CC and Law no. 6/2006) is replaced by the application, *mutatis mutandis*, of Law no. 67/2003. This doesn´t mean that the urban tenancy regime does not apply, it only means that the rules of Law no. 67/2003 prevail over them.

Briefly: How is the financing of private and professional/commercial landlords typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)

There is no relevant data to conclude with certainty the percentage of each financing method used by landlords. However, it is common knowledge that a person that buys a block of apartments or a single house for rental purposes normally uses the same funding schemes as a person who buys a property for housing[156]. The most popular scheme is the use of mortgage loans.

For professionals the financing may also come from the issuing of shares in their company and, to a lesser extent, from resorting to securitization schemes[157].

Apartments made available by employer at special conditions

For all the possible cases there is no regulation on this subject. In the case of an employer who gives a flat or house to an employee as part of his remuneration, some doctrine used to see this "lease" as a real component of the remuneration, and considered the situation only as a labour contract. However, the legal framework tends to give us an idea that we come across a linked agreement (*contrato coligado*) or a union of contracts (*união de contratos*). Article 1051 al. *g*) CC establishes that the lease will expire upon termination of the services which determined

[156] Part I, 1.1. C 'How is the financing for the building of homes typically arranged?'.
[157] These however are normally used only by big companies, which are not very common on rental market.

the occupation of the leased premises. The doctrine[158] considers that in that case we have a true lease united with another contract (possibly a labour one) or at least a linked agreement.

One Ministerial Order of December, the 22nd, about the regulation of labour by the doorkeepers of urban buildings who live in the building that they work in, established that the part of the contract that refers to obligation of work should mention the labour legislation that is applied.

- **Mix of private and commercial renting (e.g. the flat above the shop)**

Based on the principle of the freedom of contract, the parties are permitted to celebrate a contract with elements of different contracts (article 405, no. 2). So, if a person rents a property for both residential purposes and non residential purposes, for example, if on the first floor there is a shop and on the second floor a dwelling, this is allowed by the legal regime. In this case, we have a mixed-purpose contract (*contrato misto*)[159]. Article 1028 CC explicitly refers to the possibility of a lease having a plurality of purposes. If none of the purposes is predominant, the corresponding regime is applied for each purpose (no. 1), but if one purpose is predominant, the legal regime that is applied to the contract is the one which would always be applied to the principal purpose. For example, if the shop is the main reason for the celebration of the contract and the possession of the flat is merely instrumental, the legal regime to be applied to the lease is the tenancy without a residential purpose. However, for everything that does not collide with the latter, we can still apply the residential purposes regime (no. 3).

- **Cooperatives**
- **Company law schemes**
- **Real rights of habitation**
- **Any other relevant type of tenure**

The legal regime of this type of tenures (cooperatives, company law frameworks, real rights of habitation and other relevant types of tenure) was already analysed in detail supra[160].

The most relevant types of tenures – without order of importance – are hire purchase (*locação-venda*), which is a lease with a determined timeline in which the property will be transferred *ipso iure* to the "tenant" at the moment of the payment of the last provision.

Financial leasing (*locação financeira*) is a contract in which the lessor [*o locador financeiro*] acquires or builds an asset at the request of the lessee [*o locatário financeiro*], giving him, afterwards, the use of the house, and being paid for

[158] Jorge Pinto Furtado, *Manual de Arrendamento Urbano*, Vol. I, 5.ª Ed., (Coimbra, Coimbra Editora, 2009), 52 and 438-445.
[159] Pinto Furtado, *Manual de Arrendamento Urbano,* 442-445.
[160] Part I, 1.1. C Are there intermediate forms of tenure classified between ownership and renting?

it, with the clause that, at the end of the assignment period, he can buy it for a certain amount.

Time-sharing (*direito real de habitação periódica*) is the right of use for housing purposes, for one or more previously determined periods in each year, of one tourist resort housing unit, by paying a fee to the resort's administration or its owner.

The usufruct (*direito de usufruto*) provides a right to use and enjoy fully but temporarily (for example, when the right of the original titleholder is extinguished by death) an asset or a right from someone else.

The right of use and housing (*direito de uso e habitação*) gives the right holder the right of use and to live on someone else's property and to reap the harvest, due to his and his family's needs.

The right to build or right of surface (*direito de superfície*) gives a right to construct or maintain, temporarily or perpetually, a construction in someone else's property or to keep plantations in it. This right can be used for housing.

Condominiums or horizontal property (*propriedade horizontal*) provides the right holder of a single unit (*fracção*) with property rights on that single unit and a common property right (*direito de compropriedade*) on common areas along with the other owners of that multi-unit building.

There are also cooperatives with housing and construction finality. They have the purposes of promoting, constructing or acquiring dwellings intended for their members' housing, as well as their maintenance, repairing and re-arrangement.

4.3. Regulatory types of tenures with a public task

- **Please describe the regulatory types of rental and intermediary tenures with public task (typically non-profit or social housing allocated to need) such as**
  - **Municipal tenancies**
  - **Housing association tenancies**
  - **Social tenancies**
  - **Public renting through agencies**
  - **Privatised or restituted housing with social restrictions**
  - **Public entities (e.g. municipalities) taking over private contracts, typically for poor tenants to counteract homelessness**
  - **Etc.**

In the sector of social housing, there are several types of rental tenures with a public task. As seen in **section 2.2,** the PER and PROHABITA programmes allow the funding of rental tenures. But the legal acts that establish those programmes do not configure the legal form that the rental tenures will assume.

In 2012, to respond to the difficulties of certain households with economic needs and due to a high number of dwellings handed over to the banks, the Social

Market of Tenancy (SMT) was created in a partnership between the State and the Bank Institutions. The objective is to lease foreclosed dwellings at lower prices.

The SMT is one of the many measures of the Government's Social Emergency Plan. This Plan is a set of multiple answers which ensures that no Portuguese person is left behind when faced with a difficult social reality.

The SMT "opens a door" to a new market between the free rental market and social housing and has a triple benefit:

- It solves the difficulties of access to housing for families, enabling the supply of homes with rents 30% below the normal market;
- It monetizes the growing real estate that banks have inherited, thus having an economic rationality;
- It enhances the urban renewal of the housing stock, which in some cases is in a state of degradation and consuming productive resources.

This measure is focused on young couples or middle class families who don't have access to social housing or have the necessary income to buy their own house.

The SMT is intended as a first step in ensuring housing availability in more than 100 municipalities by the end of 2012.[161]

The rental tenures with a public task sector, whether directly owned by the public sector or through some form of subsiding, are contained in scattered legislation. At the time of the urban tenancy reform, in article 64, no. 2, al. *a*) of Law no. 6/2006 (NRAU) the Assembly of the Republic had authorised, within 180 days, the Government to produce legislation related to the state's urban property, the tenancies by public entities and their regime of rents. However, no legislation has so far been set forth in that regard.

We can make a distinction between leases where the state or other public entities (municipalities, etc.) assume the legal position of a party (lessor) in the contract and leases where the state or other public entities have another form of state intervention, manly through subsidising the rent of leases contracted by privates.

For the first category, we have the regimes of supported rent, approved by the supported rent regime [*renda apoiada*], provided by Decree-Law 166/93, of 7th May, and the social rent regime [*renda social*], established in Ministerial Order 288/83, of 17th March.

In the supported rent regime, the lessee only has to pay the supported rent, which is based on the determination of the value of the technical price of a dwelling and the effort rate (art. 2, no. 1). The value of supported rent is directly dependent on the effort rate (art. 2, no. 2). The effort rate is determined by the application of the following formula present in art. 5, no. 2:

[161] http://www.mercadosocialarrendamento.msss.pt/docs/mercado-social-arrendamento.pdf

$$T = 0.08\ RC$$

Smn

In which:

Rc = Corrected Monthly Income (*Rendimento mensal corrigido*) of the household[162];

Smn = National Minimum Wage (*Salário Mínimo Nacional* – currently *Retribuição Mínima Mensal Garantida*).

Ministerial Order 288/83, which regulates social rent, determines the rules of the technical rents for the leased dwellings promoted by the State. This Order allows the state to update the rents in the case of works on the dwellings, but the value of the new rent depends on the financial condition of each household.

The second category is composed of the "Porta 65 — Jovem" programme, for Renting by young people [*Arrendamento por Jovens*], approved by Decree-Law no. 308/2007, of 3rd September, and the programme Social Market of Tenancy [*Mercado Social de Arrendamento*] (MSA). The MSA does not have a legal framework, however the regulation of this program can be found in the official website[163]. By the end of 2013, about 2,000 contracts had been signed.

The renting by young people was already described in **section 2.3**.

According to MSA regulations, the lease is celebrated between the adherent entities (banks that own dwellings) and beneficiaries. The contract is subjected to the law of urban tenancy (CC, NRAU), and the State, IHRU, and a management company (Norfin – Sociedade Gestora de Fundos de Investimento Imobiliários, S.A.) regulate and supervise the application.

- **Specify for tenures with a public task:**
  - **selection procedure and criteria of eligibility for tenants**

In relation to supported and social rent regimes, both the selection procedures and criteria of eligibility for tenants depend on the programme which applies. As seen before, both PER and PROHABITA establish a criterion of extreme housing need for a person to be eligible for a social tenancy. At the local level, the municipalities have autonomy to assign social tenancies to their residents. Despite being subject to those regimes of rents, the criteria had to be established in local regulations, because there is no legislation about such matters.

In the third clause of the MSA regulation it is provided that the programme is aimed at households with an average income that makes the access to the free

[162] The definition of Corrected Monthly Income is: the gross monthly income deducted from an amount equal to three-tenths of the national minimum wage for the first dependent and one-tenth for each further dependent, the deduction being increased by one-tenth for each of the dependents that, demonstrably, have some kind of permanent disability (art. 3, no. 1, al. *d*)).

[163] http://www.mercadosocialarrendamento.msss.pt/.

market of housing difficult or even impossible. Point no. 3 of that clause establishes the requisites for an application. Applicants must: (i) be of majority age or emancipated; (ii) not be owners, tenants, or have other rights that allow them the use and housing of a building or a building unit with housing purposes in the districts or bordering districts where the dwelling is located or in the metropolitan areas of Lisbon and Oporto if the dwelling is in those areas, with the exception of leases that are intended to replace existing leases; (ii) the applicant and/or the household have to reveal financial capacity to pay the rent, according to the effort rate in fifth clause; (iv) if the applicant presents a guarantor (*fiador*) with sufficient income to pay the rent, the previous point does not apply; (v) not benefit from a tenancy agreement celebrated under the present initiative, with the exception of leases that we wish to replace. The monthly income of the household must be compatible with a rent that translates into a minimal effort rate of 10% and maximum of 30% of the monthly income of the household. The monthly income is considered as the value corresponding to one twelfth of the gross annual income, with a deduction of the monthly responsibilities arising from loans (fifth clause no. 2, al. a)).

- **typical contractual arrangements, and regulatory interventions into, rental contracts**

In fact, three of the most recurrent clauses in tenancy contracts are the obligation to exclusively allocate the dwelling to the tenant's permanent residence, the regulation of the dwelling's assignment or subleasing and the possibility of being evicted in the event of breach of the regulation. That is why all of them can be considered typical clauses for tenancy contract.

Both in "Porta 65" and MSA, lessor and lessee can draft any clauses that they intend to include, as the leases are celebrated between privates. The MSA regulation gives the tenant the option of purchasing the dwelling, if the managing entities of the programme (IHRU, Norfin) put that kind of clause in the contract of tenancy.

- **opportunities of subsidisation (if clarification is needed based on the text before)**
- **from the perspective of prospective tenants: how do I proceed in order to get "housing with a public task"?**

In "Porta 65", the application is submitted electronically through the Housing Website (*Portal da Habitação*), website of IHRU, at www.portaldahabitacao.pt/porta65j. In MSA, the tenant can also apply online (at http://www.mercadosocialarrendamento.msss.pt/), if the person lives in or near a municipality that has adhered to the initiative.

- **Draw up summary table 9, which should appear as follows:**

Rental housing **without a public task** 6 coexistent intertemporal schemes; CC, NRAU, RAR, RAF	Main characteristics • Private owners mainly • The size of market share is 18%
1) Urban tenancy with residential purposes 2) Urban tenancy without residential purposes 3) Rural Tenancy Regime 4) Forester Tenancy Regime	The legislation for tenancies with residential purposes is mainly imperative, with a scope of protection of the tenant
Rental housing for which a **public task** has been defined Supported rent regime Social rent regime "Porta 65" MSA	- Have a price below the market. - Their construction is subsidised. - Public rental approximately 2% of the full housing stock.
5) Municipal tenancy	

5. Origins and development of tenancy law

What are the origins of national tenancy law and where was and is it laid down (civil code, special statute, case law)?

Portuguese tenancy law has its origins in the *locatio conductio rei* of the Roman law. The *locatio conductio rei* was a consensual contract, by which a person (the *locator*) becomes bound to deliver to another (the *tenant*) the use of a thing (*res*) for a certain time at a certain price (*merces*)[164]. The discipline of the *locatio conductio rei* was regulated in *Inst.*3.24 and C.4.65[165].

The first Portuguese legal compilations established a few rules, strongly influenced by Roman law, on the "*aluguer das casas*" (Rental homes) agreements. The Manueline Ordinances (*Ordenações Manuelinas*) of 1512 had such previsions in Book IV, Titles 57 and 58, while the Phillipine Ordinances (*Ordenações Filipinas*) of 1595[166] had them in Book IV, Titles 23 and 24.

The Civil Code of 1867, commonly known as *Código de Seabra*, regulates, in articles 1595 *et seq.*, the lease contract (*locação*), and was the first law to establish the distinction between rental (*aluguer*) and tenancy (*arrendamento*) contracts. Such distinction was structured according to the fundamental distinction between movable (*aluguer*) and immovable property (*arrendamento*). The tenancy general provisions could be found in articles 1606 *et seq.* for all tenancy contracts, while the specific provisions for tenancy contracts in urban properties were established by articles 1623 *et seq.*

[164] António Santos Justo, Direito Privado Romano, Vol. II (Direito das Obrigações), 2.ª Edição, Studia Iuridica 76, Coimbra, Coimbra Editora, 2006, 63-69.
[165] Luís Menezes Leitão, *Arrendamento Urbano* (Coimbra, Almedina, 2012), 17.
[166] Only entered into force in 1603.

The first half of the twentieth century experienced the making of a series of laws that changed the legal framework instituted by the Civil Code of 1867. This was characterized by contractual freedom and equal treatment of both parties. Those laws instituted a very strict legal framework for the landlord, especially on subjects like termination of contract and increase of rents.

In 1966, the Civil Code in force was approved. Leases were regulated in articles 1022 *et seq*[167]*.* Urban tenancies were regulated in the original version of this code in articles 1083 *et seq.*

In the following question we will address the major legal changes and reforms of tenancy law.

The current legal framework of tenancy law is composed by:

- General rules on leases (articles 1022 to 1063 CC),
- General provisions on urban tenancy – introduced in the Civil Code by the New Urban Tenancy Regime [*Novo Regime do Arrendamento Urbano or* NRAU (2006)] (articles 1064 to 1091 CC),
- Specific provisions relating to tenancy with residential use (articles 1092 to 1107 CC) and,
- Specific provisions regarding tenancy without residential use (articles 1108 to 1113 CC).

However, Law no. 6/2006, of 27th February, which approved the New Urban Tenancy Regime [*see pag. 10*], has a set of special rules.

Articles 9 to 25 regulate communications between the parties, eviction procedures, rent increases, rent deposits (*consignação em depósito*) and articles 26 to 58 regulate a set of transitional provisions regarding contracts celebrated before the implementation of NRAU.

With the NRAU reform, other laws for the regulation of specific aspects of tenancy were also created. Decree-law no. 157/2006, of 8th of August, approved the Legal Regime of Works on Leased Buildings (*Regime Jurídico das Obras em Prédios Arrendados*) and is one of the most relevant laws created.

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?)

In the period following the Revolution of 25th of April of 1974, and before the approval of the Portuguese Constitution in 1976, the legal framework of a lease – and especially of urban tenancy – was significantly changed. There were several laws and regulations approved in this period that, somehow, were influenced by socialist and communist ideas shared by the political parties that governed during that period.

[167] All articles shown without a mention of a legal act belong to the Civil Code.

The main political driving force in those times was to concede a greater protection to the tenant, viewed as the weakest party in the tenancy scheme. Some of the most significant measures approved were:

- the obligation for the landlord to rent empty buildings;
- the provision of a maximum rent that could be stipulated for old buildings;
- the legalization of squatting for residential purposes, obliging the owner to celebrate tenancy contracts.

After the approval of the Constitution, the legislator tried, in small steps, to normalise the situation. The previous laws had been revoked because those efforts had caused more harm than good to the housing market. By limiting the possibility of freely establishing the amount of rent, it had caused a serious retraction in construction. The creation of a housing market could only emerge – in a period marked by serious housing needs, especially in terms of quantity – if the return of investment became profitable and higher rents could be stipulated[168].

In the current legal framework, we cannot say that there is any particular philosophy behind the rules. Since Portugal entered the European Union in 1986, and the Constitution revision of 1989, the political driving force was to liberalize the housing markets, especially the rental market. The Urban Tenancy Regime, approved by Decree-law no. 321-B/90, of 15th of October, was the first reform that tried to accomplish that goal, by the admission, for example, of the conclusion of fixed-ended contracts. The Reforms of 2006 (NRAU) and the recent reform of 2012 were also set to promote and stimulate the urban lease market, while also trying to balance this with the protection of the tenant.

What were the principal reforms and their guiding ideas up to the present date?

Since the approval of the Civil Code, the principal reforms on tenancy law were the reform of RAU (Urban Tenancy Regime) in 1990/1991, the NRAU's (New Urban Tenancy Regime) reform in 2006, and, most recently, the 2012 reform, implemented by Law no. 31/2012, of 14th of August, and other complementary laws.

The regime of tenancy with residential purposes is set by mandatory provisions, which are primarily aimed at protecting the tenant. The original version of the Civil Code - which followed the previous laws and regulations that were set by the Republican Revolution of 1910 – was very strict for the landlord. The contracts were, with some exceptions (students, displaced workers, etc.), open-ended. Although the free stipulation of rents was allowed, there were very strict rules on rent increases and the right of landlords to give notice was limited.

That legal regime had a negative impact on the housing market. The so-called "rent freeze" (*paralização das rendas*) for a period of 30/40 years, combined with an extreme difficulty for the landlord to terminate the lease agreement, almost paralysed the tenancy market. The old buildings – especially in the historic city centres – were one of the main problems. Houses rented 30-40 years ago had never been repaired because landlords had no economic incentive for doing so[169].

[168] Sandra Passinhas, *Tenancy Law Portugal*, http://www.eui.eu, (accessed 10 Jul. 2012), 3.

[169] Sandra Passinhas, *Tenancy Law Portugal*, 2-3.

In order to boost the housing market, the RAU (1990) was approved and was set to increase, as much as possible, the stability between the parties, which meant giving the landlords more rights. This allowed parties to conclude fixed-term contracts, but with a minimal duration of five years. New and more flexible rules on rent increase were set and the legal provisions about the termination of the contract by the landlord were less restricted.

The main idea of the legislator was to ensure a balanced position for the parties in tenancy agreements – although this was done in a cautious way, for reasons of a political and social order – with the intention of creating incentives and promoting the revival of the tenancy market[170].

The RAU (1990) reform was seen as a somehow timid reform. In spite of all the provisions, which made the tenancy contract as balanced as possible, the legal regime was still protecting the tenant more than it was protecting the landlord.

In 2006, the approval of the NRAU produced a significant change in the urban lease legislation. This reform had a clear intention of assuring a greater contractual freedom to the parties when defining the contents of lease agreements. The main objectives that NRAU aimed to achieve were:

- promotion and stimulation of the urban lease market;
- boost urban rehabilitation;
- increase (in a phased manner) of the rents that were frozen in the past;
- speed up eviction procedures and increase the number of extrajudicial enforceable titles.

To achieve those objectives, the legal framework had some significant amendments to the previous provisions that were deep-rooted in Portuguese legal tradition, which we will address further on.

Differently from what happens with the RAU (1990), which lists the situations whereby the landlord may terminate the lease – such as failure to pay rent, use of the property for illegal purposes –, NRAU (2006) (article 1083 CC) allows the landlord to terminate the lease whenever there is a situation of breach of contract that, due to its gravity or consequences, makes the maintenance of the contract unenforceable. This is a general clause that allows a number of cases outside the list – that is still laid down in article 1083 – in which the landlord could no longer maintain the contract.

Other innovation regarding the contract termination is the landlord's right to terminate an open-ended lease with, at least, 5 years notice.

One of the points of extreme importance and focus of the reform was the many amendments that were introduced at a procedural level with a scope to reduce the number of eviction procedures pending in the courts. With NRAU (2006), a faculty was provided to the landlord to demand immediate vacancy of the premises without needing to first obtain a court decision that decrees the resolution of the agreement.

Regarding the tenancy contracts in effect upon the approval of NRAU's (2006) reform, a set of transitional provisions was created, so that the impact of the reform and the change of paradigm wouldn't have a big impact for the standing contracts.

[170] Sandra Passinhas, *Tenancy Law Portugal*, 3.

This transitional provisions concern, mainly, a set of special rules dealing with the increasing of the rents in force in the older contracts.

Although the goal was to revitalise the Portuguese tenancy market, the 2006 reform did not accomplish, in reality, all the objectives that it set itself, notably, regarding rent increase. The main reason was that most of the "new" rules did not apply to the agreements concluded before NRAU came into force. Those contracts were subjected in most aspects of their regime to the transitional rules.

The transitional provisions concerning rent increases were exceedingly complex[171], the landlord could only increase the rent after the leased premises had a fiscal evaluation of the premises and provided that the maintenance coefficient was not inferior to 3 (this is, provided the premises were in an "excellent", "good" or "average" state of maintenance).

The most recent reform (2012) arises from the commitments undertaken by the Portuguese State with the IMF, the ECB and the European Commission in the context of the financial assistance plan for Portugal. One of the obligations was the restructuring of the urban tenancy law in order to liberalize the rental market (6.1 and 6.2), that was established in the *Memorandum of Understanding on Specific Economic Policy Conditionality* (MoU)[172] for the Portuguese Government.

With Law no. 31/2012, of 14th of August, the impact of the regime arises essentially from three aspects: (i) the provisions governing rent increase – in Law 6/2006 of 27th of February; (ii) the amendments to the rules concerning the duration and termination of agreements in the Civil Code; and (iii) the attempt to reduce the time required to terminate agreements and for tenants to vacate the property – amendments made to the Civil Procedure Code and to the NRAU in respect of the judicial and extra-judicial termination and special eviction procedure.

The main purpose of the Reform was to stimulate the urban rental market, whose operation was highly-regulated over past decades. This circumstance contributed for the long-term conditions of the older leases (particularly, regarding value of the rent) and the deterioration of properties in Portugal, as well as the excessive duration of eviction procedures.

The adoption of a new legal framework aims to increase the availability of rental properties, both through the renegotiation of older rents and by more flexibility in the agreements, enabling landlords and tenants to find solutions better suited to their requirements and promoting the renovation of the buildings, especially those located in urban areas, by encouraging landlords to invest in rehabilitation works.

Simultaneously, the Reform establishes special eviction procedures that make eviction procedures faster and more effective without resorting to court.

The main effect of the amendments is to make the lease relationship more dynamic. For that purpose, the "old" leases (agreed upon before 2006 and especially before 1991) had to have a legal framework closer to the current leases. The legislator felt that six years after the approval of the new law (NRAU) was sufficient time to bring the regime of the old contracts closer to the new ones.

The most important innovating legal provisions are the following:

[171] Proposta de Lei no.38/XII, Exposição de Motivos, de 30 de dezembro de 2011, 2.
[172] To see the Memorandum provisions in regards of the rental market see Part I, 1, 1.1, A.

- The fixed-term agreements are no longer subject to a mandatory minimum duration (the former 5-year minimum duration), which can be freely agreed by the parties, the only limit being a 30-year maximum duration;
- Landlords can now terminate agreements of unlimited duration with a two-year notice instead of the previous five years;
- Increase the rents of older agreements (under any regime). The rent increase depends on a negotiation between the tenant and the landlord, provided for and ruled under the new law. This negotiation depends on the initiative of the landlord, who has to communicate, informing the tenant of the new rent value, as well as of the type and duration of the desired agreement.
- Law no. 31/2012 provides special transitional rules for cases needing protection. Regarding the lease agreements for residential purposes, these special rules apply:
  i. if the tenant has an "Adjusted Gross Annual Income" inferior to the annual minimal income;
  ii. if the tenant is 65 or more years old or suffers from a degree of disability superior to 60%.
- In these situations, Law no. 31/2012 imposes restrictions on rent increase by the landlord and postpones, or even excludes, the right to terminate the lease.
- A special eviction procedure was set up, which included the creation of the National Rental Counter (*Balcão Nacional de Arrendamento*), an administrative body under the Ministry of Justice that is in charge of the procedure leading up to the eviction and vacating of the property. This special eviction procedure is an extrajudicial mechanism, although under certain circumstances it may be transferred to the courts.

- **Human Rights:**
  - **To what extent and in which fields was tenancy law since its origins influenced by fundamental rights enshrined in**
    - **the national constitution**

The Portuguese Constitution of 1976, in its article 65[173], states that everyone is entitled to a home. This is a fundamental right of a social nature, which is established in Chapter II (Social Rights and Duties), Title III (Economic, Social and Cultural Rights and Duties) of the Portuguese Constitution. The State has the obligation to assure these rights; their content, rather than being concretized in the Constitution, presupposes a concretization and mediation by the ordinary legislator. Their effectiveness depends on the Best Possible Reserve[174].

The Constitutional Court plays an active role in the control of the Portuguese Tenancy regime. It has been called upon multiple times to determine the constitutionality of many legal provisions.

[173] In Part I, 2, 2.1, you can see the Constitutional provision.
[174] For more details, see Part I, 2, 2.1.

▪ **international instruments, in particular the ECHR**

Besides the Portuguese Constitution, the right to housing is also established in international law instruments, ratified by the Portuguese State or by International Institutions. This right can be found in:

- article 25 of the Universal Declaration of Human Rights of 1948 (ratified by the Portuguese State on 9 March 1978);
- article 31 of the European Social Charter (ratified on 30 May 2002) and;
- article 34 of the Charter of Fundamental Rights of the European Union.

- **Is there a constitutional (or similar) right to housing (droit au logement)?**

The right to housing is considered a right with a dual nature. On the one hand, it consists of a right to not being arbitrarily deprived of a dwelling or not being prevented from acquiring a dwelling. From this perspective, the housing right is considered as a *negative right*, a right of defence against the state or any person. On the other hand, it consists of a right to access a place to live. This means that the State has to adopt adequate policies to reach that goal. In this sense, the housing right is a real *social right*, as it requires the State to take action: for example, construction of sufficient dwellings for those who cannot afford a place to live. There is a basic responsibility from the Government to build social dwellings.

6. Tenancy regulation and its context

6.1. General introduction

- **As an introduction to your system, give a 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))**

Basic Requirements for conclusion:

A tenancy contract has to be done in written form (article 1069), otherwise it is null (art. 220). The absence of written form has, in principle, nullity as a legal effect. However, if the landlord refuses to comply with that provision, it is considered an abuse of right and he cannot argue the nullity of the agreement. The agreement can only be valid if the premises have an utilisation permit for housing (*licença de utilização*) (art. 1070, no.1). Also, the agreement must contain the following information (art. 1070, no. 2 and art. 2 of DL no 160/2006, of 8th August): identification of the parties, identification of the dwelling, value of the monthly rent, time and place to pay the rent, date of the beginning of the contract, and if it is an open-ended contract or a limited contract, the duration of the initial time.

Basic conditions for termination of contracts by the landlord:

If the tenant breaches the contract and there is a reason for its termination, the landlord can terminate the contract before it ends. A simple breach of contract may not result in a possibility of termination, for example, article 1083, no. 2, allows the landlord to terminate the lease agreement upon existence of a "breach which, due to its gravity or consequences, renders the subsistence of the lease enforceable". Number 2 of article 1083 also includes some cases in which the landlord can terminate the lease, such as, for example, use of the property for illegal purposes (al. b)) and use of the property for purposes not set out in the contract (al. c), also the failure to pay rent (or other expenses) for two or more months (art. 1083, no. 3) and the case in which the tenant does not pay the rent within a period of one month after a written communication from the landlord (article 1084, no. 4).

In an open-ended contract, the landlord can terminate the contract by sending a registered letter with acknowledgment of receipt[175] to the tenant giving him/her 2 years advance notice (art. 1101, al. c)).

Basic conditions for rent increase:

The landlord is allowed to raise the rent once a year (art. 1077, no. 2, al. a), but only after the initial year of the contract has passed (art. 1077, no. 2, al. b)). The parties, however, can agree upon the time and percentage of rent increase.

The landlord can raise the rent up to the limit that is annually published by law art. (1077, no. 2, al. a). For 2013, the rent increase coefficient is 1.0336 (Notice no. 12912/2012[176]). To increase the rent, the landlord has to send a registered letter to the tenant (art. 1077, no. 2, al. c)).

Habitability:

The legal regulation of the licence of use is contemplated in the General Law on Urban Construction, adopted by decree-law no. 38 382, of 7th August of 1951. The licence of use is issued by the City Council from the local area where the housing stands and its finality is to certify which use the building or building unit could have and if it is capable for that purpose.

- **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)**

[175] Registered mail requires the receiver's signature upon receipt. E.g. when the mailman delivers the letter, the receiver must sign the receipt to receive it. A registered receipt is for the sender to keep and can be used as proof that the receiver actually received the letter.
[176] http://dre.pt/pdfgratis2s/2012/09/2S188A0000S00.pdf

The current tenancy law is only state law. As we have seen before[177] both the Parliament and the Government have normal legislative powers. The power to legislate about tenancy belongs to the Assembly of the Republic. The Assembly of the Republic has exclusive competence to legislate on "*the general regime governing rural and urban rentals*", unless it also authorises the Government to do so (art. 165, no. 1, al. h) CRP).

Also, the Autonomous Regions [Madeira and Azores], if authorised by the Parliament, can produce regional legislative decrees on matters that are Parliament's legislative competence (article 227, no. 1, al. *b*) CRP), such as tenancy law (art. 165, no. 1, al. h) CRP).

- **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?**

This question is highly debatable in doctrine. The majority of Authors consider that the tenant has only a personal/obligatory right (*doutrina personalista*)[178]. This position is supported by case-law.

The minority position (*doutrina realista*)[179] considers the position of the tenant as a minor real right (similar to a property right).

There is also a mixed position[180].

In the first position, the most common arguments employed are: leases are regulated in Book II (Law of Obligations); article 1031, al. b), expressly qualifies the use and enjoyment as an obligation of the landlord, which is a characteristic that turns them into obligatory rights; law concedes, to other right holders that have clearly personal rights, access to the possessor's mechanisms of defence, and also the tenant can only use those powers after the asset is handed over to him/her. This is a mere extension of possessory protection to non-possessors; in other legal provisions, the right of the tenant is expressly qualified as a personal right (article 1682-A, no. 1, al. a) and no. 2). For Professor Maria Olinda Garcia[181], the most

[177] In Part I, 2, 2.2, A.

[178] Pires de Lima/Antunes Varela, Código Civil Anotado, III, sub art. 1022.º, no. 2, p. 342 e sub. art. 1o.RAU. no.2. p. 480; Inocêncio Galvão Telles, *Arrendamento*, 305 ff; Carvalho Fernandes, Direitos Reais, 163-173; Jorge Pinto Furtado, *Manual de Arrendamento Urbano*, Vol. I, 5.ª Ed., (Coimbra, Coimbra Editora, 2009), p. 64; Romano Martinez, *Obrigações*, 160 ff.; Januário Gomes, Constituição, 122 ff.; Maria Olinda Garcia, *O Arrendamento Plural: Quadro normativo e Natureza Jurídica* (Coimbra, Coimbra Editora, 2009), 377 ff; Luís Menezes Leitão, *Arrendamento Urbano* (Coimbra, Almedina, 2012),

[179] Oliveira Ascensão, *Direitos Reais*, 1971, 519 ff and "Locação de bens dados em garantia", *ROA*, 1985, p. 346 ff.; Menezes Cordeiro, *Direitos Reais*, 1993, (reprint, 1979) 665 ff and "Da natureza jurídica do direito do locatário", *ROA*, 1980, 61 ff.

[180] Manuel Henrique Mesquita, Obrigações Reais e Ónus Reais, Coimbra, 1990, p. 131 ff.; António Santos Justo, *Direitos Reais*, (Coimbra, Coimbra Editora, 2006), 109 ff.

[181] Maria Olinda Garcia, *O Arrendamento Plural: Quadro normativo e Natureza Jurídica* (Coimbra, Coimbra Editora, 2009), 386 ff.

important element that excludes the tenant's possibility to have a real right is based on the causes for the termination of that right. The notice in an open-ended contract or notice in a time limited contract and especially the resolution are not causes of termination of a real right. Article 1083 allows the landlord to terminate the contract if the tenant breaches the contract,; this means that, for the tenant, to maintain the use and fruition of the thing, he repeatedly has to adopt a series of behaviours, which is not characteristic of a right in rem, as observed in the legal provisions of the multiple real rights.

The main argument in favour of this second position is based on article 1037, no. 2, which grants the tenant the same protection as the possessor (articles 1276 *et seq.*), when he is deprived or disturbed in the exercise of his rights, even against the landlord (the proprietor). Thus, the tenant qualifies as a possessor. The right of possession is only granted to a holder of a right in rem (art. 1251), so the law is qualifying a lease as a right in rem. Another argument is based on article 1057, which enshrines the rule of *emptio non tollit locatum*, which means that the lease is not affected if the rented asset is acquired by a third party. They view this as a right of sequel (*direito de sequela*), typical of *ius in rem*.

To briefly summarise, despite having only an obligatory right, the tenant's position is strongly protected, as he has possessor's protection.

- **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?**

The Lease agreement is ruled – primarily – in the Civil Code, Book II [Obligations], Title II [Specific Contracts], Chapter IV [Lease], in articles 1022 to 1113. A lease is defined in article 1022 as a contract by virtue of which someone grants the use of a thing for a certain period of time in return for money[182].

There are general rules for all leases in articles 1022 to 1063. These focus on matters of the obligations of parties, rents, restitution of the leased thing, termination and expiry, and transfer or assignment of contract.

The type of immovable also determines the type of tenancy. If we have an urban immovable this means we have an urban tenancy and if the immovable is rustic so is the tenancy. The distinction between urban and rustic is based on the existence or otherwise of a building on the land (art. 202, no. 2). An affirmative answer means considering the property as urban.

Articles 1064 to 1113 regulate the urban tenancy law. From article 1064 to 1091, we have general rules that apply to urban tenancy. Urban tenancy can be used for residential (articles 1092 to 1107) or non-residential purposes (articles 1108 to

[182] "*Locação é o contrato pelo qual uma das partes se obriga a proporcionar à outra o gozo temporário de uma coisa, mediante retribuição*".

1113). The latter includes purposes other than housing, such as commercial purposes or to exercise liberal professions, etc.

In addition to urban tenancy, there is also another type of tenancy that is (no longer) ruled by the Civil Code. Its the New Regime of Rural Tenancy (NRAR), provided by Decree-Law no. 294/2009, of 13th October. Rural tenancy is a total or partial lease of rustic buildings for agricultural, forestry, or other purposes like production of goods or services associated with agriculture, livestock or forestry (art. 2, no. 1 of DL 294/2009[183]).

Parallel to the Civil Code, we have a number of special laws that rule several aspects concerning urban tenancy or leased properties.

Law no. 6/2006, of 27th February (NRAU), amended by Law no. 31/2012, of 14th August, and by Decree-Law no. 266-C/2012, 31st December, provides a set of transitional rules, in articles 26 to 58, for contracts agreed before the entry into force of NRAU, and in articles 9 to 25 some rules about communication between the parties, eviction procedures, increase of the rents, deposit of the amounts due further to the lease with the clerk to the court (*consignação em depósito*).

The transitional provisions are applicable to contracts concluded before the entry into force of this law (27 of June 2006). It's not a complete legal framework for those contracts. The provisions enshrined in the Civil Code are applicable to such contracts, with the exception of the special rules (art. 26 et seq.) laid down in Law 6/2006 (that are only applied to those contracts).

As we have seen *before*[184], there are four different inter-temporal frameworks of urban tenancy that are coexistent with the present regime:

- Contracts with residential purposes agree upon before the entry into force of RAU);
- Contracts with residential purposes concluded before the entry into force of NRAU but after the entry into force of RAU;
- Contracts without residential purposes concluded before the entry into force of Decree-Law no. 257/95, September, the 30th;
- Contracts without residential purposes concluded before the entry into force of NRAU but after the entry into force of Decree-Law no. 257/95.

Decree-Law no. 157/2006, of 8th August – amended by Decree-Law no. 306/2009, of 23rd October, and by Law no. 30/2012, of 14th August – approved the Legal Regime of Repairs on Leased Buildings (*Regime Jurídico das Obras em Prédios Arrendados*).

Decree-Law no. 307/2009, of 23rd October – amended by Law no. 32/2012, of 14th August – establishes the legal regime of urban rehabilitation (*reabilitação urbana*).

[183] "*Locação, total ou parcial, de prédios rústicos para fins agrícolas, florestais, ou outras actividades de produção de bens ou serviços associadas à agricultura, à pecuária ou à floresta*".
[184] In Part I, 3, 3.2.

Decree-Law no. 266-B/2012, 31st December - establishes the regime of the determination of the level of conservation of urban buildings (regime de determinação do nível de conservação dos prédios urbanos).

Decree-Law no. 158/2006, of 8th August, amended by Decree-Law no.266-C/2012, of 31st December, establishes the regime for determining the fixed gross annual income (*Rendimento Bruto Annual)* and assignment of rent allowance.

Decree-Law no.160/2006, of 8th August, amended by Decree-Law no.266-C/2012, of 31st December, focuses on the elements of tenancy agreements and the requirements for conclusion.

In urban tenancy for housing purposes there are more mandatory than dispositive rules. The regime is, still, highly protective of the tenant. In relation to the general rules of both leases and tenancies, there are still a considerable number of mandatory provisions.

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 Portuguese court system is relatively complex. It is divided into two separate and independent jurisdictions: the judicial courts and the administrative courts. The administrative courts deal, mainly, with disputes arising out of the exercise of public power and prerogatives (*ius imperii*), e.g., building licences. Judicial courts are generalist, dealing with most private law issues, encompassing criminal, employment, family and commercial disputes. Both the administrative and judicial courts are organised into a hierarchical three-tier pyramid structure. In the judicial courts structure, we have the first-instance courts (normally divided into generic sections for the smaller cities and/or specialised sections for the medium and big cities), on the second level there are five district courts or appeal courts (*Tribunais de Relação*) and at the pinnacle stands the Supreme Court of Justice (*Supremo Tribunal de Justiça*).

There is no special jurisdiction for tenancy, which falls within the competence of civil jurisdiction.

The general rule concerning the appeal regime is that an ordinary appeal is only admissible when the claim has a higher value than that of the jurisdiction (*alçada*) of the court and the contested decision has to be unfavourable to the appellant in an amount equivalent to at least half of the value of the jurisdiction of the court that decided it (art. 629º, CPC). The value of the jurisdiction in the first instance is € 5,000 and in the second instance € 30,000 (art. 31 Law no. 52/2008, of 28th August, the Law of the Organisation and Operation of Law Courts [*Lei de Organização e Funcionamento dos Tribunais Judiciais* (NLOFTJ)]).

In short, in order to appeal, two requirements must be met:

- The claim's value must be higher than € 5,000 (higher than the value of the jurisdiction) and,

- The unfavourable decision must be no less than € 2,500 (more than half of the value of the jurisdiction of the first instance).

However, article 629, no. 3, al. a) of the Civil Procedure Code provides that irrespective of the amount of the claim (*valor da causa*) or of the claim's defeat (*sucumbência*), the appeal to a second-instance court is always admissible if the matter concerns assessing the validity, the subsistence or the termination of tenancy agreements, with the exception of tenancy for non-permanent housing or for special transitory purposes[185]-[186]. I.e., regardless of the amount of the claim, if the matter of the dispute concerns the validity or termination of the tenancy, the parties can always appeal to the Court of Appeal [*Relação]*. For every other situation regarding a tenancy agreement, the general rule applies.

- **Are there regulatory law requirements influencing tenancy contracts**

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

Apart from other formalities that a tenancy must fulfil, which we will address later[187], for an agreement with a duration of more than six years to be enforceable against any third party, it must be registered (art 2, no. 1, al. m) and art 5, no. 5 both from Real Estate Registry Code [*Código do Registo Predial*], hereafter CRPre).

- **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.**

For the agreement to comply with the law, the premises must have an utilisation permit for housing (*licença de utilização*) (art. 1070, no. 1). Article 1070, no. 2 refers to DL 160/2006, regarding what concerns us herein. Article 5, n. 1 provides that only buildings or building units in which the intended purpose of the contract is certified by an utilisation permit can be subject to urban tenancy. The only case in which such requirement is not necessary is if the building was constructed before 13

[185] The legal category of tenancy for non-permanent housing or for special transitory purposes no longer exist since the Law 32/2012, so we just interpret this provision to be applied to tenancies with a duration inferior of 30 days and without an automatic renewal (art. 1096, 2)

[186] "*Independentemente do valor da causa e da sucumbência, é sempre admissível recurso para a Relação: a) Nas acções em que se aprecie a validade, a subsistência ou a cessação de contratos de arrendamento, com excepção dos arrendamentos para habitação não permanente ou para fins especiais transitórios*".

[187] In Part II, 2, c).

of August of 1951, the date when the General Law on Urban Construction (*Regulamento Geral das Edificações Urbanas* [RGEU]), adopted by Decree-Law no. 38 382, of 7th August of 1951, entered into force. Since RGEU, all constructions for housing purposes must have a utilisation permit, approved at the municipal level with respect for the development plans, that describe the specifics of the building, its purpose, etc, but the construction date has to be annexed to the contract (art. 5, n*o.*2 DL 160/2006).

This regime does not apply to the tenancies on uninhabitable premises or premises used for commerce, industry or services, namely for outdoor advertisement (art. 5, no. 9 DL 160/2006).

If a tenancy agreement is concluded without a utilisation permit, that does not make it invalid, but the landlord may be subject to a fine that cannot be less than one year of rent, unless the lack of permit is not his/her fault (art. 5 no. 5 DL 160/2006). The tenant has the faculty of terminating the contract with a right to be compensated (art. 5 no. 7 DL 160/2006). The agreement, however, is null if it is used for a purpose different from the licensed one, with the addition of the fine of the same amount and also a right of the tenant to be compensated (art. 5 no. 8 DL 160/2006).

- **Regulation on energy saving**

As seen before[188], the legal framework on energy in the residential area is constituted by some legal acts, such as:

- Directive 2002/97/CE: Regulation for Energetic Systems related to Building Acclimatisation (RSECE), approved by Decree-Law no. 79/2006, of 4th April;
- the Regulation on Thermal Insulation in Buildings (RCCTE), approved by Decree-Law no. 80/2006, of 4th April; National Energy Performance Certification System and;
- Indoor Air Quality in Buildings (SCE), approved by Decree-Law no. 78/2006, of 4th April, concerning the building's energy performance**.**

The Portuguese government is in the process of modifying the current legislation in order to transpose the new directive on the energy performance of buildings (Directive 2010/31/EU of the European Parliament and the Council of 19 May 2010) according to Resolution of the Council of Ministers n*o.*20/2013, of 10th April.

Decree-Law 78/2006, of 4th April, approved the National System for Energy and Indoor Air Quality Certification of Buildings [*Sistema Nacional de Certificação Energética e da Qualidade do Ar Interior nos Edifícios*] (SCE). SCE regulates the emission of an Energy Performance Certificate for a building or autonomous fraction, in which the energy performance of the building is classified on a scale from A+ to G. This document presents the possible improvement measures to be implemented at the level of energy performance and comfort, highlighting the ones with better economic viability.

[188] Part I, 3, 3.2.

As of July 2008, all new buildings must have a valid certificate. In the case of existing buildings, since 2009 they must necessarily have a valid certificate, at the stage of the conclusion of the contract of sale, lease or rental. The non-submission of this document is subject to penalties and fines established by law (art. 3, no. 1 al. c) and art. 14 et seq. of DL 78/2006).

6.2. Preparation and negotiation of tenancy contracts

Preliminary Note: We suggest that for each section (b through g) and each tenancy type, some concluding remarks should be provided in a summary table about the rights and duties of tenant and landlord and the main characteristics (in telegram style).

Example of table for **b) Preparation and negotiation of tenancy contracts**

	Main characteristic(s) of tenancy type 1 Private tenancy
Choice of tenant	- Advertisement in local newspapers and specialized internet websites; through an estate agent. - Checks on personal and financial status (personal identity documents, income tax declaration, employment contract) - Currently there are no black lists
Ancillary duties	- The parties must be loyal to each other in the negotiations and provide any information so the other party can make choices in full knowledge of the facts. - The parties may also conclude a promissory contract of tenancy. The promissory-lessee can immediately start living in the dwelling. A down payment is usual.

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

In accordance with the rules of the general part of the Portuguese Civil Code, in order to form a tenancy contract two coinciding declarations of intent (offer and acceptance) are required.

A lease is normally concluded by contract, and the owner (or other person who is entitled to conclude the contract) must give consent for it to be validly concluded.

However, there are some cases when a tenancy is concluded by an act other than a contract. We can find that in a divorce or legal separation relating to property (*separação judicial de pessoas e bens*), article 1793 (and 1794) [189] provides a possibility of formation of a tenancy relationship between the ex-spouses through a court decision[190].

Also, we can find tenancies imposed by public bodies. Through an administrative decision it is possible for a Municipality to lease, through a public tender, with the duration of five years, a vacant premise that was subject to works and repairs under urban rehabilitation set by the local authorities in order to pay for the expenses of those repairs (art 20 RJOPA)[191].

- **Matching the parties**

  - **How does the landlord normally proceed to find a tenant?**

The customary means for a landlord to find a tenant are:

a) Personal contact with friends and acquaintances interested in renting a house;

b) Suggestion of trustworthy persons who recommend a friend or an acquaintance, by publishing an add in a newspaper (especially local or regionally);

c) Publishing an advertisement in specialized internet websites (for example, www.imovirtual.com or http://casa.sapo.pt/);

d) Resorting to a real estate agency.

  - **What checks on the personal and financial status are usual? In particular: May the landlord ask for a salary statement? May he resort to a credit reference agency and is doing so usual?**

Before the conclusion of a contract, the landlord, usually, asks for the tenant's identity documents (ID-card, Tax Identification Number), in order to fill in the contract forms (art. 2 DL 160/2006) and his fiscal duties.

Landlords have legitimacy to ask for a salary statement or a salary receipt in order to know the tenant's financial capacity to pay the rents.

[189] This solution is also applied to a breach of unmarried partnership (art. 4 Law 7/2001, of 11th March).
[190] L. Menezes Leitão, *Arrendamento Urbano*, 13.
[191] L. Menezes Leitão, *Arrendamento Urbano*, 14 (n. 4).

It is also usual for the landlord to ask if the tenant is married or is living in partnership, because that person can legally live in the premises. Information about the matrimonial property regime of the spouses is also commonly asked so the landlord is informed if the spouse of the tenant is or is not liable in case of arrears.

Finally, as it is common to require a guarantor (*fiador*), this person may have to provide information about his/her level of income as well.

- **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?**

The legal limitations on data protection exist and they are enshrined in Law 67/98, of 26th October, that transposed Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The competent authority to supervise and control the application of the law is the Portuguese Data Protection Authority [*Comissão Nacional de Protecção de Dados*] (CNDP), endowed with the power to supervise and monitor compliance with the laws and regulations in the area of personal data protection.

According to article 6, al. a) Law 67/98, personal data may only be used if the person concerned gives his/her consent or if processing is necessary for the performance of a contract or contracts that the data subject is party to or in order to take steps at the request of the data subject prior to entering into a contract or a declaration of his/her will to negotiate.

If any association or enterprise wishes to gather personal data in a sort of list of defaulting tenants and/or landlords, in addition to obtaining the subject's prior consent, it must also notify the CNDP, since the processing of personal data relating to credit and the solvency of the data subjects must be previously checked by CNDP, and only after CNDP's authorisation will it be possible to compile such list (art. 28, al. a) Law 67/98).

Currently it is not common knowledge that a compilation of data or "blacklist" of tenants exists. However, the CNDP authorised – in compliance with articles 27, 28, al a) and 30 Law 67/98 – in Authorisation 2503/2012, of 19 of March 2012[192], a limited liability company – Origi9 - Soluções Tecnológicas, Lda – to gather personal data (Name, ID-card, Tax Identification Number, default situation [*situação de incumprimento*], document attesting the debt) on tenants, landlords, spouses and guarantors (*fiadores*).

[192] http://www.cnpd.pt/bin/decisoes/aut/10_2503_2012.pdf

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

The tenant has at his disposal the possibility to access the Property Register Office and ask for a permanent certificate or simplified property information to confirm that the counterpart is actually the owner of the house. Since 2011 those services are available online[193].

- **Services of estate agents**

  - **What services are usually provided by estate agents?**

As reported earlier[194], the role of real estate agents is to act as an intermediary between landlords and future tenants, in a case of a lease. Their activity is regulated in Decree-Law no. 211/2004, of 20th August, and it's supervised by InCI.

Normally the estate agents assist landlords – ranging from newcomers in the rental market to large construction companies or banks that could not sell the properties due to the current economic crisis – assessing the market conditions, proposing the terms of the contract – especially the amount of rents – promoting a lease – by all sorts of marketing tools, such as specialized internet websites, outdoor advertisement, etc – and, quite often, act as a negotiator between the parties.

  - **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?**

The activities of property brokerage and estate agency are regulated by Decree-Law no. 211/2004, of 20th August, amended by Decree-Law 69/2011, of 1st July. This law establishes the necessary requirements in order to carry out such activities, such as licensing (articles 5, 6 and 9 to 13 for brokerage and articles 24, 25 and 27 to 30 for estate agency) and professional competence (articles 7 and 8 for brokerage and article 26 for estate agency). The activity of brokerage is regulated in Section II (articles 14 to 21) and the activity of estate agencies is regulated in Section I.

Article 16, number 1 states the duties that an estate agent must comply:

a) Make sure that all the parties involved in the transaction have capacity and legitimacy to concluded the contract(s);

b) Make sure with all the means at its disposal that the characteristics of the dwelling match the information provided by the interested parties;

[193] http://www.predialonline.pt/PredialOnline/.
[194] Part I, 1, 1.2, D

c) Inform the parties in a clear, intelligible and appropriate manner regarding, notably, the characteristics, price and term of payment of the property;

d) Propose in a clear and accurate manner the transaction that they are charged with, in a way to not mislead the parties;

e) Immediately inform the parties of any event that threatens the viability of the transaction.

- **What is the usual commission they charge to the landlord and tenant? Are there legal limitations on the commission?**

There are no legal limitations on the commission estate agents charge to property owners or tenants by facilitating a contract conclusion. Parties freely agree the amount of the remuneration, but it is due only if a contract is eventually concluded, according to Law no. 15/2013, 8th February, art. 19.

Usually, estate agents charge 15% of the annual rent when representing a landlord. Alternatively, they charge the equivalent of one or two months' rent. When they represent a tenant, estate agents usually charge the equivalent of one month's rent.

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

The legal provision towards *culpa in contrahendo* is enshrined in article 227 of the Civil Code[195]. It is the general provision on pre-contractual liability. A person in the negotiation of a contract must proceed in conformity with the principle of good faith, otherwise he is liable for the resulting damages caused by his wrongful conduct[196]. This is a case of non-contractual liability. This provision applies regardless of whether or not the contract is concluded.

The main reason behind this regime is the protection of the legitimate expectations that a party may have when entering into negotiations with another. This protection of expectations has as a corollary aspect the duty of loyalty and duty to inform[197].

[195] See, Mário Júlio Almeida Costa, *Direito das Obrigações,* 12.ª Ed., Coimbra, Almedina, 2009, 298 ff.
[196] "*Quem negoceia com outrem para a conclusão de um contrato, deve tanto nos preliminares como na formação dele, proceder segundo as regras da boa-fé, sob pena de responder pelos danos que culposamente causar à outra parte*".
[197] Joaquim de Sousa Ribeiro, "Responsabilidade pré-contratual- Breves anotações sobre a natureza e o regime" *Estudos em Homenagem ao Prof. Doutor Manuel Henrique Mesquita*. Coimbra Editora, (2009).

The duty of loyalty (*dever de lealdade*) prevents a party from acting disloyally vis-a-vis the counterparty. When a negotiation occurs a party must give due regard to the other party's interest in order to fulfil his duty of loyalty, acting in good faith, namely by avoiding actions and behaviours that may be prejudicial to the other party. The landlord agrees to conclude the contract, but after receiving a better proposal from a third party, accepts the latter. Despite the contract not being concluded, the landlord acts without good faith and is liable for all the damages that the other party may suffer.

The duty to inform implies the adoption of a proactive conduct, by giving the other party all the necessary information to make choices in full knowledge of the facts, as well as creating equal conditions between the parties. This duty also includes the obligation to reply to any request for clarification.

In terms of contract preparation and negotiation, it is possible to conclude a promissory contract of tenancy (art. 410). With such agreement the parties do not have a present tenancy, but rather just an obligation – of either parties or just one of them (art. 411) – to conclude a tenancy contract in the future. However, there are no legal impediments for the promissory-lessee to be given access to the premises. This promissory contract of lease must also be put down in written form (art. 410, no. 2).

If the promissory lessee is given the possibility to use the premises, normally, there is also a down payment (*sinal*) provided by the same, which acts as an advance payment if the lease is concluded or compensation if it is not concluded (articles 440 and 442).

6.3. Conclusion of tenancy contracts

Example of table for **c) Conclusion of tenancy contracts**

	Main characteristic(s) of tenancy type 1
Requirements for valid conclusion	- Urban tenancy contract must be concluded in written form. The absence of written form has, in principle, nullity as a legal effect. However, if the landlord refuses to comply it is considered an abuse of a right and he cannot argue the nullity of the agreement.
Regulations limiting freedom of contract	- Rules regarding racial, ethnic or sexual discrimination. - Minimal content on the written contract: identification of the parties; landlord's domicile; identification and location of the premises; use of the dwelling; utilisation permit; amount of rent; day of the conclusion of the contract (limited in time contracts). - Control of contractual terms for all types of contracting parties. Extra protection for consumers.

6.3.1. Tenancy contracts

Distinguished from functionally similar arrangements (e.g. licence; real right of habitation; Leihe, comodato)

As seen in detail[198], there are several figures that functionally fulfil the same function of tenancy, but with a different juridical scheme. i.e., there are others forms of possession of a premise.

A tenancy – as a sub-figure of leases – is a legal figure framed in the doctrinal category of contracts of concession of use (*contratos de concessão de gozo*). Such category encompasses contracts that allow a person, other than the owner, to use an asset for a period of time. Aside from leases the other important contract in such category is the lending contract (*comodato*).

The main characteristics of a lease agreement – established in article 1022 – that distinguish it from other agreements are:

a) obligation to provide the use of a thing (by the lessor); temporary nature and;

b) obligation of payment (by the lessee).

The legal regime of the *commodatum* is provided in articles 1129 to 1141 of the Civil Code. It is a contract by which one party gives a thing to another who uses it and has the obligation to give it back just after the use. It is a loan for use. The difference between a loan for use and a lease lies in the lack of a remuneration of the arrangement. A *commodatum* is essentially a free contract, although the receiver has obligations (art. 1135), none of which is of a pecuniary nature[199].

There are real rights that also allow other persons besides the owner to use the asset, especially with housing purposes. Those legal figures concede to the holder an *ius in rem*, with a possibility to oppose his/her position to any third party (*erga omnes* effectiveness). The creation of a real right could be due to a contract, but there are other means (by law, by last will, etc.).

The Portuguese legal system provides two real rights that grant housing to a person: usufruct (*direito de usufruto*) and right of use and housing (*direito de uso e habitação*). As these legal schemes were already addressed[200], in the present question we will only make a brief reference.

The usufruct gives to the usufructuary a right to use and enjoy a thing, and because it is a real right his/her position is strongly protected as he/she can act as an owner – with the only bounds being the exclusion of the faculty of selling and some limitations on works and repairs. Normally the creation of usufruct is made through a gratuitous agreement (donations), although nothing forbids it being made through an onerous contract (sale and purchase, exchange, etc.)[201].

The right of use and housing is divided into the right of use, which allows the right holder to use someone else's property and reap the harvest, according to his/her family needs, and the right of housing; when the object of this right is a home

[198] Part I, 1, 1.1 C.
[199] L. Menezes Leitão, *Direito das Obrigações,* Vol. III, 375.
[200] Part I, 1, 1.1 C.
[201] A. Santos Justo, *Direitos Reais,* 357.

to live in the right of use is called right of housing instead. It is similar to usufruct; however the use is restricted to a real need of the right holder or his family[202].

Specific tenancy contracts

i) **contracts on furnished apartments;**

ii) **student apartments;**

iii) **contracts over room(s) only (e.g. student rooms);**

iv) **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.

The discipline on contracts for furnished apartments (or any other type of premise) is presented in article 1065, in the section on urban leases. There is a presumption that a lease on a furnished immovable has a unitary treatment and the rent already includes the use of furniture. This means that such contract is subject to the urban tenancy regime despite, in juridical terms, being a true mixed contract (part tenancy, part rental [*aluguer*] of movable goods). The idea behind the legal norm is to subject such arrangement to the legal discipline of urban tenancy and by doing so prevent the use of such arrangements to escape the mandatory provisions of tenancy[203].

The fact that the tenant is a student has no effect over the contract. In general there are no legal provisions for student apartments, with the exception of Law no. 2/82, of 15th January, amended by Law 12/85, 20th June, about Premises used by Students, known as *Repúblicas* (a sort of fraternities)[204]. The legal regime qualified the *repúblicas* of university students complying with the academic rules (*Praxe*) as associations with no legal personality, and they can conclude tenancy agreements. With the recent reform of 2012 the new version of article 51, no. 4, al. c) and article 54 of Law 6/2006 (for the contracts concluded before NRAU (2006)) allows the tenant (the *república*), if the landlord wants to make the transition of the contract to NRAU (changing the rent, the duration, the type of contract), to maintain the old regime for a period of 5 years and only after that NRAU's regime could be applied to them. The idea was to protect the historical and cultural identity of the *repúblicas*[205] that in some cases are located in the same place for a long period of time (even centuries).

In relation to contracts over rooms only, such contract is viewed as an atypical contract that is inappropriately called "*aluguer de quartos*" (rental of rooms, in a literal translation)[206] or a lodging contract (*contrato de hospedagem*) if there are some

[202] A. Santos Justo, *Direitos Reais*, 380.
[203] Pires de Lima/Antunes Varela, *Código Civil Anotado*, Vol. II, 631-632.
[204] Casas fruídas por repúblicas de estudantes
[205] Maria Olinda Garcia, *Arrendamento Urbano Anotado: Regime Substantivo e Processual (Alterações introduzidas pela Lei n.º 31/2012)*, (Coimbra, Coimbra Editora, 2012), 158-159.
[206] Acórdão nº TRL_6957/2006-7 de 19-09-2006.

services (meals, room service, cleaning service, etc.) provided[207]. The lodging contract is a form of service contract. Both qualifications have resulted in the exclusion of the urban tenancy regime with major consequences on rent increase, termination of the contract, etc. Their regime is not typified in the Civil Code, but due to the principle of contractual freedom, they are admissible. The same regime is applied if the landlord lives there as well.

If a tenant rents a room to another person, such act is considered a sublease, which, in that case, needs the authorisation of the landlord (1088).

Requirements for a valid conclusion of the contract

i. formal requirements

Differently from leases in general – in which there are no special forms required for the conclusion of an agreement (art. 219 CC), which means that these contracts can be concluded orally – an urban tenancy contract must be concluded in written form (art. 1069)[208].

The absence of written form makes it null (art. 220). This means, for example, that the contract could not be proven by providing a mere receipt, such means of documentary proof cannot compensate such invalidity. In the previous legislation (art. 7, no. 2 RAU (1990)) the opposite rule was consecrated, in which a contract remained valid without written form if it was proven with a receipt[209].

However, if one of the parties acts in bad faith, the abuse of a right could be eventually be claimed (art. 334) and such party could not argue the invalidity of the agreement[210]. For example, If a landlord refuses to conclude a contract in written form, telling a misinformed tenant that it's not necessary, receiving rents for a long period of time and after that trying to "evict" him/her by arguing that no valid tenancy has been agreed because it lacks written form, such action could be considered as an abuse of a right.

The declaration of invalidity of a tenancy – based on the lack of written form or any other cause of invalidity – has a retroactive effect, destroying all the practical effects produced by the contract, so the landlord must return the received rents, while the tenant, as it is not possible to return the use of the thing, must return the value of the enjoyment of the lease (art. 289, no. 1)[211]. This value will tend to be the same.

The tenant must leave the premises, since he/she has no right to occupy them. The landlord has the right of resorting to court, introducing an action of invalidity (art. 285) or, if the landlord is the owner, a claim action (*acção de*

[207] Acórdão TRL de 01-10-1998.
[208] Other formal requirements are stated in art. 1070, which we will address in the question "mandatory provisions in rental contracts, in particular: mandatory minimum requirements of what needs to be stated in a tenancy contract" of Part II, 2, C).
[209] S. Passinhas, *Tenancy Law Portugal*, 23.
[210] L. Menezes Leitão, *Arrendamento Urbano*, 67.
[211] L. Menezes Leitão, *Arrendamento Urbano*,77.

reivindicação) (art. 1311). Both actions have the legal consequence of the return of the premises.

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

If a tenancy agreement is subject to registration, a fee must be paid for that act.

According to article 60 of the Stamp Duty Code the landlord has to pay a stamp tax of 10 % of the monthly rent.

Registration requirements; legal consequences in the absence of registration

Note: If relevant, please distinguish the various existing registers, e.g. land register, tax register, register of domicile.

The registration of a tenancy – and also all the transmissions and subleases – is only necessary if the initial duration of the contract is superior to six years, with the exception of a rural tenancy, which does not need to be registered (art. 2, no. 1, al. m) CRPre). The legal consequence of the absence of registration is that the contract is not effective against third parties after six years of duration (art. 5, no. 5 CRPre).

Restrictions on choice of tenant - antidiscrimination issues

ii. EU directives and national law on antidiscrimination

The legal framework for antidiscrimination issues is composed of Law 18/2004, 11th May - that transposed Council Directive 2000/43/EC, of 29 June 2000, implementing the principle of equal treatment between persons regardless of racial or ethnic origin – and Law 14/2008, 12th March – that transposed 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.

In the Portuguese Constitution there is also some provisions related to the prohibition of discrimination on grounds of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation, based on the principle of equality of all citizens (art. 13 CRP) directly applied to all private persons (art. 18 CRP). This means that even without the appropriate legislation – which nowadays exists – an injured person can resort to the courts.

The first law is the refusal or restriction to lease or sublease based on racial or ethnic origin. It is considered a forbidden discrimination, as a violation of the principle of equal treatment (art. 3, no. 2, al. c) Law 18/2004). The practice of such actions is subject to the application of an administrative fine between one to five times the national minimal wage and a possible liability.

Also, there is an entity (High Commission for Immigration and Intercultural Dialogue [*Alto Comissariado para a Imigração e Diálogo Intercultural* (ACIDI)], set

out in Decree-Law no. 167/2007, of 3rd May[212]) competent for the promotion of equality of treatment between all people, without any discrimination on the grounds of racial or ethnic origin (art. 8, no. 1 Law 18/2004). This Commission has competence to know of any situation which may be considered to be infringing this law.

The second legislative act forbids direct or indirect discrimination based on sex in the access to and supply of goods and services (art. 1). Article 4, no. 2, c) regards as a discriminatory practice the refusal or restriction to lease or sublease based on the sex of the counterparty. In article 5 it is also forbidden to ask if a woman is pregnant to access a lease.

The practice of any discriminatory action, based on sex, to access a lease, constitutes an administrative infringement (*contra-ordenação*) (art. 12 Law 14/2008) and grants the injured person a compensation or reparation for the possible losses or damages sustained (art. 10, no. 1). If a contract contains any discriminatory provisions, the injured party acquires the right to alter the contract in the most advantageous way.

Limitations on freedom of contract through regulation

iii. mandatory provisions in rental contracts, in particular: mandatory minimum requirements of what needs to be stated in a tenancy contract

For an urban tenancy agreement to be validly concluded it must contain some information as documentary support. Art. 1070, no. 2 and DL 160/2006 (amended by Decree-Law 266-C/2012) establish must be stated in the contract.

Under article 2 DL 160/2006 a tenancy contract must contain:

a) Identification of the parties (Names, ID card, tax identification number [NIF], etc.);

b) Landlord's domicile;

c) Identification and location of premises;

d) Housing purposes or non-housing purposes, and, when for temporary housing purposes, the reason for the temporariness;

e) the utilisation permit for housing and its number and the issuing body, or the reference that such permit is not required under article 5;

f) the amount of rent;

g) the day of the conclusion of the contract.

Article 3 also stipulates a set of provisions that, eventually, must be mentioned in the contract:

a) Identification of the areas of exclusive use of the tenant and the areas of common use, if he/she has access to them;

b) Legal nature of the powers of the landlord, if the contract is concluded based on a temporary right or the landlord has powers to administer the property of others;

[212] Prior to 2007 it was the High Commission for Immigration and Ethnic Minorities (ACIME).

c) Registration number in the urban land register (*matriz predial*);

d) Regime of rents and rules for its increase;

e) Duration of the contract;

f) Regulation of condominium;

g) Other clauses allowed by law or wanted by the parties.

According to article 4, the omission of the elements of articles 2 and 3 (when applied) do not determine the invalidity or inefficacy of the contract when such irregularities can be remedied and the decisive reasons for the form were satisfied. This means that if the omissions are not tackled, or if they are, but the reasons for the formal requirements are not met, the contract is invalid or ineffective.

As seen before[213] a utilisation permit is only mandatory for buildings constructed after 1951, so, for leases on such buildings, the purposes of the contract must be compatible with the utilisation permit (art. 5, no. 1). If, for reasons attributable to the landlord such permit is not annexed to the contract, the landlord incurs a fine equivalent to at least one year of rent (art. 5, no. 5) in favour of the municipality (no. 6) and the tenant can resolve the contract and have the right to be compensated for possible damages (no. 7). Any contract with a purpose different from the permit is null (no. 8). If the building was constructed before 1951, no utilisation permit is required, but a document that proves the date of the construction must be annexed to the contract (art. 5, no. 2).

Control of contractual terms (EU directive and national law); consequences of invalidity of contractual terms

The control of contractual terms is set by Decree-Law 446/85, 25th October, amended by Decree-Law 220/95, 31st August, and Decree-Law 249/99, 7th July (both legal acts were approved to transpose Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts), and more recently by Decree-Law 323/2001, 17th December. The Portuguese law precedes the Directive and is heavily inspired by German Law (*AGB-Gesetz*[214]). One of the main differences is that it is applied not only in the relations of professionals and consumers, but also between professionals (or equated entities) and between mere private individuals.

The Portuguese law of general contractual terms applies to standard terms pre-formulated for general (frequent) use (art. 1, no. 1) and also pre-formulated individual contracts (art. 1, no. 2). The legal act is basically divided into a control of inclusion of the clauses (art. 4 et seq.) and a control of content of the clauses (art. 15 et seq.). The former is composed of a set of obligations of communication and information incumbent upon the adherent. In the latter case, the provisions are set to review the content of the clauses, carried out according to the general clause of article 15 (contradiction against good faith) and a set of black and grey lists – that are nothing more than an implementation of the principle of good faith – in the following articles.

[213] In the question of part II, 2, a) regarding regulatory requirements for habitable dwellings

[214] Gesetz zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen (1976).

The consequence of a clause not "passing" the control of inclusion is the exclusion of that clause from the singular contract (art. 8). For the control of content the legal consequence is nullity (art. 12).

There are no specific provisions regarding tenancy or leases in general.

iv. statutory pre-emption rights of the tenant

One of the rights of tenants is the pre-emption right in the acquisition of the leased premise. The pre-emption right is conceded to a tenant in case of purchase or lieu of payment (dação em cumprimento) if the duration of the leasing exceeds three years (art. 1091, no. 1, al. a))[215].

The tenant also has a pre-emption right for a new tenancy contract if the previous contract was forfeited due to such rights, or if the powers to administrate, that the contract was agreed upon, have ceased to be valid (art. 1091, no. 1, al. b)) if a tenancy contract with a third party is concluded in the six months after the forfeiture of the contract (art. 1091, no. 2 read in conjunction with articles 1053 and 1051, al. b)) – i.e. the time that the landlord has to wait to demand the return of the premises[216].

In the case of a tenancy for non-residential purposes, Article 1112, no. 4 provides the possibility of the parties to previously set aside the pre-emption right of the landlord in the case of a sale of the business installed in the leased premises.

Are there provisions to the effect that a mortgagor is not allowed to lease the dwelling (charged by the mortgage) or similar restrictions?

In loans for the purchase of a house, granted by a mortgage, it is very usual for a financial institution that concedes the loan to forbid the debtor to rent the immovable through a clause in the agreement. The main reason for such clause is related with the position of the tenant in the legal system being very close to a *ius in rem* holder. For example, in the event of a landlord's insolvency the lease agreement is not affected at all and the tenant maintains his/her right to occupy the dwelling, even in the case of a judicial sale.

The contractual consequences for the breach of such clause usually mean the possibility for the creditor to demand the payment of the entirety of the loan or increase the spread interest rates.

As a response to the recent difficulties felt by the debtors caused by the financial crisis, the government approved some measures in this field. In article 28-A of Decree-Law 349/98, 11th November (amended for the last time by Law 59/2012, 9th November), which regulates the Legal Regime for granting housing credit, provided a series of prohibitions on increasing charges on housing loans. The financial institutions cannot increase the charges – namely increase the spreads – when the debtor leases the dwelling to a third party due to a change of their workplace (or one of the members of

[215] In RAU it was only necessary to lease a premise for more than one year (art. 47, no. 1 RAU).

[216] In the previous regime provided by RAU, the tenant had the right to a new tenancy contract, now he/she only has a pre-emption right (Maria Olinda Garcia, *A Nova Disciplina do Arrendamento Urbano. NRAU Anotado e Legislação Complementar (2ª Edição)*, (Coimbra, Coimbra Editora, 2006), 29).

their household) to another more than 50 Km away and when that implies the change of their permanent dwelling, or in the case of their unemployment (or of one of the members of their household), as stated in art. 28-A, no. 1, al. a).

6.4. Contents of tenancy contracts

Example of table for **Contents of tenancy contracts**

	Main characteristic(s) of tenancy type 1
Description of dwelling	Description in the utilisation permit.
Parties to the tenancy contract	- The parties have to be legally capable of concluding a tenancy contract. - Legitimacy regarding landlords. Only the owner or a representative with general powers may sign a tenancy contract with a duration inferior to six years. Only the owner or a representative with special powers may sign a tenancy contract with a duration inferior to six years
Duration	- Maximum of 30 years for time-limited contracts. - No minimal duration. - Automatic renewal for time-limited contracts.
Rent	- No rent control. Freedom of contract. - Rent increase is up to agreement. - Rent increase. Subsidiary regime: annual increase based on inflation
Deposit	- Distinction between an advanced rent payment (deposit) and a bond. The deposit is only for non payment.
Utilities, repairs, etc.	- Responsibility for utilities is freely agreed by the parties. - Repairs are up to the landlord, unless otherwise previously agreed by the parties.

Description of dwelling; indication of the habitable surface (and consequences in case of the provision of wrong data)

As seen before, one of the elements that must be stated in a tenancy agreement is the identification and location of the premises and the utilisation permit (article 2 als. c) and e) DL 160/2006). The absence of those elements entails the agreement's nullity.

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)

Being a general provision applicable for all kinds of leases, article 1028 establishes that if an asset is leased for different uses, with a non-specific subordination to a determinate one, it is still subject to the corresponding regime, as if two different contracts were concluded[217]. This legal provision is applicable to leases with a combination of different uses. It is not exclusive for leases with residential and commercial uses, although cases involving the latter are the more common and significant in the courts[218].

If one of the parts (uses) of the contract is not subjected to the other, the causes of invalidity or the resolution do not affect the other part (art. 1028, no. 2, 1st part)[219]. For example, if the commercial part of the lease is null or annulled by a formal flaw, the contract is reduced, and the residential part is still valid and effective.

Article 1028, no. 2 also provides for other cases aside from the one when no use is subjected to another. We have three situations: one use is subjected to another; nothing from the elements of the contract (or connected elements) can define the principal use; and there are joint uses (*solidariedade*). In all of those situations, a cause of invalidity or a resolution of one of the uses of the lease affects the other (art. 1028, no. 2, 2nd part).

If a lease has a major use, the contract is subject to the legal regime applicable to that use, and the other regime is only applicable in as far as it does not go against the principal uses regime (art. 1028, no. 3). For example, if a building is leased for industrial uses with a clause that allows the workers to live there, the first is the prevalent use. So the regime of tenancy without residential uses is the one to be applied (art. 1108 et seq.). But if a house is rented to a person with the possibility for the tenant to use it also as an office for the exercise of a liberal profession, the legal framework will be the one that is applied to tenancies with residential use[220].

In the second situation – when it is not clear which is the prevalent use – we have a lease used for both uses, residence and commerce, but no element of the contract or in the surrounding circumstances (type of building, amount of rent, etc.) can give us a clear picture of the main use of the contract. So for this contract to be valid it must comply with the rules for both contracts[221].

As an example for the third situation – both uses are joint – we have a building which is rented with a house and a shop, when to enter the house you have to go through the shop[222].

[217] Pires de Lima/Antunes Varela, CC II, 351.
[218] Pires de Lima/Antunes Varela, CC II, 350.
[219] Pires de Lima/Antunes Varela, CC II, 351.
[220] Pires de Lima/Antunes Varela, CC II, 352.
[221] Pires de Lima/Antunes Varela, CC II, 352.
[222] Pires de Lima/Antunes Varela, CC II, 352.

Parties to a tenancy contract

- Landlord: who can lawfully be a landlord?

Given that, at least, a lease constitutes an ordinary administrative act (if it is concluded with a duration of less than six years), to be a landlord one must have legal capacity. So, a minor (art. 122 et seq.), an interdict (art. 138 et seq.) and an incapacitated person (art. 152 et seq.) can only conclude a lease through legal representation. When the legal powers of administration cease the contract is forfeit[223].

Legal persons (i.e. companies, associations, etc.) also have capacity to be landlords (art. 160).

In terms of legitimacy (*legitimidade*), for a (legal or natural) person to be a lessor, if the duration of the tenancy is inferior to six years, such person can be, not only the owner, but also a representative with general powers of administration (art. 1159, no. 1), a legal representative (parents, tutor, etc.), a company administrator and in general terms, a person with powers to administrate assets of others.

If the contract has a duration longer than six years or is an open-ended contract, only an owner (or an usufructuary), a legal representative if the owner is incapable, or a representative with special powers, as this type of leases are viewed as subject to extraordinary administrative powers (typically acts of alienation or encumbrance) have the legitimacy to be a lessor. So, not every person with administrative powers can lease.

However, if the asset is owned by two or more individuals in co-ownership, all the co-owners must give their assent (article 1024, no. 2).

- does a change of the landlord through inheritance, sale or public auction affect the position of the tenant?

The position of the tenant is not affected by any change of landlord. In the case of inheritance, the principle of universal succession laid down in article 2024 determines that upon the death of a person, the property passes to one or several persons (heirs). Upon the death of the inheritor, the heirs become parties to the lease contract. The previous contractual relationship is maintained in the same way, with no special rights to terminate the agreement.

If a landlord decides to sell the property, the buyer will succeed in the rights and duties of the previous landlord. The rule "*emptio non tollit locatum*" set forth in article 1057 is applied. The conditions of the contract will remain the same.

Not even a public action will affect the position of the tenant. If a landlord is insolvent, the declaration of insolvency shall not suspend the enforcement of the contract (article 109, no. 1 of the Insolvency and Corporate Recovery Code [CIRE]) and even in the event of alienation of the rented dwelling in the insolvency proceedings, the tenant maintains the same rights and duties as before (article 109, no. 3 CIRE). The same result is set out if there is a public auction (enforcement proceedings) of the use.

[223] L. Menezes Leitão, *Arrendamento Urbano*, 71.

- Tenant:

v. Who can lawfully be a tenant?

To be a lawful tenant, one must have legal capacity or be legally represented by someone legally capable. As a tenancy for the tenant is not an alienation act – it is just a simple obligation of payment – this is seen, by most of the doctrine, as a mere act of ordinary administration[224], so a representative with general powers of administration can conclude a contract on behalf of others.

A legal person can also be a lessee; however for some authors they cannot conclude a housing tenancy as this excludes the amplitude of their capacity, since it's an attribute reserved for natural persons. As an exception, it is accepted to have a contract in favour of a third party, when it refers to a natural person[225].

The spouse – married in community of property – of the tenant is a tenant him/herself (*ipso iure* party), even if not referred to in the contract as a party. The rights of a tenant are extensive to a spouse married in community of property[226].

Which persons are allowed to move in an apartment together with the tenant (spouse, children etc)?

When the tenant allows any third party to live with him/her, with or without any payment, such action is considered subletting or a *commodatum*, giving the landlord – if he/she did not give authorisation – a legitimate cause for resolution (article 1083, no. 2 al e)). However, there are certain persons that are allowed by law to live in the rented dwelling besides the tenant, as laid down in article 1093, no. 1: everybody that lives with the tenant in joint (or domestic) economy [*economia comum*] (al. a)); up to three guests, unless there was a prior agreement precluding this (al. b)).

People who live in domestic economy are normally family or someone who shares the same place due to a special affection or relationship between them. For Article 1093, no. 2 people who live in domestic economy with the tenant may be:

- Relatives (and relatives by affinity) in direct line, or to the third degree in a collateral line[227];

- People with regard to whom, by law or through convention, the tenant has an obligation of conviviality (e.g. the spouse).

This means that taking a partner, parents and children to live with the tenant is an appropriate use of the premises; therefore, it is not necessary to get permission from the landlord, nor does the tenant need to inform him.

Under article 1093, no. 3, one is considered a guest only if the tenant onerously provides housing and services related to housing or food.

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[224] L. Menezes Leitão, *Arrendamento Urbano*,74.
[225] L. Menezes Leitão, *Arrendamento Urbano*, 75.
[226] In RAU (art. 83) the opposite rule was laid down. Maria Olinda Garcia, *A Nova Disciplina do Arrendamento Urbano,* 17.
[227] Even if they pay any kind of retribution.

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

In case of **divorce or judicial separation,** article 1105 states that if the use is the family residence (*casa de morada da família*), spouses can agree about the replacement of the position of a tenant (no. 1). If the spouses do not reach an agreement, it is up to the Court to make a decision, taking into account the need of both, the interest of their children, and also assessing other relevant factors (no. 2). The agreement or the judicial decision shall be officiously notified to the landlord (no. 3).

This provision is also applicable to the separation of the members of a partnership that lasts for two or more years long (art. 4 Law 7/2001, 11th May as amended by Law 23/2010)[228].

There are no special provisions related to change of parties on leases concluded with **students**, if the contract is concluded with a group of students in which all of them are parties to the agreement.

If one of them is moving out of the apartment and the others want to replace him with another person, an agreement between the other students is not enough, as this is an assignment of the contractual position [*cessão da posição contratual*] (art. 1059, no. 2 and art. 424 et seq.) to a third party so the assent of the landlord is necessary (art. 424). Otherwise, the landlord will have a lawful cause for resolution of the contract (art. 1083, no. 2, al. e)).

If the students live in a *student housing*[229], the tenancy agreement is concluded with the association and not with the students themselves. The students according to their academic rules (*praxe*) can decide to replace a student, without the assent of the landlord.

In case of **death** of the tenant the contract expires. This is the general rule for all leases (article 1051, 1, d). A lease is seen from the tenant's perspective as an *intuitus personae* contract. However, this can be differently provided for by the parties through agreement[230].

In an urban housing tenancy the contract does not terminate on the death of the tenant if certain people survive and supervene him/her. It's a case of replacement of a tenancy by death. The contract remains the same and the same conditions as before are applicable.

Such rule is laid down in article 1106, no. 1 of the Civil Code[231]. The contract will not expire upon the death of the tenant when one of the following supervene him:

a) The spouse residing in the leased premises;

b) A partner who lived with the tenant for more than one year;

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[228] L. Menezes Leitão, *Arrendamento Urbano*, 121.
[229] See the question in **Part II, 2, C** about the **specific tenancy contracts**.
[230] L. Menezes Leitão, *Arrendamento Urbano*, 124.
[231] For urban tenancies with non-residential purposes there is also a legal provision laid down in article 1113.

c) A person who lived with the tenant in joint economy for more than one year[232].

Regarding the spouse, we've seen before that the tenancy rights are extendable to the spouse if they are married in community of property, which means that the surviving spouse is already a tenant him/herself (art. 1068). Article 1106, no. 1, al. only refers to a surviving spouse married in separate property.

Under the new number 2[233] of article 1106, it is stated that for subparagraphs b) and c) of number 1 of article 1106 the replacement of the tenancy only takes place if the transferee had been living on the premises for over a year on the date of death of the tenant.

Number 3 of article 1106 provides the order of replacement. The position of the tenant shall be transferred, successively and in identical circumstances to the surviving spouse or partner who lived with the deceased, to the closest relative or relative by affinity or, among these, to the eldest, or to the eldest among the remaining persons who lived with the tenant in joint economy.

However, pursuant to number 4 the replacement right provided in the preceding numbers is precluded if the beneficiary owns a house or a lease in the judicial districts of Lisbon, Porto, surrounding areas, or in the same judicial district where he/she lives for the rest of the country. This number has been subject to criticism by some authors, who say that the interpretation cannot be too widely at risk of including situations that should not be included (e.g. a holiday home in the surrounding areas of Lisbon). The only reasonable interpretation of this provision is to exclude the right of replacement for persons who have a viable alternative for living. This number does not apply in the case of an owner who cannot live in the other house because it's being leased, a third person who has a real right (e.g. usufruct) or lack of living conditions[234].

We can have more than one replacement of the contract. When the (first) transferee dies the contract can be transferred again[235].

The replacement of the tenancy or the concentration on the surviving spouse must be communicated to the landlord with a copy of the supporting documentation within three months of the death of the tenant, according to article 1107, no. 1. Non-compliance with the provisions of the previous number by the transferee may require him to indemnify himself to the landlord (no. 2).

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)?

The legal framework of subletting is laid down in articles 1060 et seq. as far as leases in general (sublease) are concerned and in articles 1088 et seq. referring to urban tenancy. A sublease is a new lease contract where the sub lessor is a tenant in a previous contract (article 1060). The sublease can be total or partial (e.g. a room).

[232] In the legislation prior to 2006 (article 85 RAU) the spectrum of eligible people was vaster. For more details, see S. Passinhas, *Tenancy Law Portugal*, 19 et seq.
[233] Amended by Law 31/2012.
[234] Maria Olinda Garcia, *Arrendamento Urbano Anotado*, 78-79.
[235] L. Menezes Leitão, *Arrendamento Urbano*, 125.

Subletting is only allowed if the landlord authorises it since the lessee has an obligation to not grant to others the total or partial enjoyment of the thing, either by an onerous or a free assignment of his/her position - subletting or *commodatum* (article 1038 al. f)).

The authorisation by the landlord must be written (article 1088, no. 1). And, even so, the tenant must communicate it to the landlord within 15 days after the subletting is concluded (article 1038 al. g)), as the contract would not be considered effective against the landlord (article 1061) if it is not communicated in time. Actually, this is a legal cause of resolution of the agreement, which means that the landlord could terminate the agreement (article 1083, no. 2, al. e)) without any harm to himself. However, if the landlord recognises the sub lessee, the sublease is effective against him (articles 1049, 1061 and 1088, no. 2)[236].

Subletting cannot be a means of circumventing the legal protection of tenants. The sublease creates another tenancy relationship between the parties like any other tenancy contract creates, with the exception of a few special rules[237]:

a) To avoid speculation, the tenant/sub landlord can only receive the initial rent plus 20 per cent, unless otherwise agreed between the parties (article 1062).

b) The law allows the landlord to demand the rent directly from the subtenant, if both the tenant and the subtenant are in arrears (art. 1063);

c) In case of subletting of the whole dwelling, the landlord may replace the tenant (sub lessor), through judicial notification, if the first tenancy is terminated and the subtenant becomes a direct tenant (art. 1090, no. 1). Also if the landlord receives a rent from the sublease and gives a receipt to the subtenant after the tenancy had terminated, the subtenant also becomes direct tenant (article 1090, no. 2)[238].

Is it possible and if yes under what conditions, to conclude a contract with a multiplicity of tenants (e.g. group of students)?

There is no legal obstacle for the conclusion of a contract with a multiplicity of tenants, but there are also no special provisions for the plural tenancy (more than one tenant or more than one landlord in the same contract). The legal framework of leases is not shaped to deal with a multiplicity of parties on one side of the contractual relationship since it is exclusively based upon a singular tenancy. The legal regime is set on a singular structure of tenancy (one landlord on the one hand and one tenant on the other). This means that in several aspects of the contractual relationship the law of leases is not fit to sort out this complex legal situation (for example, in the case that one of the students does not pay the rent, the law does not provide us with the consequences for the others). In these situations we must refer to the regime of other legal schemes (joint ownership, for instance). However, in several aspects the legal framework of those schemes is inadequate, as they do not give us a proper solution for the specific problems of a plural tenancy[239].

[236] Menezes Leitão, 127.
[237] Menezes Leitão, 127.
[238] Menezes Leitão, 127-128.
[239] For the emergent problems of the plural tenancy in the Portuguese legal system see MOG 2009, *passim.*

Duration of contract

Open-ended vs. limited in time contracts

The parties can conclude either an open-ended or a time-limited contract (art. 1094).

Article 1094 no. 2 allows the parties to conclude a contract that after the first renewal (of a time-limited contract) converts into an open-ended contract.

- For limited in time contracts: is there a mandatory minimum or maximum duration?

Article 1025, applicable to all leases, states a maximum duration of thirty years and any contract with a superior duration or perpetual is, *ex lege,* reduced to the legal limit (also article 1095, no. 2 for urban tenancies for residential use).

However, it must be stated that the maximum legal duration is only a limit to the initial duration of the contract, which means that through renewal the agreement can have a total duration superior to 30 years. And since the subsidiary regime consecrates an automatic renewal, such situation is quite usual.

There is no minimum duration of a tenancy; it is up to the parties[240]. With the amendments made by Law 31/2012 the former 5-year minimum duration was removed (article 1095, no. 2 prior to 2012)[241].

If nothing is established by the parties regarding the duration of the contract, it is deemed to be a time-limited contract for 2 years (article 1094, no. 3). This is a significant change (made in 2012) in comparison with the previous regime, in which if the parties did not say anything about the duration of the contract, it was considered an open-ended contract[242].

Other agreements and 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); prolongation options; contracts for life etc.

As a general rule, a time-limited contract terminates if one of the parties gives notice before the end of the limit of the time, unless something else is stipulated in the contract. If not, the contract will be automatically renewed (article 1096, no. 1).

However, in the case of 30-day contracts, or less, an automatic renewal does not occur, unless the parties decide otherwise (article 1096, no. 2). Since contracts with such short durations are usually agreed upon for transitory purposes, such as vacations, an automatic renewal as a subsidiary regime does not fit their aims, as most of these contracts will expire at the end of the established time[243].

The parties can choose a different duration period than the initial time (for example, if the initial duration is 5 years, the parties can agree that the duration

[240] MOG 2012, 43-45.

[241] The previous version of article 1095, no. 3 [currently revoked] provided an exception to the minimum duration in case of temporary housing purposes contracts or for special transitory purposes (professionally, educational or touristic), in which cases the lease could be inferior to 5 years.

[242] MOG 2012, 42-43.

[243] MOG, 2012, 46-47.

period after the renovation will be only for 2 years). If nothing is stated, the contract is renewed at the end of the initial period and with the same duration[244].

The opposition to the renewal regime by the parties will be addressed further ahead[245].

Contracts for life are forbidden, as it is not possible to conclude a contract for a period over 30 years. In case of such agreement the duration is reduced to 30 years (article 1025 and article 1095, no. 2).

Rent payment

- In general: freedom of contract vs. rent control

The legal provisions regarding rents are stipulated in articles 1039 et seq. (for leases in general) and in articles 1075 et seq. (for urban tenancies).

It is up to the private autonomy of the parties to fix the rent in the tenancy agreement. If the parties have not fixed the rent during the negotiations, the contract will nonetheless be valid as long as the rent can be determinable by other means[246].

The rents are an essential element of the tenancy contract and they have to be paid in money (article 1075, no. 1). Contrary to what was established in article 19 RAU (1990) the rent can be paid in foreign currency[247].

It can be said that, since the 2006 reform carried out by NRAU (Law 6/2006), there are no rent control schemes in force. In RAU there were established three rent regimes (art. 77): free rent, conditioned rent and supported rent[248]. This rent control schemes are still in force in the tenancies provided by a state authority (tenancy with a public task)[249].

- **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**

The current regime does not comprise mandatory rules on rent control for the contracts concluded after 28.06.2006. The parties are free to establish both the initial amount of rent and the future rent increase. When they do not do so, the landlord has the right to ask for an annual rent increase according to the inflation rate – art.1077º Civil Code.

There is also no specific rule that applies when the parties agree on an excessive rent.

Conversely, concerning old contracts [concluded before 15.11.1990] there are mandatory rules about rent increases, as will be explained *infra*.

[244] MOG, 2012, 46
[245] **Part II, 2, f)**.
[246] Menezes Leitão, 94.
[247] Menezes Leitão, 94.
[248] For further information, see for all, Passinhas, 32 ff.
[249] Part I, 3.3 “Regulatory types of tenures with a public task”.

- **Maturity (fixed payment date); consequences in case of delayed payment**

Article 1075, no. 2 states that, unless something else is stipulated in the contract, if the payment of the rent is to be done according to the months of the Gregorian calendar, the first rent will fall due at the moment of the conclusion of the contract; and following rents must be paid on the first business day of the month. This rule applies only to urban tenancy and is a sort of rent anticipation. In other leases (article 1039, no. 1), the rule is the opposite, since the rent is only due on the last day of the month, unless the parties or the usage stated another solution.

The lessor, aside from claims for delayed rents, can also demand a compensation of 50% of the rent due. However, the right of compensation and the resolution of the contract cease if the tenant pays within 8 days of the delay (article 1041, no. 2).

The tenant is in delay if he does not pay on the maturity date, but he can still pay within 8 days (article 1042). During this legal period the tenant does not endure any legal consequences.

If the tenant falls into arrears, the landlord can resolve the contract (article 1083, no. 3). However, if the landlord decides to resolve the contract based on the delay of payment, he loses the right to demand compensation of 50 % of the amount of the rents due (art. 1041, no. 1).

- **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);**

According to article 1036, if the landlord has to carry out repairs and he/she is in delay, the tenant can do the repairs and has the right to be reimbursed, but only if it is on account of urgency and it is not compatible with a judicial procedure (article 1036, no. 1). When the urgency does not admit any postponement, the tenant can do the work, also with the right to be reimbursed, without delay by the landlord, providing he/she notifies the landlord (article 1036, no. 2). Unless the contract determines something else or the landlord gives his written consent (article 1074, no. 2), these are the only situations in which the tenant can be reimbursed for the expenses for any reparations and he/she can off-set those costs from the monthly rents (article 1074, no. 3). But he/she has to inform the landlord that he/she intends to use his/her right to off-set when notifying the landlord according to article 1036, and also attach documentary evidence (article 1074, no. 5).

The tenant also has a retention right for those expenses (article 754).

May claims from rental agreements be assigned to third parties (i.e. may the landlord assign his rent claim to a bank?)

Both parties can also assign their claims to third parties, even without the consent of the debtor, according to the general regime (article 577 et seq.). The third party will have a right to demand the claim, but will not be a party in the contract.

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)

As seen before, the rent can only be paid in money, and cannot be replaced by a performance in kind or by work performances[250].

There is no statutory pledge granted to an undertaker similar to § 648 BGB. However, the owner and the building contractor can conclude a mortgage to grant the payment of the construction works; this mortgage cannot be enforceable against the tenant, as his/her position is protected against third parties, like an *ius in rem* holder.

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 landlord does not have any pledge type of security on the tenant's movable property, such as furniture or other belongings, to assure the rent payment or any other claim (e.g. damages to the premises) that he/she possibly may have against the tenant.

Clauses on rent increase

Open-ended vs. limited in time contracts

According to article 1077, no. 1, regardless if it is an open-ended contract or a time-limited contract, it is up to the parties to determine the possibility of increasing the rent and the respective regime.

If no such clause is included in the agreement, the rents will be annually increased in accordance with the coefficients published.

Automatic increase clauses (e.g. 3% per year)

The parties are free to conclude progressive rent arrangements, as the regime of the rent increase is up to the freedom of contract.

The parties can agree on a clause that automatically increases the amount of rent owned by the tenant by *X* percent a year. This can be stipulated for a period of a year or for other periods (e.g. every five years).

[250] Pereira Coelho, *Arrendamento*, Coimbra, 1988, p. 13

Index-oriented increase clauses

In the absence of a statement by the parties, the law determines that the rent can be increased annually according to the increasing coefficients in force (article 1077, no. 2, al. a)). The first rent increase can be demanded after one year of the entry into force of the agreement; and the following year after the previous increase (al. b)). This means that the landlord can increase the rent every year. The landlord, with a minimum notice of 30 days, sends a written notice to the tenant that contains the increasing coefficients and the new rent (al. c)).

The annual increasing coefficient is stated in article 24 of Law 6/2006, and corresponds to the average rate of consumer price indices, without housing, over the previous 12 months. This coefficient should be available on 31st August, and it is determined by the National Institute of Statistics [INE]. INE publishes the coefficient in the Official Journal (*Diário da República*) until 30th October of each year. As we can see, the annual increase of the rents is tied to the annual increase of the cost of living.

Below we present the increase coefficient since 1982 until 2013[251]:

Ano	Habitação renda livre	Habitação renda condicionada	Não habitacional	Diplomas legais que aprovaram os coeficientes
2013	1,0336	1,0336	1,0336	**Aviso n.º 12912/2012**
2012	1,0319	1,0319	1,0319	**Aviso n.º 19512/2011**
2011	1,003	1,003	1,003	**Aviso n.º 18370/ 2010**
2010	1,000	1,000	1,000	**Aviso nº 16247/2009**
2009	1,028	1,028	1,028	**Aviso nº 23786/2008**
2008	1,025	1,025	1,025	**Aviso nº 19303/2007**
2007	1,031	1,031	1,031	**Aviso nº 9635/2006** e **Rectificação nº 1579/2006**
2006	1,021	1,021	1,021	**Aviso nº 8457/2005**
2005	1,025	1,025	1,025	**Aviso nº 9277/2004**
2004	1,037	1,037	1,037	**Aviso nº 10280/2003**
2003	1,036	1,036	1,036	**Aviso nº 10012/2002**
2002	1,043	1,043	1,043	**Aviso nº 13052-A/2001**
2001	1,022	1,022	1,022	**Portaria nº 1062-A/2000**
2000	1,028	1,028	1,028	**Portaria nº 982-A/99**
1999	1,023	1,023	1,023	**Portaria nº 946-A/98**
1998	1,023	1,023	1,023	**Portaria nº 1089-C/97**
1997	1,027	1,027	1,027	**Portaria nº 616-A/96**
1996	1,037	1,037	1,037	**Portaria nº 1300-A/95**

[251] http://www.portaldahabitacao.pt/pt/portal/legislacao/coeficientes.html

1995	1,045	1,045	1,045	**Portaria nº 975-A/94**
1994	1,0675	1,0675	1,0675	**Portaria nº 1103-A/93**
1993	1,080	1,080	1,080	**Portaria nº 1024/92**
1992	1,1150	1,1150	1,1150	**Portaria nº 1133-A/91**
1991	1,11 (a)	1,11 (b)	1,11 (c)	**Portarias nº 1101-A/90** (a), **nº 1101-B/90** (b) e**1101-E/90** (c)
1990	1,10 (a)	1,10 (a)	1,10 (b)	**Portarias nº 965-A/89** (a) e **nº 965-D/89** (b)
1989	1,073 (a)	1,073 (a)	1,073 (b)	**Portarias nº 715/88** (a) e nº **725-A/88** (b)
1988	1,074 (a)	1,074 (b)	1,074 (c)	**Portarias nº 845/87** (a), **nº 846/87** (b) e **nº 847-A/87** (c)
1987	1,085 (a)	1,090 (b)	1,090 (c)	**Portarias nº 604/86** (a), **nº 605/86** (b) e **nº 617/86**(c)
1986	1,13 (a)	1,14 (b)	1,14 (c)	**Portarias nº 179/86** (a), **nº 29/86** (b) e **nº 926/85**(c)
1985		1,18 (a)	1,18 (b)	**Portarias nº 842-C/84** (a) e **nº 842-B/84** (b)
1984		1,17 (a)	1,17 (b)	**Portarias nº 1007/83** (a), **nº 43-B/84** e **nº 1006/83**(b)
1983		1,17 (a)	1,17 (b)	**Portarias nº 1014-B/82** (a) e **nº 1014-A/82** (b)
1982		1,15 (a)	1,17 (b)	**Portarias nº 63/82** (a) e **nº 62/82** (b)

Utilities

Kinds of utilities and their legal regulation (especially: does the landlord or the tenant have to conclude the contracts of supply)

According to article 1078, no. 1 the parties are free to agree, in writing, who will be responsible for charges and expenses (water, electricity, gas, heating, telephone, Wi-Fi, etc.) related to the leased premises. If the parties do not reach an agreement regarding this matter, the following numbers of article 1078 establish a subsidiary regime.

Article 1078, no. 2 states that charges and the expenses of supplies of goods or services regarding the premises are borne by tenants. According to article 1078, no. 3, in a rented apartment, the charges and the expenses related to the administration and utilization of common parts of buildings and also the payment of expenses of services for the common use are to be paid by the landlord.

Distribution:

There are no legal rules about the provision of utilities. The standard practice is for the tenant to directly conclude a contract of distribution of utilities with the company or public entity responsible for the supply. For tenants to conclude a contract with water, electricity (and others) companies, they only need to exhibit the written tenancy contract.

Article 1078, no. 4 establishes as a subsidiary regime that the charges and the expenses must be contracted by the person responsible for the payment. If the tenant is responsible for an expense, but the contract is signed by the landlord, the latter must present to the tenant, within one month, the proof of payment; the tenant having one month, after being informed by the landlord, to pay, simultaneously with the rent, those expenses (article 1078, no 5 and no. 6).

The parties, to simplify, matters, can agree on a certain amount, to be paid monthly; and the adjustments will be made on a half-yearly basis (article 1078, no. 7).

Which utilities may be charged from the tenant?

The parties can agree that all the utilities may be charged directly to the tenant. Besides, the subsidiary regime also establishes for most of the utilities that the tenant must be the one who is charged.

What is the standing practice?

How may the increase of prices for utilities be carried out lawfully?

If the landlord is the one who is responsible for the payment of the utilities – for example, because of of previous contract of supply signed by the landlord or when the agreement is for a short period of time (e.g. vacations or other transitory purposes) and the tenant does not want to contract directly with the utilities company in question (particularly in order to avoid the fee for the connection of the utility) – it is common practice to add the average amount of expenses to the rent.

Is a disruption of supply by the external provider or the landlord possible, in particular if the tenant does not pay the rent?

Since most of the utilities contracts are concluded between the tenant and the utilities' companies, the disruption may only take place if the tenant does not pay the bill.

If the contract of supply is concluded with the landlord and, without any justification or reason, the landlord terminates this contract, by doing so, the tenant will not have access to the utilities (water, electricity), which can be considered an abuse of a right[252]. If the landlord acts in bad faith, with the intention to affect the tenant and, maybe, to force him to leave the premises – or if the utilities in question are necessary or indispensable or of such importance for a person in order to use the premises (for instance, water and electricity for housing) – the landlord is violating his/her obligation to not disturb the use of the premises by the tenant (established in article 1037). In this case, the tenant can replace the contract of supply[253].

[252] Ac. TRC of 15-07-2009 (dgsi.pt).
[253] Ac. TRP of 04-01-2010 (dgsi.pt).

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)?

Portuguese Law makes a distinction between an advance rent payment and a bond. According to article 1076 no. 1 the parties can agree that a maximum of three months' rents is paid in advance. This advance payment can only serve the purpose of protecting the landlord against a situation of delay or non-payment of rents by the tenant. If the tenant always pays the rents on time, this anticipation is set-off with the rent due in the last months of the agreement (depending on how many monthly rents were paid in advance).

Number 2 of article 1076 establishes a provision related with the creation of bonds. The parties can fix a bond, by any of the forms legally foreseen, destined to guarantee the fulfilment of either party's obligations. We have to combine this article with article 624, which states that a bond created by contract can be any type of personal or real guarantee. In most rental contracts, landlords demand a personal guarantor who is responsible for the payment of all rents until the tenant leaves the dwelling.

What is the usual and lawful amount of a deposit?

The practice of asking for an advanced payment of rent is quite common. The Law, since 2006, allows the landlord to ask for three months' rent in advance (art. 1076, no. 1). In the previous legislation the amount of the advanced payment could not exceed the equivalent of one month's rent (article 21 RAU (1990)).

This means that a person, when a tenancy contract is concluded and he is moving into a rented house, can possibly be asked to pay an equivalent amount of four months' rent, being three monthly rents for the advanced payment of rent and another one for the rent of the first month, which are due at the moment of the conclusion of the contract.

How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant?)

There is no legal provision about the way the landlord has to manage the deposit. It's not frequent for a landlord to create or use a special account to manage the deposit provided in advance.

The landlord does not owe any interests to the tenant, given that article 213, no. 2 states that in relation to civil fruits (rents, interests, etc.), the division will be done proportionally according to the duration of the right. This means, as long as the landlord has a right to maintain the deposit – e.g. as long as the contract is in force – that the landlord will be able to collect the interests for himself. For example, if the tenant terminates the contract and no set-off took place, the landlord must return the

deposit and any interest that the deposit may generate to the tenant; and in that case the landlord owes him interests.

In short, the landlord can keep the interests for himself as long as he doesn't need to return the deposit to the tenant, in which case he has to not only return the deposit, but also the interests that deposit may have generated as well.

What are the allowed uses of the deposit by the landlord?

There is also no provision regarding the allowed uses of the deposit by the landlord. He will be able to use the deposit in whatever way he wants since usually there will be a set-off at the end of the contract, meaning that the tenant will not be impaired.

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)

Under Portuguese Law, for all leases, the lessor has an obligation to deliver the dwelling (article 1031, al. a)) and to assure that it can be used according to the purpose of the contract (art. 1031, al. b)). The lessor has to maintain the property in good condition during the entire period of the contract. For all maintenance works and repairs the responsible person is the landlord (article 1036), but as seen before, this provision allows the tenant to proceed with the repairs in case of urgency. The law does not state any concept of "case of urgency", so it depends on the nature and specificity of the case.

For urban tenancy, article 1074, no. 1, regarding works, states that both ordinary[254] and extraordinary[255] repairs, demanded by law or according to the purposes of the contract, which should be carried out on the leased property are the landlord's responsibility. This is however a subsidiary regime, as the parties can reach an agreement that certain works and repairs are to be carried by the tenant (article 1074, no. 2). This means that the landlord can shift any type of repairs to the tenant.

Connections of the contract to third parties

Rights of tenants in relation to a mortgagee (before and after foreclosure)

If the tenancy agreement is concluded before the mortgage is granted, the tenant can remain in the rented dwelling even in the event of foreclosure. The buyer

[254] E.g. minor repairs and cleanliness of the building.
[255] E.g. defects of the building.

will succeed in the same rights and duties of the previous landlord, as the rule "*emptio non tollit locatum*" is applied in that case (article 1057).

However, if the agreement is only concluded after the mortgage comes into force the rights that the tenant may have are subject to great controversy both in the doctrine and in the jurisprudence.

One side[256]-[257] defends the extinction of the tenancy contract after the foreclosure. This position is based on the fact that under article 824, no. 2 all rights of enjoyment (real or personal) are forfeited after a public auction. The *ratio legis* of this provision is for the buyer in a public auction to acquire the property free of any encumbrances or charges. So, the tenancy must cease.

The other position[258]-[259] defends that the tenancy is not included in the rights described in article 824, no. 2 – as it is not an *ius in rem* – and the law does not foresee any exception for the rule "*emptio non tollit locatum*" (article 1057). Also, in case of insolvency of the landlord and subsequent alienation in the insolvency proceedings, the tenancy contract is still in force (article 109, no. 3 CIRE). So, a different rule for the foreclosure is not suitable.

As to the form of execution, the lease agreement must be in written form, regardless of its duration or purpose. Therefore, an oral agreement which provides a lease with a duration inferior to 6 months is no longer a possibility.

6.5. Implementation of tenancy contracts

Example of table for e) **Implementation of tenancy contracts**

	Main characteristic(s) of tenancy type 1
Breaches prior to	- Delayed completion of dwelling: the landlord is only

[256] Oliveira Ascensão, *Locação de bens dados em garantia. Natureza jurídica da locaçã*o, ROA, ano 45 (1985), tomo II, pp. 363 ff.; Henrique Mesquita, Obrigações Reais e ónus reais, Coimbra, Almedina, 1990, p. 140, nota 18; António Luís Gonçalves, Arrendamento de prédio hipotecado. Caducidade do arrendamento, RDES, ano 140 (1999), tomo I, pp. 95-101; Romano Martinez, Obrigações, pp. 206-207 and Da Cessação do Contrato, 2.ª Ed., Almedina, p. 327; José Alberto Vieira, Arrendamento de Imóvel dado em garantia, Estudos em homenagem ao Prof. Doutor Inocêncio Galvão Telles, vol. IV, Almedina, p. 437 and Laurinda Gemas, Albertina Pedroso, João Caldeira Jorge, *Arrendamento Urbano. Novo Regime Anotado e Legislação Complementar.* 3.ª Ed., 2009, 268.

[257] In the jurisprudence: Ac. TRC 30-03-1993 (RDES 40 1999, n.º 1 87-94); Ac. STJ 3-12-1998 (BMJ 482 1999, pp. 219-225); Ac. TRL 28-09-2006 (CJ 31 2006, T. 4, pp. 63-67); Ac. TRL 26-06-2008 (CJ 33 2008, T. 3, pp. 117-119); Ac. TRE 19-06-2008 (CJ 33 2008, T. 3, pp. 250-253) and Ac. TRC 21-10-2008 (CJ 33 2008, T. 4, pp. 24-26).

[258] Maria Olinda Garcia, *Arrendamento urbano e outros temas de direito e processo civil*, Coimbra Editora, 2004, p. 55; L. Menezes Leitão, *Arrendamento Urbano*, 161-162; Carvalho Fernandes and João Labareda, Código da Insolvência e da Recuperação de Empresas Anotado, Quid Iuris, 2005, nota 5.º ao art. 109.º, p. 413 and Cláudia Madaleno, A Vulnerabilidade das garantias reais, Coimbra Editora, p. 322.

[259] In the jurisprudence: Ac. STJ 25-2-1993 (CJ-ASTJ 1 1993, T. 1, pp. 147-150); Ac. TRL 15-5-1997 (CJ 22 1997, T. 3, pp. 87-90) and Ac. TRL 16-09-2008 (CJ 33 2008, T. 4, pp. 80-85)

handover	responsible if he/she is at fault. - "Double lease": the first contract to be concluded prevails. If it is a registered lease, the first to be registered prevails (even if it is the second contract to be concluded). - Refusal of clearing and handover by previous tenant: the landlord has to assure that the dwelling is not being used by anyone else, without prejudice to the tenant acting of his own accord. - Public law impediments to the tenant: after the construction or reparation of a building the municipality must concede an authorisation of the use. - Insolvency of tenant: for housing tenancy the insolvency administrator would not be able to terminate the agreement.
Breaches after handover	- Defects of the dwelling: the law makes a fundamental distinction regarding the moment of delivery. For any defects that date from the moment of delivery the landlord must prove that he/she, without fault, did not know about them, but for any defects appearing after that moment the burden of proof is on the tenant. - If the tenant is a consumer, the landlord has to deliver the premises in conformity with the contract [same regime of sale of consumer goods Directive]. - The landlord is not responsible for noise (from third parties). The tenant can act by him/herself (possessor means); protection of personality rights (right to sleep, right to quietness, etc.). - Damages caused by third parties: the tenant cannot act since the landlord is the owner. If he/she cannot enjoy the use of the premises, he/she can claim compensation (tort law). - Rent reduction is proportional to the duration of the deprivation.
Rent increases	- Currently there are no mechanisms for the landlord to increase the rents after renovation works.
Changes to the dwelling	- The tenant can make improvements which can be necessary, useful or voluptuous. The landlord is obligated to pay him for the necessary improvements and for the useful improvements. The tenant, at the end of the contract, can remove those improvements, provided the leased property does get damaged in the process. - Voluptuous improvements are not indispensable to the preservation of the dwelling, or increase the value of the same, but serve only to please the tenant (at the end of the contract he/she can take them with him/her, provided

	that this can be done without deteriorating the dwelling, if not, the tenant is not entitled to any compensation). These improvements can only be made with the written consent of the landlord - The tenant can make deteriorations for his own comfort or convenience, but these shall be repaired before the restitution of the building. - The tenant has to tolerate urgent repairs, as well as any kind of works demanded by a public authority that have to be carried out by the landlord.
Use of the dwelling	- The tenant can have a domestic industry; keep pets; receive up to three guests (people to whom the tenant provides housing and provide services related to the house, or provides maintenance payments, for consideration); exhibit a poster on the balcony, provided it is not offensive to decency. - The tenant cannot have unlawful, indecent and dishonest practices; and must comply with the rules regarding hygiene, quietness, good neighbourly relations or other internal condominium rules.

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

In a case of an owner who leases a dwelling that is under construction or will be built in the future and fails to deliver it in time, the solution is different depending if the landlord is at fault or not.

One of the obligations of the landlord is to deliver the dwelling (article 1031, al. a)). If there is a term for the delivery and the landlord falls into delay, the tenant could have interest on arrears (article 805, no. 2, al. a)). In the case of a non-term agreement the tenant can demand the delivery at all times (article 777).

However, supposing that the contracting parties agreed on a time of delivery of the dwelling and the delay was caused by a third party (e.g. a person that is challenging the building permit), a natural event or other circumstances beyond the control of the debtor (e.g. a strike), the landlord is not liable, because this is a case of a temporary impossibility (article 792, no. 1). The compliance is postponed to a posterior date, when possible, without consequences to the debtor.

The temporary impossibility does not imply the extinction of the obligation not to delay. But if the tenant looses the interest in the contract the impossibility shall be considered definitive (article 792, no. 2) and as it would be deemed as a situation of objective impossibility, the landlord cannot not be held responsible.

Refusal of handover by landlord (in particular: case of "double lease" in which the landlord has concluded two valid contracts with different tenants)

The duty to deliver the dwelling and the duty to pay the rent are synallagmatic. If the landlord does not deliver it, the tenant can invoke *exceptio non adimpleti contractus* and refuse to pay the rent.

If the landlord concludes two valid contracts with different tenants, the contract that will prevail is the first one to be concluded. Article 407 states that when someone grants non-compatible personal rights to different people by multiple contracts, the older right prevails (*prior in tempore, potior in iure*). As the tenancy is a consensual contract, the first contract to be concluded is the one that will prevail.

However, article 407 has an exception regarding registration provisions. As seen before[260], an agreement with duration of more than six years, in order to be enforceable against any third party, must be registered (art 2, no. 1, al. m) and art 5, no. 5 both from CRPre). So, for contracts lasting more than six years, which require registration, the first contract to be registered prevails (art. 6 CRPre).

The tenant of the contract that will not prevail will be able to sue the landlord and get compensation.

Refusal of clearing and handover by previous tenant

The fact that the previous owner did not handover the premises to the landlord does not have any specific relevance do the new tenant. It is only a failure to fulfil the obligation to deliver the dwelling by the landlord (art. 1031, al. a)).

The landlord is the only one who can act, having at his disposal the possibility to resort to the special procedure for eviction (art. 15 et seq. Law 6/2006).

Public law impediments to handover to the tenant

According to the Legal Regime of Urban Planning and Building (RJUE), after the construction or reparation of a building, the municipality must grant an authorisation of use (*autorização de utilização de edifícios*) before the building or building units are capable of being used by anyone (art. 62 et seq.).

The occupation of buildings or building units (apartments) without a licence or at odds with the established use is sanctioned with an administrative fine, between € 500 and € 100,000 if it is a natural person and between € 1,500 and € 250,000 if it is a legal person (art. 98, no. 1, al. d) of RJUE).

[260] Part II, 2, C "Registration requirements; legal consequences in the absence of registration".

If a landlord concludes a contract without a utilisation permit, he/she may be subject to a fine that cannot be less than one year of rent, according to art. 5 no. 5 DL 160/2006)[261].

- **In the sphere of the tenant: refusal of handover by tenant; insolvency of tenant**

If the tenant refuses, without a legal reason, the handover, he/she must pay by way of compensation, until the moment of the handover, the rent that was agreed (art. 1045, no. 1). However, as soon as the tenant is in arrears (after notification by the landlord) the compensation is increased to twice the amount (art. 1045, no. 2).

In case of insolvency of lessee, article 108, no. 1 CIRE, establishes that the enforcement of the contract shall not be suspended, but the insolvency administrator can terminate the agreement with a notice of sixty days (unless a shorter period is applicable). However, for a housing tenancy, this option is forbidden. The insolvency administrator can only declare that the payment of the rents in arrears after sixty days of the declaration of insolvency will not be exercisable in insolvency proceedings. In this case, the landlord has the right to claim compensation, as a creditor of the insolvency proceedings for damages caused by the eviction due to lack of payment of rent(s) up to an amount of one trimester (art. 108, no. 2).

After the declaration of insolvency, the contract may not be terminated by the landlord based on (art. 108, no. 4): default in the payment of rent arising before the opening of the declaration of insolvency (al. a)); because of degradation of the debtor's financial situation (al. b)).

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?

As the landlord must assure that the dwelling can be used according to the purpose of the contract (art. 1031, al. b)), article 1032 stipulates that the landlord is not in compliance when the rented thing suffers a defect that does not allow the pursuit of the contract or does not have the qualities necessary to that purpose (or lack qualities that have been assured by the landlord), provided that the following situations occur:

a) The defect already existed at the date of the delivery and the landlord does not prove that he did not know about it and that it is not attributable to him/her;

[261] For more details see Part II 2 c) question regarding mandatory provisions in rental contracts.

b) The defect appeared after the delivery and is attributable to him/her.

In general terms, the fault of the debtor is always assumed, as he/she has the burden to prove otherwise (art. 799). However, regarding defects of the rented property, the law makes a fundamental distinction regarding the moment of delivery. For defects that are dating from the moment of delivery, the landlord must prove that he was unaware of them without fault on his/her part, but for defects appearing after that moment, the burden of proof ison the tenant.

The landlord is not responsible if the tenant already knew about existing defects when the contract was concluded or after receiving the premises.

According to article 1033, the landlord is not liable for the defects:

a) if the tenant already knew about the existing defect when he/she concluded the contract;

b) if the defect already existed upon the delivery and it was easily conspicuous, unless the landlord has ensured its' non-existence or has deliberately hidden it;

c) if the defect is due to the tenant;

d) if the tenant does not warn the landlord, as he/she was required to do.

In article 1033 al. a), there is presented a situation of a lease of a dwelling in a bad state of repair, and, nonetheless, the landlord is responsible for the obvious defects that the use may present.

The tenant may, however, annul the agreement based on malicious misconduct or error (art. 1035).

If the tenant is a consumer and the landlord is a professional, a different set of rules are applicable. Decree-Law 67/2003, 8th April, that transposed Directive 1999/44/CE, of 25th May, last amended by the Decree-Law 84/2008, of 21st May, regarding sale of consumer goods is also applicable, *mutati mutandis,* to leases (art. 1-A, no. 2).

Therefore, the landlord must deliver the premises in conformity with the contract (art. 2, no. 1). The premises are presumed to not be in conformity with the contract if they are in the situations described in art. 2, no. 2.

Once the non-conformity has been verified, the tenant shall be entitled to have the goods brought into conformity free of charge by repair, replacement, reduction or resolution (art. 4, no. 1).

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?

Exposure to noise is not a defect *per se*, unless the landlord assured that the dwelling is situated in a peaceful location. Despite the obligation to deliver housing exempt from defects (art. 1032), this obligation does not cover *de facto* disorders caused by third parties. The landlord is not responsible for acts caused by third parties, even if, for example, they are also his/her tenants. However, the tenant can

resolve the contract if there is a defect that endanger his/her life or health (art. 1050, al. b)), and noise can be categorized as such.

Besides the public law provisions regarding noise and environment – calling the police on this basis or going to court to prevent the continuation of construction works – the tenant also has remedies from civil law. He/She has personality rights, namely the right to sleep, to rest, among others, that allow him/her to ask for compensation for the pain and suffering caused by the noise.

He/She can also use possessor's means (art. 1037, no. 2) and address the noisy neighbours him/herself.

Regarding other damages caused by third parties, because the rented dwelling is not property of the tenant, only the landlord can claim a compensation in the event of any damages to the house. Of course, if the damages are caused on the tenant's own property (e.g. furnishings) he/she can resort to civil liability.

In addition, the tenant can claim damages he suffered due to not being able to enjoy the use of the premises. His/Her possession and use of the house may be disturbed by a third party and, according to the principles of tort law (art. 483), everyone is obliged to repair damages caused with fault on their part themselves.

In case of occupation by a third party, since the tenant has access to possessor's means, he/she can demand him/herself that the third party leaves the premises, or, if the latter chooses not to do so, he/she can resort to court.

Discuss the possible legal consequences: rent reduction; damages; "right to cure" (to repair the defect by the landlord); reparation of damages by the 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

The rent may only be reduced when the tenant is deprived, fully or partially, of the use of the thing. For example, if the roof needs repairs and the room is inhabitable. The reduction is proportional to the duration of the deprivation (art. 1040, no. 1). For the tenant to have the right of reduction of the rent, he/she must have notified the landlord in time (according to art. 1038, al. g) and the landlord must not have made the necessary repairs.

In the case of deprivation not due to landlord's or a relative's fault, the reduction of the rent only takes place if it exceeds 1/6 of the duration of the contract (art. 1040, no. 2).

If for some reason the defect caused damages to the tenant or to his/her property – e.g. damp on the walls provoked severe damages to furnishings – the landlord is responsible for the damages if he/she was acting with fault (art. 798), in that case, he/she has the burden of proof (art. 799).

In addition, if the landlord is in delay and does not carry out the repairs in time, in a situation of urgency, the tenant can carry these out him/herself – and has the right to be reimbursed – but has to warn him/her, as seen before (art. 1036).

Entering the premises and related issues

Under what conditions may the landlord enter the premises?

The landlord can only enter the premises with the tenant's consent. Article 34 of the Portuguese Constitution states that the "entry into a citizen's domicile against his/her will may only be ordered by the competent judicial authority and then only in the cases and in compliance with the forms laid down by law". In an eviction procedure the landlord may be allowed to enter the tenant's house without his/her consent to evaluate the damages to the house, for example. However, no one shall enter the home of any person at night without that person's consent (art. 34, no. 3 CRP).

Entering a tenant's house without consent or authorisation by a competent judicial authority can constitute a criminal offence (trespassing onto a home and disruption of private life) punished with up to one year in prison or 240 days of fine (art. 190 of the Criminal Code).

Is the landlord allowed to keep a set of keys to the rented apartment?

The landlord may only keep a spare set of keys if the tenant agrees. As the tenant has a constitutional right of housing (art. 65 CRP) he/she is the only one – and the members of his/her family that also share the same right – that can have access to the premises. Also the right of privacy (of their personal and family life) (art. 26 CRP) is also constitutionally protected, so the landlord keeping a set of keys without the tenant's consent can been seen as a possible threat to their right, since he/she can easily enter the premises at any time.

Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

The landlord cannot lock the tenant out, even if he/she is not paying the rent. Such action constitutes a violation of his/her obligation to assure that the premises can be used according to the purpose of the contract (art. 1031, al. b)) and legitimizes the tenant to not pay the rent as long as he/she cannot enter the premises[262]. According to article 1040, no. 1 of the Civil Code the rent reduction is proportional to the duration of the deprivation.

If the tenant is locked out, even in the case of rent arrears, he/she has the right to go to court and ask for the restitution of the premises and can also claim

[262] Ac. TRP 17/05/1994 (ALMEIDA E SILVA).

damages (e.g. hotel expenses)[263]. According to the jurisprudence the tenant can also use a provisional measure [*providência cautelar*] to get a temporary restitution of the house, even if the landlord acted without physical violence towards him[264].

Also the tenant has at his/her disposal the faculty of possessory restitution (art. 1037, no. 2). The Portuguese Civil Code gives the tenant the same protection as the possessor, when he/she is deprived or disturbed in the exercise of his/her rights, even against the landlord.

- **Rent regulation (in particular implementation of rent increases by the landlord)**

  - **Ordinary rent increases to compensate inflation/ increase gains**

As seen *supra*[265], if the parties do not agree in a specific rent increase clause, the subsidiary regime is based on annual increases taking into account the inflation.

  - **Rent increase after renovation or similar measures, e.g. upgrading the energy performance of the house, or similar lawful and dealt with in a special procedure?**

Currently, there is no type of mechanism for the landlord to increase the rents after renovation works. The original version of the Legal Regime of Repairs on Leased Buildings [RJOPA], approved by Decree-Law no. 157/2006, of 8th August, in article 27, contemplated a rent increase after the conclusion of renovation works for contracts for residential use concluded before the entry into force of RAU (1990). However, with the 2012 reform that aimed to bring these older contracts into line with the new legal framework – contrary to the 2006 reform that created a set of special rules, applicable to those contracts, which were simultaneously in force with the new regime – article 27 was revoked by the Law no. 30/2012, of 14th August. The reason behind this legal change is that the 2012 law created a mechanism, based upon a negotiation procedure involving the parties, for the transition of the older contract to the new legal framework, in which the landlord is allowed to increase the rent, regardless of any works on the rented premises, so article 27 was viewed as unnecessary.

  - **Rent increases in "houses with public task"**

According to article 9 of Ministerial Order 288/83, of 17th March, regarding the social rent regime[266] for leased dwellings promoted by the State, the social rent is adjusted once a year according to the percentage change of the monthly earnings.

[263] Ac. TRL 04/10/07 (JORGE LEAL).
[264] Ac. TRP 24/02/1997 (RIBEIRO DE ALMEIDA).
[265] Part II, 2, d) in question regarding rent increase.
[266] For further details see Part I 3.3 "Regulatory types of tenures with a public task".

Also, the State is allowed to increase the rents in the case of works on the dwellings, but the value of the new rent depends on the financial condition of each household.

- **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)?**

As already seen, the annual increase of rents is based on an increasing coefficient that corresponds to the average rate of the consumer price index in the previous year. This coefficient is determined by the National Institute of Statistics [INE].

- **Possible objections of the tenant against the rent increase**

Given that the rent increase is based on an agreement between the contracting parties or a subsidiary regime that foresees an annual increase of rents, the tenant cannot object, unless of course the increase is illegitimate (e.g. the increases are greater than is allowed by the contract or by law).

- **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?**

According to article 1046, applicable for all leases, regarding improvement on the dwelling, the lessee is compared to a possessor in bad faith, with the exception of repairs made in case of urgency and when the landlord is in delay (art. 1036).

Portuguese law provides for three kinds of improvements:

a) necessary improvements, in which the works have the purposes of conserving the dwelling or preventing further deterioration (e.g. putting tiles on a roof in poor condition; repairing a cracking wall or a leaking pipe, etc.);

b) useful improvements, which, although not essential for the conservation of the premises, increase its value (e.g. painting the walls; putting double glazing on the windows; putting a gate in the garden, etc.);

c) voluptuous improvements, which are not essential for conservation and do not increase the value either, but only serve an aesthetic purpose or are for embellishment (for example, the installation of a swimming pool; making sculptures on the walls).

A possessor of bad faith can only be compensated for the necessary improvements. In this case, the landlord is bound to pay him (art. 1273 no. 1). Also, for useful improvements the landlord does not have to compensate the tenant for any expenses, but the tenant can collect/remove this type of improvements, provided this can be done without damaging the property (art. 1273, nos. 1 and 2).

For voluptuous improvements, a possessor of bad faith does not have the right to either be compensated or to collect the improvements.

The parties can agree otherwise, since this regime is only subsidiary (art. 1046, no. 1).

For an urban tenancy, the regime is slightly different. Article 1074, no. 2 states that the tenant can only perform any type of works if that clause was established in the agreement or if the landlord gives his/her written consent. This is the only case in which the tenant can be reimbursed, through means of off-set with previous notice to the landlord (art. 1074, nos. 3 and 4).

- **Is the tenant allowed to make other changes to the dwelling?**

The tenant is allowed to cause some deterioration in the dwelling that is caused by a normal and careful use, according to the purpose stipulated in contract (art. 1043). For example, making a small hole in the wall to hang a painting. The dwelling must be delivered to the tenant in good condition, but if there is no document attached to the contract describing the state of the building when it was handed over, article 1043, no. 2, establishes a presumption in favour of the landlord that the building was in a good state.

He/She can also carry out other improvements for his/her own comfort or convenience (art. 1073, no. 1).For example, the tenant can instal a built-in closet, blind a window or remove a door. However, these improvements shall be changed back to the previous state otherwise agreed with the landlord (art. 1073, no. 2).

In particular changes needed to accommodate a handicap (e.g. building an elevator; ensuring access for wheelchairs etc)?

There are no legal rules authorising the tenant to adapt the dwelling in case of disability. However, according to article 1425, no. 3 amended by Law 32/2012, any condominium member can make works to install access ramps or lift platforms[267] if a person of their household has reduced mobility. This means that a landlord, as a condominium member can authorise a tenant to perform such works if he/she is in the situation described in the article.

It is, however, debatable if a tenant who pays the condominium expenses can use the faculty granted by the article 1425, no. 3 without a previous authorisation by

[267] In this case only if the building does not have an elevator that is suitable (wide enough) for the use of a person in a wheelchair.

the landlord. The article is not clear in this regard and at the moment there is no jurisprudence on this matter.

Affixing antennas, including parabolic antennas

Although there is an absence of any legal provision regarding the use or installation of an antenna on the balcony or the roof of the rented premises, such action is generally regarded as a normal use of the dwelling.

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?**

Besides having to permit the landlord to examine the dwelling (art. 1038, al. b)), the tenant has to tolerate urgent repairs as well as any kind of works demanded by a public authority that have to be carried out by the landlord. If the tenant opposes the execution of works demanded by a public authority, the landlord has a cause for resolution of the contract, since this situation of infringement of the contract by the tenant renders the subsistence of the tenancy as non-demandable (art. 1083, no. 3). However, if the tenant ceases his opposition within one month, the resolution shall be considered ineffective (art. 1084, no. 5).

The regime of compulsory works is set out in article 12 et seq. of the Legal Regime of Repairs on Leased Buildings [RJOPA] and also in the Legal Regime of Urban Regeneration, created by Decree-Law no. 307/2009, of 23rd October, amended by Law no. 32/2012, of 14th August.

In RJOPA (art. 4), a regime is established for termination by notice for the execution of deep modification or restoration works. We will go into this in further detail *infra,* in f).

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)?

The landlord cannot perform any type of renovation unless he/she reaches an agreement with the tenant. Without the tenant's consent the renovation would go against one of the primary duties of the landlord, the duty to not disturb the use and enjoyment of the thing by the tenant (art. 1031, al. b)).

However, there are two cases when the landlord can proceed with renovation works without the tenant's agreement, in case of urgent repairs or if a public authority demands it.

Uses of the dwelling

Discuss 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.

According to article 1071, the tenant is subject to the same constraints as are imposed on the owners, which means he/she is subject to article 1346 et seq. regarding the relationship with neighbours, and article 1422 et seq., regarding relationships between condominium members.

The tenant cannot use the dwelling for any other use than that allowed in the contract. If nothing is specifically stated in the agreement, the rented premises can be used within the aptitudes that are stated in the utilisation permit (art. 1067, no. 2). This means that a leased dwelling, if the permit allows it – according to the municipal urban planning – can be used for commerce or other professional uses (e.g. a legal office, a medical clinic).

For residential tenancies, unless otherwise agreed, the residential use also includes domestic industry, even if it is taxed (art. 1092, no. 1). Number 2 of article 1092 regards as domestic industry the carrying out in the tenant's residence of any industry that does not have more than three employees. Domestic industry can be, for example, the work of a craftsman or a self-employed person (a painter, etc.) who keeps a room to work in, as long as it is not a true establishment open to the public – this shall be regarded as a use typically of a tenancy without residential use (commercial, professional, etc.) and not as domestic industry[268].

One of the tenants' obligations is to use the dwelling with due diligence (art. 1038, al. d)). Keeping pets in the rented premises is considered a normal use of the dwelling. According to article 1, no. 2 of Portaria 1427/2001, 16th December, if the rules of hygiene and quietness are complied with, a person in an apartment can have up to three adult dogs or four adult cats.

However, the landlord alone can prohibit, without any justification, or the parties can agree, that pets shall not live in the apartment. It can also be stated in the internal rules of the condominium that animals are forbidden in the building.

If the tenant has unlawful, indecent and dishonest practices (such as prostitution) the landlord can resolve the contract (art. 1083, no. 2, al. b)). Also, if the tenant has infringed the rules regarding hygiene, quietness, good neighbourly relations or other internal condominium rules, the landlord has a legitimate cause of resolution (art. 1083, no. 2, al. a)).

[268] Pires de Lima/Antunes Varela, vol. II, p. 633-636.

When it comes to guests, the tenant is allowed to live, unless otherwise stated, with up to three guests (art. 1093, no. 1, al. b)).

Finally, in general, there is no provision that forbids a tenant exhibiting a pamphlet, a poster, a flag, etc. on the windows, balconies, walls or roofs. Nevertheless, such action can be forbidden by public rules (regarding urban planning) or even by condominium rules (for aesthetic reasons).

Is there an obligation of the tenant to live in the dwelling? Are there specificities for holiday homes?

The tenant is obligated to live in the dwelling. If the dwelling is not occupied by the tenant for one year, the landlord has the right to terminate the contract (art. 1072, no. 1), unless: the tenant has a force majeure reason (e.g. being in the hospital) (art. 1072, no. 2):

a) the tenant has to leave the dwelling for professional or military reasons[269] for a period up to two years (art. 1072, no. 2);

b) the people who are authorised to live on the premises, for example his/her family, according to art. 1093, keep living in the dwelling. In this case, there is no time limit for the tenant's absence (art. 1072, no. 2, a);

c) if the absence is due to providing long-term care to people with a disability of at least 60 % (art. 1072, no. 2, al. d).

There are no specificities regarding holiday homes.

Video surveillance of the building

Is the surveillance of certain parts (e.g. corridors) of the building lawful and usual?

The legislation regarding video surveillance for housing can be found in article 4, no. 4 of Law no. 67/98, 26th October, regarding the protection of personal data and, more specifically, in Law no. 34/2013, of 16th May, which regulates the use of systems of video surveillance by private security enterprises.

For the owner of a single unit house (i.e., not a block of apartments), the installation of video surveillance equipment is subject to prior authorisation from the National Data Protection Commission (CNPD). The owner must fill out an application form and attach a layout with the positioning of the cameras and the locations covered by the angle of the capture of the images. Also, if there are cameras outside the house (for example, at the gates) there must be a warning or a sign to inform passers-by of data recording.

For a building or a condominium the applicant must also have the written consent of all joint-owners or tenants (art. 6 Law 67/98) in order to protect the privacy

[269] If the professional or military reasons are directly concerning the spouse or the partner, the tenant is also allowed to not occupy the dwelling for a period up to two years.

of their personal and family life (articles 26 and 35 of the Constitution)[270]-[271]. The building must have a warning informing people that it is subject to video surveillance.

The landlord must inform the new tenants that the building is subject to video surveillance and obtain their consent trough a clause in the tenancy agreement[272].

Such practice is not very usual. The reasons may be related to the high costs of the equipment, the maintenance and the relative security and low criminality that the country enjoys. However, in more recent years we are witnessing a significant growth in the demand for these services.

[270]AAVV., Princípios Sobre o Tratamento de Videovigilância http://www.cnpd.pt/bin/orientacoes/principiosvideo.htm

[271] Ac. RG of 31/03/04.

[272]http://www.portaldocidadao.pt/PORTAL/pt/Dossiers/DOS_videovigil++226+ncia++o+que+++233++e+quais+os+riscos.htm?passo=3

6.6. Termination of tenancy contracts

Example of table for Termination of tenancy contracts

	Main characteristic(s) of tenancy type 1: <u>time-limited contract</u>	Main characteristic(s) of tenancy type 2: <u>open-ended contract</u>	Ranking from strongest to weakest regulation, if there is more than one tenancy type
Mutual termination	revocation agreement, art.1082º CC	revocation agreement, art.1082º CC	
Notice by tenant	*Ordinary termination: -End of the contractual term, when the tenant gives notice in advance,art.1098º no.1 CC -Withdrawal from the tenancy contract, at any time with notice in advance art.1098º, no 3. *Extraordinary termination: -On the grounds of non-compliance with the habitability conditions when it endangers tenant's life – art.1050 - Termination for breach of contract by the landlord, art.1083º, no.2 and no.5 - Termination due to the tenant's death, art.1051º d)	*Ordinary termination: when the tenant gives notice in advance, art. 1100º CC *Extraordinary termination: -On the grounds of non-compliance with the habitability conditions when it endangers tenant's life – art.1050 - Termination for breach of contract by the landlord, art.1083º, no.2 and no.5 - Termination due to tenant's death, art.1051º d), 1106º CC, and art.57º Act 6/2006	

	and 1106 CC		
Notice by landlord	*Ordinary termination: -End of the contractual term, when the landlord gives notice in advance, art.1097º - Breach of contract by the tenant, art.1083º, nos. 2, 3 and 4 CC	*Ordinary termination: when the landlord gives notice in advance, art. 1101, c) CC *Extraordinary termination: - Landlord´s or his son's/daughter's need, art.1101 a) CC --Building demolition or major repairs, art.1101,b) -- Breach of contract by the tenant, art.1083º, nos. 2, 3 and 4 CC	
Other reasons for termination			

Mutual termination agreements

The parties to a rental agreement can terminate this agreement any time they agree to do so, irrespective of the duration of the contract – art.1082º Civil Code. This revocation agreement does not have to be written if the tenant starts vacating the dwelling immediately. Conversely, if it is agreed that the vacation occurs only in a couple of weeks or if it is agreed that the landlord will give the tenant any compensation, the revocation agreement should be in a written form.

If the dwelling is the family residence (*casa de morada de família*), the tenant's spouse must always give his/her consent for the revocation agreement to be valid – art. 1682-B, al. b). If the dwelling is not the family residence, the consent of the tenant's spouse is needed only if they are married in community of property.

Notice by the tenant

Periods and deadlines to be respected

Portuguese law distinguishes between open-ended contracts (*contratos de duração indeterminada*) and time-limited contracts (*contratos com prazo certo*) and states different solutions about notice by the tenant and by the landlord.

A time-limited contract for a certain period will renew automatically at the end of that period, for the same time, unless one of the parties gives notice in advance to the other.

If the tenant does not want the contract to renew, he must give notice in advance to the landlord respecting the following periods[273]:

a) 120 days, if the initial contract term (or its renewed time) is equal to or longer than six years;

b) 90 days, if the initial contract term (or its renewed time) is equal to or longer than one year, but not longer than six years;

c) 60 days, if the initial contract term (or its renewed time) is equal to or longer than six months, but not longer than one year;

d) one third of the time of the initial contract term (or its renewed time), if the term is shorter than six months. Nevertheless, if a rental agreement has a duration equal to or shorter than 30 days, there is no automatic renovation[274].

If the tenant does not respect the period of notice, the contract renews for an identical time. For example, if on 1st January 2014 the parties had a rental agreement for one year, the tenant has to give notice to the landlord by the end of September, otherwise the contract renews for one year more.

With regard to open-ended contracts, after 6 months duration the tenant can give notice in advance to the landlord respecting the following periods[275]:

a) 120 days, if the contract has already been in existence for one year or more;

b) 60 days, if the contract has had duration of less than one year.

For example, if on 1st January 2014 the parties make an open-ended rental agreement, only on 1st June does the tenant have the right to give notice. If he gives notice on this date, the contract will end on 31st of July.

If the tenant wishes to vacate the dwelling before 31st July, he is free to do so, but will have to pay the rent up to this day[276].

Giving notice in advance both in a time-limited contract or in an open-ended contract can be defined as an ordinary way of termination.

[273] Art.1098º Civil Code.
[274] Art.1096º, no. 2 Civil Code.
[275] Art.1100, no. 1 Civil Code.
[276] Art.1100, no. 4 CC.

Apart from this type of termination, the rental agreement can be subject to an extraordinary termination as follows:

a) On the grounds of supervening lack of habitability conditions of the dwelling when it endangers the tenant's life or health or that of somebody belonging to his household – art.1050 Civil Code. For example, if the dwelling is seriously affected by the bad weather or if the tenant's health is affected by extremely noisy neighbours.
In this type of situation the tenant can terminate the contract immediately, provided that he sends a registered letter to the landlord explaining the reason for his decision.

b) Termination due to breach of contract by the landlord, namely in the case of non-observance of his obligation to carry out repairs, when it affects the habitability conditions of the dwelling – art.1083º, no.2 and no.5.

May the tenant terminate the agreement before the agreed date of termination (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)?

In a time-limited contract the tenant has the right to withdraw from the rental agreement when the contract has lasted for, at least, one third of its agreed duration by giving notice in advance to the landlord as follows[277]:

a) 120 days, if the agreed duration of the contract is equal to or longer than one year;

b) 60 days, if the agreed duration of the contract is shorter than one year.

For example, if the parties have a rental agreement for 6 years, the tenant only has the right to withdraw after 2 years, provided that he gives notice to the landlord of 120 days.

In the event of the tenant wishing to vacate the dwelling earlier he will have to pay the rents corresponding to one third of the contract.

In a situation like the one given above, concerning a contract of 6 years' duration, to have to pay the rents for one third of this time (2 years) is extremely unfair for the tenant, as it strongly limits his capacity to move to another place or to another country, even when the need to move away is based on unexpected circumstances, such as unemployment or health problems.

[277] Art.1098º, no. 3 Civil Code.

Are there preconditions such as proposing another tenant to the landlord?

Proposing another tenant to the landlord is not possible in Portuguese law as a condition for the tenant to step out of the rental agreement. Being replaced by another tenant is only possible if the landlord gives his consent – art.1059º, no. 2 CC.

Notice by the landlord

Ordinary vs. extraordinary notice in open-ended or time-limited contracts; if 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)

As already mentioned above, Portuguese law distinguishes between open-ended contracts (*contratos de duração indeterminada*) and time-limited contracts (*contratos com prazo certo*) and states different solutions about notice by the tenant and by the landlord.

(i) Ordinary notice by the landlord, meaning notice in advance and not based on any special grounds, takes place both in time-limited contracts and in open-ended contracts.

- In time-limited contracts, if the landlord does not want the contract to renew, he must give notice in advance to the tenant respecting the following periods[278]:

a) 240 days, if the initial contract term (or its renewed time) is equal to or longer than six years;

b) 120 days, if the initial contract term (or its renewed time) is equal to or longer than one year, but not longer than six years;

c) 60 days, if the initial contract term (or its renewed time) is equal to or longer than six months, but not longer than one year;

d) one third of the time of the initial contract term (or its renewed time), if the term is shorter than six months. Nevertheless, if a rental agreement has a duration equal to or shorter than 30 days, there is no automatic renovation[279].

In open-ended contracts, the landlord can give notice to the tenant 2 years in advance, stating when he wants the contract to terminate, art.1101 c) Civil Code.

Nevertheless, the landlord does not have this right to terminate the contract if the rental agreement was made before 15.11.1990[280].

If the rental agreement was made after this date, but before 28.06.2006, the landlord cannot terminate the contract when the tenant is over the age of 65 or, being younger, is severely disable[281].

[278] Art.1097º Civil Code.

[279] Art.1096º, no. 2 Civil Code.

[280] Art.28º Act no. 6/2006 amended by Act 31/2012.

[281] It means to have a level of disability over 60%, according to art.26º, no. 5 Act 6/2006 amended by Act 31/2012.

(ii) With regard to extraordinary notice, meaning when the landlord has to demonstrate that he has grounds to terminate the contract, the landlord can give notice in the following situations:

a) Landlord´s or his children's need[282]:

The landlord has the right to terminate the contract giving notice to the tenant 6 months in advance, by registered letter[283], provided that he shows the need for the rented property to be his own dwelling or the dwelling of a son or a daughter. Additionally, the landlord has to show that he has been the owner of the property for more than 2 years or that he has acquired the ownership by succession. Moreover, the landlord has the duty to pay the tenant compensation of one year's rent.

However, the landlord does not have this right to terminate the contract if the tenant is over the age of 65 or is severely disable and the rental agreement was made before 28.06.2006[284].

The landlord or his son or daughter, depending on which one is in need, has the duty to occupy the dwelling within 3 months after the vacation and has to live there at least for 2 years. Otherwise, the ex-tenant is entitled to ask for compensation of 10 years' rent[285].

b)To demolish the property or to carry out major repairs[286]:

The landlord has the right to terminate the contract giving notice to the tenant of 6 months, by registered letter[287], provided that he proves the property has to be demolished or he wants to carry out major repairs, which are allowed by the municipality[288].

The landlord has the duty to inform the tenant, in detail, about the type of repairs which will be carried out and about the technical reasons to terminate the contract. If the tenant is not given this full information, the landlord's notice will be considered null and void and thereby the contract will not terminate in 6 months[289].

Furthermore, the tenant is entitled to have compensation of one year's rent at the time he vacates the dwelling.

However, if the tenant is over the age of 65 or, being younger, is severely disabled and the rental agreement was made before 15.11.1990, he has the right to ask for an alternative dwelling instead of that compensation[290].

Finding an alternative dwelling for the tenant is not an easy task for the landlord, as it should be located in the same parish or in a neighbouring parish, should have equivalent or superior level of habitability and the tenant should not pay a higher rent.

[282] Art.1101º, a) Civil Code.
[283] Art.9º, no. 1 Act 6/2006, amended by Act no. 31/2012.
[284] Art.26º, no. 4, a) Act 6/2006, amended by Act 31/2012.
[285] Art.1103º, no. 5 and no. 9 Civil Code.
[286] Art.1101,b), art.1103, no. 1 to no. 4 and Decree-Law 157/2006 amended by Act 30/2012.
[287] Art.9º, no. 1 Act 6/2006, amended by Act no. 31/2012.
[288] According to Decree-Law no. 555/99, amended by Decree-Law no. 26/2010.
[289] Art.1103º, no. 2 Civil Code.
[290] Art.1103, no. 6 CC and art.28º, no. 5 Act 6/2006 amended by Act 31/2012.

Consequently, when the landlord cannot find an alternative dwelling, which fulfils these conditions, and the tenant does not accept the compensation, it is not possible for the landlord to terminate the contract.

After the vacation of the dwelling, the landlord has to start the works within 6 months. Otherwise, the ex-tenant has the right to ask for compensation of 10 years' rent[291].

c) Breach of the contract by the tenant[292]:

The landlord has the right to terminate the contract when the tenant breaches the contract with serious consequences – *resolution* of the contract, art.1083º, no. 2 CC. Then, if the tenant does not perform his duties, but this fact has minor consequences, there is no legal reason for terminating the contract.

The conclusion about the consequences of a tenant's behaviour is, in general, a matter for the courts to decide, as the landlord has to start a judicial procedure based on breach of the contract by the tenant[293].

Exceptionally the landlord is entitled to terminate the contract by an extrajudicial notification[294], when the tenant falls into arrears for more than 2 months[295]. In this case, after receiving that notification, the tenant still has the right to avoid the contract termination by paying the delayed amount plus 50%[296].

Apart from a lack of rent payment, breach of the contract by the tenant can lead to the termination of the rental agreement in the following cases, listed in art.1083º, no. 2:

- In the case of infringement of condominium rules, such as rules about hygiene or quietness in a building;

-In the case of illegal activities or activities against public order taking place in the dwelling, for example: drug selling or prostitution.

-If the tenant uses the dwelling for another activity, for example as a place of business.

-If the tenant stops living in the dwelling for more than one year, other than in the case where he has the right to do so[297]. For example, if he is abroad for professional reasons for up to 2 years, or for longer if his family keeps living in the dwelling.

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[291] Art.1103, no. 5 and no. 9 Civil Code.

[292] Art.1083º, no. 2, no. 3 and no. 4 and art.1084º, no. 1 CC.

[293] Art.1084º, no. 1, CC and art. 14º Act 6/2006 amended by Act 31/2012.

[294] Art.9º, no. 7 Act no. 6/2006 amended by Act no. 31/2012. This notification is directly carried out by a lawyer or a bailiff.

[295] Art.1083º, no. 3 CC. The landlord has the right to terminate the contract by an extrajudicial notification also when the tenant delays the payment of the rents for more than 8 days and repeats this practice 5 times within a period of 12 months, according to art.1083º, no. 4. This rule is not an example of clarity and is therefore criticized by the authors.

[296] Art. 1084º, no. 3 and art. 1041º CC. The tenant only has this opportunity once.

[297] Art.1072 CC

-In the case of the tenant subletting or transferring the dwelling to a third person without permission.

As this list does not represent a closed list of grounds for resolution, the termination of the contract can be based on other causes, such as when the tenant damages the dwelling or develops construction works without the landlord's permission; for example, if he builds an interior wall to divide the living room into two rooms.

To terminate the contract based on the mentioned grounds for resolution the landlord has to go to court within one year of the event occurring (statute of limitations)[298]. Conversely, in the case of the tenant falling into arrears for more than 2 months, the deadline to send the extrajudicial notification to the tenant to terminate the contract is 3 months after that[299].

After a court decision, when it terminates the contract, the tenant has the duty to vacate the dwelling in one month[300].

Statutory restrictions on notice:

for specific types of dwellings, e.g. public dwellings; rental dwellings recently converted into condominiums (if there exists a special form of protection in this case as in German law) etc.

Although Portuguese law states some statutory restrictions on notice, mainly from the landlord, there are no restrictions in matters relating to a rental dwelling recently converted into condominiums. Consequently, the landlord and the tenant keep having the same rights to terminate the contract as they had before that legal change. The only difference is that after the creation of the condominium the tenant will have a right of pre-emption, which allows him to buy the dwelling (in an apartment building) if the landlord intends to sell it to a third person and if the rental agreement has lasted for more than 3 years[301].

With regard to public dwellings, when the landlord is the State, a municipality or another administrative institution, there are some statutory restrictions on notice by the landlord, as this special regime is, on several points, more protective of the tenant than the common rental market regime[302].

In the case of non-payment of the rents, the landlord only has the right to terminate the contract if the tenant falls into arrears for more than 3 months. However, if this situation is caused by lack of financial means, namely in the case of unemployment, the landlord is not entitled to terminate the contract. In this case, the tenant has the right to re-negotiate the rent with the aim of its reduction and the right to phase payment of the debt[303].

[298] Art.1085º, no. 1 CC.
[299] Art.1085º, no. 3 CC
[300] Art.1987º CC.
[301] Art.1091º CC.
[302] Act no. 21/2009 of 20 March 2009.
[303] Art.3º, nos. 4 and 5 Act 21/2009.

Although the landlord has the right to terminate the contract if the tenant does not live in the dwelling for more than 6 months, if he is arrested and sent to prison for a period up to 2 years, the landlord cannot terminate the contract[304].

Despite having statutory restrictions on notice, this regime concerning public dwellings presents, however, a few points which are less favourable to the tenant than the common the rental regime, namely the regime applicable to the old contracts (made before 15.11.1990). For example, if the tenant's financial situation improves or his household changes (fewer people, for example) and he does not inform the landlord about that, the landlord can terminate the contract, not only based on the change, but also based on the lack of communication[305]. On the other hand, differently from the common rental regime, when the tenant breaches the contract, the landlord does not have to go to court to terminate the contract. The landlord (as a public entity) decides about that unilaterally. However, the tenant has the right to appeal the landlord's decision to an administrative court[306].

In favour of certain tenants (<u>old</u>, <u>ill</u>, in risk of homelessness)

As already mentioned above, tenants over the age of 65 or, being younger, severely disabled (meaning a disability over 60%), have special protection against contract termination if the rental agreement was made before 28.06.2006. For example, if the landlord of an open-ended contract needs the property to be his own dwelling, he can never terminate the contract, even if he is in a severe need.

Conversely, if the rental agreement was made after that date, tenants over the age of 65 or severely disabled do not have any special protection against contract termination both in open-ended contracts and in time-limited contract.

- **For certain periods**

The lease reform operated by Act 31/2012 aimed to liberalize the rental sector and to phase out old contracts, meaning contracts made before 15.11.1990, giving landlords the right to terminate these contracts within 5 years or to terminate immediately paying the tenant compensation to the value of 5 years rent when the parties do not reach an agreement about an increase in rent[307].

There is no set day on which to start this period of 5 years. It will depend on the day the landlord starts the proceedings to increase the rent, as follows:

-Act 31/2012 was enacted on 12.11.2012, creating a temporary regime for rent increases and contract termination as two combined factors.

[304] Art.3º, no. 1 f) and no. 3 Act 21/2009.
[305] Art.3º, no. 1 b) and no. 2 Act 21/2009.
[306] Art.3º, no. 8 Act 21/2009.
[307] Art.30º and seq. Act 6/2006 as amended by Act 31/2012

- Anytime, after that date, the landlord may send the tenant a registered letter[308] asking for a rent increase. At this stage, there is no legal limitation about the amount the landlord can ask for.

- The tenant has to reply within 1 month by registered letter. When the landlord receives the tenant's letter, the period of 5 years begins.

However, not all tenants of old contracts will be protected against arbitrary rent rises and contract termination for 5 years. Only tenants over the age of 65 or severely disabled or with a low level of income will have such protection[309]. For this purpose the monthly income of the tenant and of his relatives living together in the same dwelling should not be in total higher than 2,500 Euros[310].

Nevertheless, if a tenant is over the age of 65 or severely disabled at the time he receives that letter from the landlord, the landlord will not be entitled to terminate the contract even after that period of 5 years, but he will have the right to ask for a market rent after that period[311].

The current law does not give an answer to the question of knowing what will happen to these protected tenants after that period of 5 years if they do not have means to pay a market rent.

***Note:** see ANNEX no.1 (at the foot of the report) to have a comprehensive view about this temporary and complex system.

After sale including public auction ("emptio non tollit locatum"), or inheritance of the dwelling

The rental agreement is not affected by the sale of the property, including by a public auction. The rule "*emptio non tollit locatum"* is enshrined in art.1057º of the Civil Code. Consequently, the new owner of the property will be the new landlord, having the same rights and duties as the previous one and therefore having to bear the same statutory restriction on notice if they existed previously.

However, if the contract has already lasted for 3 years when the landlord plans to sell the property to a third person, the tenant has a pre-emption right and can

[308] Art.9º, no. 1 Act 6/2006 amended by Act 31/2012

[309] Art.35º Act 6/2006 as enacted by Act 31/2012. Tenants of old contracts who are under the age of 65 (when they get that letter from the landlord), who are not severely disabled and have a household income higher than 2,500 Euros a month are not protected. In this case, if they do not agree with the raising of the rent, they have to make a proposal of a lower value. If the landlord does not accept this proposal, he can terminate the contract, paying compensation of the value of 5 years rent. This value is based on the average value of the landlord's and the tenant's proposals. For example: if the landlord asks for a rent of 1,000 Euros a month and the tenant proposes 500 Euros, if the landlord does not accept the tenant's proposal, he can terminate the contract paying compensation of 45,000 Euros (average value of both proposals: 750 Euros x 60 months). In this case, the tenant will have to vacate the dwelling within 7 months.

[310] For 5 years these tenants will pay a controlled rent, which is a rent based on the estate tax value of the property. For example if this value is 1000,000 Euros the monthly rent will be about 555 Euros.

[311] Art.36º Act 6/2006 as enacted by Act 31/2012.

thereby acquire the property paying exactly the same price that third person would pay. In this case, as the tenant becomes the owner of the property the rental agreement terminates automatically.

In the event of the landlord's death, if he is the owner of the property, his heirs inherit his contract[312] becoming consequently the new landlord with the same rights and duties as the previous one.

If the landlord was only the holder of a right of usufruct, the rental agreement terminates automatically and the tenant has to vacate the dwelling within 6 months after his death[313].

In the case of a tenant's death and inheritance of his rights by his heirs, they have the same rights and duties as the previous tenant. There are no special restrictions on landlord's notice in consequence of this new situation.

Requirement of giving valid reasons for notice: admissible reasons

As has already been explained above, the admissible reason for terminating the contract by the landlord depends partly on the type of contract: time-limited or open-ended contracts.

In both cases, as already seen, the landlord can give notice in advance, respectively when he does not want the contract to renovate at the end of the rental agreement or when he does not want the contract to continue in the future, without the need to present any reason for terminating the contract.

Also when the landlord needs the property to use it as his own residence or the residence of his offspring or when the property should be demolished or subject to major repairs, he can terminate an open-ended contract.

In all these aforementioned cases the landlord can terminate the rental agreement by sending a registered letter to the tenant.

If the tenant breaches the contract with serious consequences, in general, the landlord has to go to court to reach the contract termination, but if the tenant falls into arrears for more than two months, he can terminate the contract extra-judicially, as explained above.

Objections by the tenant

When the landlord has the right to give notice in advance, both in time-limited or open-ended contracts, as he does not have to present any reason to terminate the contract, provided that he sends the letter to the tenant before the deadline, the tenant does not have any type of objection to present.

Even when the landlord needs the property to use as his own residence or residence of his offspring or when the property should be demolished or the subject

[312] Art.2024º Civil Code.
[313] Art. 1051º, c) and 1053º CC.

of major repairs, the tenant does not have any right to present an objection in the first stage, as the landlord terminates the contract by sending him a registered letter.

However, if the landlord's letter does not provide the tenant with the adequate information about the reason for terminating the contract, the law presumes that notice null and void. Consequently, if the landlord starts an eviction proceeding based on the fact that the tenant does not vacate the dwelling within 6 months, this can be raised in his defence in the eviction process.

If the landlord sues the tenant for breaching the contract, the tenant shall present his defence in this court procedure.

Does the tenancy have "prolongation rights", i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?

The tenant does not have a right to demand the prolongation of the contract, either in an open-ended contract or in a time-limited contract when the landlord is entitled to terminate the agreement.

Only in a judicial process can the tenant ask the court for a delay to vacate the dwelling, based on social reasons (for example: pregnancy, risk of homelessness, etc), but this is not a right to extend the contract, as the contract is already terminated[314].

Challenging the notice before a court (or similar bodies)

When the landlord has the right to terminate the contract by giving notice in advance, i.e. without the need to present a reason for terminating the rental agreement, and provided that he observes the deadlines and formal requirements, the tenant is not entitled to challenge the notice before a court (or a similar body).

However, if the formal requirements or deadlines are not observed, the notice given by the landlord is null and void. Consequently, the contract will not be affected and thereby the tenant does not have to challenge the notice before a court.

Nevertheless, in this situation, if the landlord uses the BNA proceeding[315] with the aim of achieving the vacation of the dwelling by a bailiff, the tenant has the right to bring a claim to court against the landlord to show the contract had not been terminated, provided that he can prove the notice was null and void.

When the landlord sues the tenant for breaching the contract, he has the burden of proof to show that the tenant did not perform his duties, but the tenant has obviously the right of defence in court[316].

[314] Art.15º-Q Act 6/2006 amended by Act 31/2012 and art.865º CPC – Code of Civil Procedure.
[315] The BNA is an administrative body as will be explained in point g) of this report.
[316] Art.14º Act 6/2006 amended by Act 31/2012.

In particular claims for extension of the contract or for granting of a period of grace under substantive or procedural law

There is no specific procedure the tenant can use to claim for an extension of the contract. As explained above, the tenant does not have a right to demand the prolongation of the contract, when the landlord is entitled to terminate the agreement.

As will be better explained in point g) of this report, when the eviction procedure is carried out by the BNA[317] or by a court[318], a tenant, who is in a vulnerable situation, is entitled to ask for a delay in leaving the dwelling. To decide about this delay, which cannot be longer than 5 months, the court will take into consideration circumstances of the tenant's life, namely financial situation, age, health, disability, number of relatives living together and the probability of finding an alternative dwelling.

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, in particular:

- What are the rights of tenants in urban renewal? What are the rules for re-housing in the case of demolition of rental dwellings? Are tenants interested parties in public decision-making in real estate in the case of urban renewal?

(i) If a landlord faces an execution procedure for default of mortgage payment or for default of another type of payment and the property is sold, the rental agreement may or may not terminate, depending on the following circumstances:

If a rental agreement was concluded after the property had been seized by the court, when the property is sold the rental contract shall terminate automatically, according to art.819º Civil Code;

If the rental contract was concluded before the property had been seized by the court and before the registration of any right of guarantee, this contract will not be affected by the purchase of the property and the buyer will be consequently the new landlord until the end of the rental contract. The rule "emptio non tolit locatum" will be applicable – art.1057º CC.

(ii) The tenancy agreement shall terminate in the event of an expropriation procedure on the grounds of public interest (art. 1051, f) of Civil Code). As the contract must terminate, both parties have the right to be compensated[319].

In the case of a landlord being expropriated of his property, the tenant is considered an *interested party* in the process, if his option is to get compensation. Diversely,

[317] Art.15-N of Act no. 6/2006, amended by Act no. 31/2012

[318] Art.864 and art.856 of the Code of Civil Procedure

[319] Article 62, no. 2 of the Portuguese Constitution states "expropriations in the public interest may only be undertaken on a legal basis and upon payment of just compensation".

if the tenant's option is to be lodged in a different place, he will not be considered as an interested party in the expropriation procedure, according to art.9 and art.30 Code of Expropriation – Act no. 168/99 of 18 September 1999, amended by Act no. 56/2008 of 4 September 2008.

(iii) With regard to urban renewal, it has already been explained above (see "notice by the landlord") that the landlord has the right to terminate the contract when he wishes to demolish the property or to carry out major repairs[320]: In this case, he gives notice to the tenant of 6 months, by registered letter[321], informing the tenant, in detail, of the type of repairs which will be carried out and about the technical reasons to terminate the contract[322].

The tenant is entitled to have compensation of one year's rent at the time he vacates the dwelling or to ask for an alternative dwelling if he is over the age of 65 or severely disabled and the rental agreement was made before 15.11.1990[323].

Finding an alternative dwelling for the tenant is not an easy task for the landlord as it should be located in the same parish or in a neighbouring parish, should have at least an equivalent level of habitability and the tenant should not pay a higher rent[324].

The law defines what should be considered an equivalent level of habitability as follows[325]:

Composição do agregado familiar (número de pessoas)	Tipos de fogo (1)	
	Mínimo	Máximo
1	T 0	T 1/2
2	T 1/2	T 2/4
3	T 2/3	T 3/6
4	T 2/4	T 3/6
5	T 3/5	T 4/8
6	T 3/6	T 4/8
7	T 4/7	T 5/9
8	T 4/8	T 5/9
9 ou mais	T 5/9	T 6

(1) O tipo de cada fogo é definido pelo número de quartos de dormir e pela sua capacidade de alojamento (exemplo: T 2/3 — dois quartos, três pessoas).

[320] Art.1101,b), art.1103, no. 1 to no. 4 and Decree-Law 157/2006 amended by Act 30/2012.

[321] Art.9º, no. 1 Act 6/2006, amended by Act no. 31/2012.

[322] If the tenant is not given this full information, the landlord's notice will be considered null and void and thereby the contract will not terminate in 6 months – art.1103º, no. 2 CC.

[323] Art.1103, no. 6 CC and art.28º, no. 5 Act 6/2006 amended by Act 31/2012.

[324] When the landlord cannot find an alternative dwelling, which fulfils these conditions, and the tenant does not accept the compensation, it is not possible for the landlord to terminate the contract.

[325] Art. 6 and art.25 Decree-Law 157/2006 amended by the Act 30/2012 – Legal Regime of Repairs on Leased Buildings [*Regime Jurídico de Obras em Prédios Arrendados*] (RJOPA).

The alternative dwelling must have a minimal number of bedrooms (from 0 to 5) according to the number of people who constitute the tenant's household, to avoid overcrowding.

If the tenant's household has, for example, 9 members, the landlord has to provide an alternative dwelling, for 2 years and for the same rent, with at least 5 bedrooms, even if the current dwelling has only 2 or 3 bedrooms.

Alternative to the termination of the contract, when the landlord wishes to demolish the building to build a new one or carry out major repairs, he can provide the tenant with a temporary dwelling whilst the construction or repairs are carried out[326].

After the conclusion of the works, the parties shall make a new open-ended rental agreement with a controlled rent if the monthly income of the tenant's household is not higher than 2,500 Euros[327].

The municipality can order the demolition of a building based on grounds of public interest, namely when it is at risk of collapsing or when it is located in an area of rehabilitation[328].

In this type of situation the municipality gives notice to the tenant, provides him with a temporary dwelling and sets a certain time to vacate the rented dwelling. If the tenant does not comply, there will be an administrative eviction[329].

Nevertheless, if the demolition of the rented property occurs due to a decision of an administrative entity, the landlord does not have the duty to compensate the tenant or to provide him with an alternative dwelling[330].

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

a). If the tenant does not vacate the dwelling after the contract termination is notified by the landlord or by other non judicial means, the landlord will have to access the BNA (*Balcão Nacional do Arrendamento*)[331] – National Office for Tenant´s Eviction – to achieve the vacancy of the property.

[326] Art.25 Decree-Law 157/2006 amended by Act no. 30/2012

[327] Art.25º, no. 10 Decree-Law 157/2006 amended by Act no. 30/2012

[328] Art.7º Decree-Law 157/2006 amended by Act no. 30/2012 and art.89º, no. 3 Decree-Law no. 555/99 amended by Decree-Law no. 26/2010).

[329] Art.92º Decree-Law no. 555/99, amended by Decree-Law no. 26/2010

[330] Art.7º Decree-Law 157/2006 amended by Act no. 30/2012

[331] https://bna.mj.pt/

The BNA is an administrative body shaped to complete the eviction procedure in a period of 3 months.

This procedure is regulated by art.15-A to art.15-S of Act no. 6/2006 as amended by Act 31/2012 and by Decree-Law no. 1/2013, which was enacted in January 2013.

To access the BNA system the landlord does not have to be represented by a lawyer. He can do it directly by filling in a form on the Website of the BNA[332], sending a scanned version of the required documents (e.g. copy of the tenancy contract and copy of the letter sent to the tenant to vacate the dwelling) and a scanned copy of his citizen card (ID card) (*Cartão de Cidadão*), or presenting these documents at any court office to be scanned and sent to the BNA (when the landlord does not have the technical equipment do to it himself).

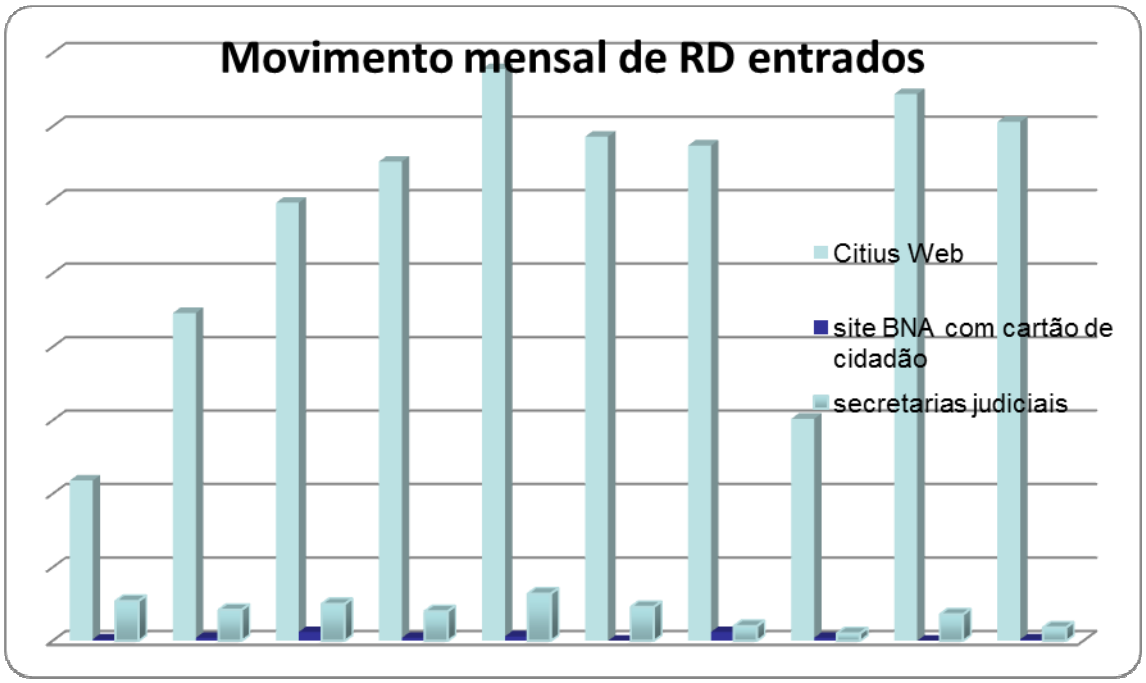
Optionally the landlord can decide to be represented by a lawyer. In this case, the lawyer accesses the BNA through a Website exclusively for lawyers[333].

This option is the most frequent in praxis as completing that form through the BNA Website is not very easy for those without legal expertise[334].

After receiving the landlord's petition the BNA sends the tenant a notification to vacate the dwelling within 30 days. If the tenant does not comply, the BNA issues

[332] https://bna.mj.pt/Default.aspx

[333] http://citius.tribunaisnet.mj.pt



[334] These data, from January until October 2013, about the percentage of BNA procedures started directly by landlords, scanning the required documents and their citizen cards (*cartão de cidadão*) or presenting these documents at a court office (*secretarias judiciais*), and by lawyers representing landlords (Citius Web), are not publically available yet. We are grateful to the BNA head office for providing us with these figures.

a mandatory order to a bailiff or to a notary[335] to evict the tenant as soon as possible.

If the tenant has a legal reason for not vacating the dwelling, he has to go to court to contest the claim. Going to court is also necessary when the tenant needs time to vacate the dwelling based on social reasons, e.g. pregnancy, health problems, etc. In these two hypotheses the tenant has to be represented by a lawyer.

When the contract is terminated by a court decision – which happens when the tenant breaches the contract, except in the case of tenant's arrears – and the tenant does not vacate the place, the landlord will have to start another court procedure – an executive process – to evict the tenant, according to art.862 of Code of Civil Procedure.

This information shows that to evict a tenant Portuguese law currently provides two different types of procedure.

b). In both types of eviction – by the BNA or by a judicial court – the tenant still has temporary social protection, as he might be allowed by a judge to remain in the dwelling up to 5 months after the legal termination of the contract.

According to art.15-N of Act no. 6/2006, amended by Act no. 31/2012, in the case of eviction procedure by the BNA, and to art.864 and art.856 of the Code of Civil Procedure, in the event that the eviction procedure is carried out by a court, a tenant who is in a vulnerable situation, is entitled to ask for a delay in leaving the dwelling. To decide about this delay, which cannot be longer than 5 months, the court will take into consideration a few circumstances of the tenant's life, namely financial situation, age, health, disability, number of relatives living together and the probability of finding an alternative dwelling.

If at the end of that period the tenant is in a serious heath situation, for example, if he is recovering from an operation, he is entitled to ask for a new delay based on a medical statement confirming that the evection could present a risk for the tenant's life, In this case, the judge will postpone the eviction for the time he thinks it is reasonable according to the tenant's social circumstances: art.15-M of Act no. 6/2006, amended by Act no. 31/2012 and Art.863º, no. 3 Code of Civil Procedure.

c).According to art.108º, no. 2 of the Insolvency Code – Act.no. 53/2004 of 18 March 2004, amended by Act no. 66-B/2012, of 31Dezember 2012 – the tenant´s insolvency or bankruptcy does not cause the termination of the contract, since he keeps paying the rents. If the tenant falls into arrears for more than 2 months, the

[335] The bailiff or the notary are designated by the landlord or, when he does not do so, by the BNA, which picks somebody from a list of those who are available to do this type of work.

landlord is entitled to terminate the contract and ask for the payment of the delayed rents, but the insolvent party's assets will not pay for more than 3 months of delayed rents.

According to art.108º, no. 4, if the tenant had fallen into arrears for more than 2 months before his insolvent status was confirmed by a court and the landlord had not given notice to terminate the contract, he cannot terminate the contract afterwards if the tenant starts paying the rent again. For example: the tenant did not pay the rents in January, February and March and in April the court confirms his insolvency. If the tenant pays the rent of April and the following months, the landlord cannot terminate the contract based on the unpaid rents of January, February and March.

***Note:** see ANNEX no.2 (at the end of this report) to better understand the complex BNA system.

6.9. Tenancy law and procedure "in action"

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 role of associations of landlords and tenants?

According to the art.13º Act 6/2006, of 27 February, associations of landlords or of tenants can represent their members in court.

Furthermore, the main association of landlords[336] and the main association of tenants[337], both provide legal services to their members (advertised on their Websites) and both are very active with regard to the defence of their members' interest. Their opinions about housing policies are frequently published in the press[338].

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[336] The main association of landlords in Portugal is the Association of Property Owners of Lisbon – ALP (*Associação Lisbonense de Proprietários*) - http://www.alp.pt/

The second most important is the National Association of Property Owners – ANP (*Associação Nacional de Proprietários*) http://www.proprietarios.pt/

[337] The main association of tenants in Portugal is the Association of Tenants of Lisbon - AIL (*Associação dos Inquilinos Lisbonenses*): http://www.ail.pt/

The second association of tenants is the Association of Tenants of Northern Portugal – AINP (*Associação de Inquilinos do Norte de Portugal*) http://www.ainorte.pt/

[338] http://www.alp.pt/Associa%C3%A7%C3%A3o/AALPnaImprensa/tabid/774/language/en-GB/Default.aspx

- **What is the role of standard contracts prepared by association or other actors?**

Associations of landlords or tenants do not play a role in the matter of preparing standard contracts. These associations assist their members in matters relating to the conclusion of contracts, but do not have any agreement to elaborate joint models of tenancy contracts.

- **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?**

Alternative dispute resolution mechanisms do not play a relevant role in tenancy law conflicts when it comes to a tenant's eviction, as there are mandatory rules on this topic.

According to art.1084º, no. 1 Civil Code and art.14 of Act no. 6/2006, amended by Act no. 31/2012, when the tenant breaches the contract and the landlord has therefore a reason to terminate the contract, in general the eviction procedure has to be carried out by a judicial court.

When the tenant falls into arrears the the landlord does not have to start a judicial process to terminate the contract and consequently to evict the tenant. In this case, the landlord has the option to terminate the contract by an extrajudicial notification and the tenant's eviction will be operated by the BNA system – as explained above in point g).

When it is not regarding a tenant's eviction, other landlord and tenant conflicts can be dealt with in a Court of Peace (*Julgado de Paz*), according to art.9º, no. 1 g) of Act no. 78/2001 of 13 July amended by Act no. 54/2013 of 31 July.

Courts of Peace are not judicial courts; they are considered to be "sui generis" courts, formally closer to an alternative dispute resolution mechanism, but a decision made in the Courts of Peace can be appealed at the First Instance Justice Courts, when its value exceeds the amount of 2,500 Euros.

When a claim is presented at a Court of Peace, a time of Mediation starts immediately, and only if the parties do not reach an agreement does it pass to a judgment stage.

Advantages involved in this option are, mainly for the landlord, the lower judicial fees[339], the shorter time of decision and the simplified proceeding rules.

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http://www.ail.pt/Informa%C3%A7%C3%A3o/Mo%C3%A7%C3%B5eseInterven%C3%A7%C3%B5es.aspx

[339] In Courts of Peace the court fees cannot exceed 70 Euros, according to rule no. 6 Regulation (*Portaria do Ministério da Justiça*) no. 1456/2001 of 28 December 2001, as amended by Regulation 209/2005 of 24 February 2005.

- **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)?**

Information on the average length of civil procedures, which comprises tenancy law disputes, are available on a Website of the Ministry of Justice (included below)[340].

The average length of tenancy procedures (*contrato de arrendamento*) finished in 2012 was 15 months[341].

po: Tipo e Objecto de acção:

Linhas 1-20 de 33 | Colun 1-9 de

Ano	2012	2011	2010	2009	2008	2007	2006	2005	200
Tipo de objecto de acção	Duração média (em meses)	Duração média (em meses)	Duração média (em meses)	Duração média (em meses)	Duração média (em meses)	Duração média (em meses)	Duração média (em meses)	Duração média (em meses)	Dura méd (em mes
Filiação	21	22	21	23	24	25	25	25	24
Poder paternal	5	1	3	4	3	12	.	.	23
Alimentos	27	26	25	25	28	29	28	26	24
Incapacidades	15	17	15	16	18	18	17	18	18
Família-Casamento	14	14	14	14	16	15	15	14	13
Sucessões	46	45	47	46	46	46	35	34	34

340 http://www.siej.dgpj.mj.pt/webeis/index.jsp?username=Publico&pgmWindowName=pgmWindow_635218241949062500

341 These figures can be found on the Website: http://www.siej.dgpj.mj.pt/webeis/index.jsp?username=Publico&pgmWindowName=pgmWindow_635218241949062500

person./nome/corresp.conf.	5	17	8	11	17	11	17	12	21
m.mod.resol.contr./out.acto	20	20	17	17	25	27	23	22	23
Responsabilidade civil	23	24	24	25	26	26	28	27	26
mprim.de contr/outras obrig.	33	35	34	33	35	37	34	30	28
Contrato de arrendamento	15	16	16	18	21	20	16	16	16
ntr.de soc.-exerc. dtos soc.	22	21	23	23	21	19	11	10	14
ontrato individ. de trabalho	14	11	7	19	18	11	.	.	.
id. de trab. e doenças prof.	12	10	11	21	16	11	.	.	.
propr.reivind.reconh.propr	31	32	32	32	34	34	28	30	29
osse - meios possessórios	21	21	21	21	23	22	20	19	18
Acções de arbitramento	31	31	28	31	32	33	30	29	30
Preferências	34	39	40	42	45	38	36	32	32
Registo civil	10	17	20	15	16	11	17	14	12
Registo predial	13	16	18	14	24	18	23	22	26

As regards peculiarities involved in the execution of tenancy law judgments (e.g. suspensions of, or delays in, evictions) it was already explained above, in point g) [*Rules on protection ("social defences") from eviction*], that vulnerable tenants have the right to remain in the dwelling up to 5 months after termination of the contract when allowed by a judge.

That explanation is here reproduced:

"*In both types of eviction, the tenant still has temporary social protection as he/she might be allowed by a judge to remain in the dwelling up to 5 months after the legal termination of the contract.*

According to art.15-N of Act no.6 /2006, amended by Act no. 31/2012, in cases where the eviction procedure runs through the BNA, and to art.864 and art.856 of the Code of Civil Procedure, in cases where the eviction procedure is carried out

by a court, a tenant, who is in a vulnerable situation, is entitled to ask the court for a delay in leaving the dwelling. To decide about this delay, which cannot be longer than 5 months, the court will take into consideration a few circumstances of the tenant's life, namely financial situation, age, health, disability, number of relatives living together and the probability of finding an alternative dwelling.

If at the end of that period the tenant is in a serious heath situation, for example, if he is recovering from an operation, he is entitled to not leave the dwelling and ask for a new delay based on a medical statement confirming that the evection could present a risk for the tenant's life. In this case, the judge will postpone the eviction for the time he thinks it is reasonable according to the tenant's social circumstances: art.15-M of Act no. 6/2006, amended by Act no. 31/2012 and Art.863º, no. 3 Code of Civil Procedure".

- **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?**

The Portuguese system in matters relating to access to courts or to legal advice for those who cannot afford to pay for these costs works well.

According to Act 34/2004, of 29 July 2004, amended by Act 47/2007, of 28 August 2007, anyone who cannot pay for legal advice or court fees has the right to be assisted and represented in court by a lawyer who is a member of the Law Society. In this case the lawyer's fees are entirely paid by the State and court fees are waived. This system is valid not only for Portuguese citizens but also for citizens from other Member States and for anybody who has entered Portugal legally.

For those who are not entitled to free legal advice or free court access the situation concerning court fees and lawyer's fees is as follows:

In respect of lawyer's fees there are no mandatory rules. This matter is agreed with the client, taking into consideration namely the time expended, the complexity of the issue and the results achieved – art.100, no. 3, Act no. 15/2005 of 26 January, amended by Act no. 12/2010 of 25 June.

The price per hour varies considerably; e.g. law firms in Lisbon can charge more than 200 Euros per hour whilst in the remainder of the country currently it is considerably lower, in the region of 50 Euros per hour or even less.

With regard to court fees to bring a claim to court, it depends on the value of the claim, according to Act no. 7/2012. Thus, if the value of the claim comprises between 1 Euro and 2,000 Euros, the court fee each party has to pay is one UC

(unit of cost)[342], that means 102 Euros; if the value of the claim is between 2,000 and 8,000 Euros, the court fee is 204 Euros (2 UC) – and so on, as in the figure below ("Tabela I").

The value of the claim of an eviction process is determined according to art.298 Code of Civil Procedural and corresponds to the value of 30 months' rent. For example, if the monthly rent is 500 Euros, the value of the claim will be 15,000 Euros and the corresponding court fees will be 3 UC (308 Euros).

It is not common to have an insurance contract to cover legal costs, either for landlords or for tenants.

Recently, the main association of landlords of Portugal – Association of Property Owners of Lisbon – ALP (*Associação Lisbonense de Proprietários*) announced they had concluded an agreement with an insurance company to cover delayed rents up to 12 months, which includes legal costs as well when a landlord has to sue a tenant[343].

[342] A Unit of Cost (UC) is a value around ¼ of the minimal wage and should change according to the minimal wage. Nevertheless, the UC has not changed since 2009 and is currently 102 Euros – art. 114º Act n. 66-B-2012 of 31.12.2012.

[343] http://www.alp.pt/Associa%C3%A7%C3%A3o/APropriedadeUrbana/tabid/775/language/pt-PT/Default.aspx

TABELA I

(a que se referem os artigos 6.º, 7.º, 11.º, 12.º e 13.º do Regulamento)

	Valor da acção (euros)	Taxa de justiça (UC)		
		A Artigos 6.º, n.º 1, e 7.º, n.º 3, do RCP	B Artigos 6.º, n.º 2, 7.º, n.º 2, 12, n.º 1, e 13.º, n.º 7, do RCP	C Artigos 6.º, n.º 5, e 13.º, n.º 3, do RCP
1	Até 2 000	1	0,5	1,5
2	De 2 000,01 a 8 000	2	1	3
3	De 8 000,01 a 16 000	3	1,5	4,5
4	De 16 000,01 a 24 000	4	2	6
5	De 24 000,01 a 30 000	5	2,5	7,5
6	De 30 000,01 a 40 000	6	3	9
7	De 40 000,01 a 60 000	7	3,5	10,5
8	De 60 000,01 a 80 000	8	4	12
9	De 80 000,01 a 100 000	9	4,5	13,5
10	De 100 000,01 a 150 000	10	5	15
11	De 150 000,01 a 200 000	12	6	18
12	De 200 000,01 a 250 000	14	7	21
13	De 250 000,01 a 275 000	16	8	24

How about legal certainty in tenancy law? (e.g.: are there contradicting statutes, is there secondary literature usually accessible to lawyers etc?)

Legal certainty in tenancy law has been an issue of concern lately due to the many legal instruments published in this area in the last decade.

In 2006 tenancy law was deeply reformed, but the new solutions did not last long, as in 2012 and 2013 this matter underwent a significant change again (as explained in several points throughout this report).

Furthermore, several rules are not written in a very clear way, which raises difficulties of interpretation and consequently different court decisions. For example, when the tenant falls into arrears for more than 2 months the landlord has the right to terminate the contract by sending him a notification by mail, as stated by art.1084º, no. 2 of Civil Code. Nevertheless, it has been discussed if this way of terminating the contract is the only procedural way the landlord has to pursue a judicial process, or if it is just one alternative, as stated by art.14º of Act 6/2006, amended by Act no. 31/2012. There are court decisions in both directions[344].

[344] About this legal discussion: Laurinda Gemas/Albertina Pedroso/João Caldeira Jorge, Arrendamento Urbano, 3ª ed. pag. 408.

- **What are the 10-20 most serious problems in tenancy law and its enforcement?**

To identify the most serious problems in tenancy law it is important to distinguish new contracts from old contracts (contracts concluded before 15.11. 1990).

The most serious problems regarding new contracts are as follows:

(i)Tenants falling into arrears, as the values of the new rents are in general high (namely when compared to the rents of old contracts). On the other hand, in old contracts, as the value of rents are in general low, tenant's arrears are not frequently a problem.

(ii)From the perspective of the tenants who fall into arrears, namely due to unemployment, one of the most serious problems is the lack of public subsidies to help them to pay the delayed rents.

(iii) Procedural problems: if the tenant falls into arrears and refuses to vacate the dwelling, the landlord will have to start two different processes; one to evict the tenant and another one to resort to courts in order to get a decision to execute the tenant's assets and get compensation for the lack of payment. Thus, landlords have to pay court fees and lawyer's fees twice.

(iv)When a tenant has a personal guarantor and the landlord wants to sue him as well, it is not possible to go to the BNA. In this case, the landlord has to bring the claim to a judicial court.

With regard to eviction procedures:

(v)As explained above [in point g)], there are two different ways to evict the tenant – the BNA system and the traditional judicial system, which realm of competence is not always clear. For example, if a tenant falls into arrears for more than 2 months and does not vacate the dwelling after the landlord's notification, the landlord can theoretically start the eviction procedure by the BNA. Nevertheless, this possibility will not exist if the tenancy contract is not in written form, even being valid, as before 2006 written form was not a condition for validity. In this case, the landlord will have to go to court, which normally takes longer to evict the tenant than the BNA.

Old contracts present mainly problems related to the maintenance of the buildings and the low value of the rents.

(vi) Due to the mandatory rules, which limited the value of the rents for decades, old tenants still pay very low rents, even "peppercorn rents". To change this situation, new legal rules were enacted by art.30 to 45 of Act no. 6/2006 as amended by Act no. 31/2012, but they have not fulfilled landlords' expectations, as tenants with

lower income levels stay protected against abrupt the raising of rents for 5 more years.

(vii) Due to the very low rents tenants of old contract have been paying, many dwellings are in precarious conditions, as landlords refuse to do the needed repairs. The situation has been like a vicious circle.

(viii) Tenants who have sued landlords to get their dwelling repaired have lost their cases when the value of the needed repairs is much higher than the value of the annual rent.

(ix)If the landlord needs the rented dwelling for himself (for example, if his home was destroyed by a fire), he does not have the right to terminate the tenancy contract if the tenant is at least 65 years old and the contract was concluded before 15.11.1990.

(x) If the tenant is at least 65 years old and the contract was concluded before 15.11.1990, the landlord does not have the right to terminate the contract when he wants to renovate the building considerably or even demolish it, unless he provides the tenant with another dwelling in the same neighbourhood.

- **Are the areas of "non-enforcement" of tenancy law (such as legal provisions having become obsolete in practice)?**

Due to the very recent reform of housing legislation in Portugal, operated in 2012 and 2013, it is not possible to say that any legal provisions have become obsolete in practice.

7. Effects of EU law and policies on national tenancy law

7.1. EU policies and legislation affecting national <u>housing</u> policies and national <u>tenancy</u> laws

Introduction

Due to the Economic Adjustment Programme established in 2011 between Portugal and the European Commission, the European Central Bank and the IMF, the so called Troika, including a joint financing package of €78 billion, Portugal as a member of the Euro Zone, had to adopt reforms to promote growth and jobs, fiscal measures to reduce the public debt and deficit, and measures to ensure the stability of the country's financial sector.

A new housing law was among the reforms that Portugal had to implement to fulfil those commitments.

In point no. 6 of the agreement between Portugal and those international entities, called Memorandum, the following was established:

Housing market
Objectives
Improve households' access to housing; foster labour mobility; improve the quality of housing and make better use of the housing stock; reduce the incentives for households to build up debt.

Rental Market

The Government will present measures to amend the New Urban Lease Act Law 6/2006 to ensure balanced rights and obligations of landlords and tenants, ***considering the socially vulnerable****.* ***[Q3-2011]*** *This plan will lead to draft legislation to be submitted to Parliament by [****Q4-2011****]. In particular, the reform plan will introduce measures to: i) broaden the conditions under which renegotiation of open-ended residential leases can take place, including to limit the possibility of transmitting the contract to first degree relatives; ii) introduce a framework to improve households' access to housing by phasing out rent control mechanisms,* ***considering the socially vulnerable****; iii) reduce the prior notice for termination of leases for landlords; iv) provide for an extrajudicial eviction procedure for breach of contract, aiming at shortening the eviction time to three months; and v) strengthen the use of the existing extrajudicial procedures for cases of division of inherited property .*

Administrative procedures for renovation

The Government will adopt legislation to simplify administrative procedures for renovation. ***[Q3-2011]*** *In particular, the specific measures will: i) simplify administrative procedures for renovation works, safety requirements, authorisation to use and formalities for innovations that benefit and enhance the building's quality and value (such as* ***energy savings measures****). The majority of apartment owners will be defined as representing the majority of the total value of the building; ii) simplify rules for the temporary relocation of tenants of buildings subject to rehabilitation works with due regard of tenants needs and respect of their living conditions; iii) grant landlords the possibility to ask for termination of the lease contract for major renovation works (affecting the structure and stability of the building) with a maximum 6 months of prior notice; iv) standardise the rules determining the level of conservation status of property and the conditions for the demolition of buildings in ruin.*

Property taxation

The Government will review the framework for the valuation of the housing stock and land for tax purposes and present measures to (i) ensure that by end 2012 the taxable value of all property is close to the market value and (ii) property valuation is updated regularly (every year for commercial real estate and once every three years for residential real estate as foreseen in the law). These measures could include

enabling municipal officers, in addition to tax officers, to evaluate the taxable value of property and the use of statistical methods to monitor and update valuations. ***[Q3-2011]***

The Government will modify property taxation with a view to level incentives for renting versus acquiring housing. ***[Q4-2011]*** *In particular, the Government will: i) limit income tax deductibility of rents and mortgage interest payments as of 01.01.2012, except for low income households. Principal payments will not be deductible as of 01.01.2012; ii) rebalance gradually property taxation towards the recurrent real estate tax (IMI) and away from the transfer tax (IMT), while* ***considering the socially vulnerable****. Temporary exemptions of IMI for owner-occupied dwellings will be considerably reduced and the opportunity cost of vacant or non-rented property will be significantly increased.*

The Government will undertake a comprehensive review of the functioning of the housing market with the support of internationally-reputed experts. ***[Q2-2013*****].**

In order to implement these law reforms the following Acts were published in 2012 and in 2013:

- Act no. 30/2012, of 14 August: established new rules about renovation of rented buildings, amending Decree-Law no. 175/2006, of 8 August;

- Act no. 31/2012, of 14 August: introduced significant amendments into the Urban Leases Act no. 6/2006;

- Act no. 32/2012, of 14 August, established new rules to simplify administrative procedures for renovation works, namely in rented buildings;

-Decree-Law no. 266-C/2012, of 31 December: established rules to evaluate the financial situation of the socially vulnerable tenants.

-Decree-Law no. 1/2013, of 7 January: established the rules regarding the BNA eviction procedure.

Apart from the legal measures enacted to implement the policies of the Memorandum, the national housing law reflects, in several points, the EU law and policies, mainly by Regulations and Directives.

(i) **EU social policy against poverty and social exclusion**

As mentioned above, the situation of the socially vulnerable was taken into consideration by the Memorandum agreed between Portugal and the Troika concerning the housing market.

Consequently, tenants of contracts established before 15.11.1990, who have a low income level will be protected for 5 more years against abrupt rent rises and the contract cannot be terminated by the landlord before the end of that period. By these temporary measures, landlords keep playing a role which should be played by the Government.

In 2012 the Programme for Social Emergency was launched (*Programa de Emergência Social*)[345], with the aim of helping those in need, namely families facing new phenomena of poverty due to the financial crisis. Among other measures, this Programme comprises the Social Rental Market (*Mercado Social do Arrendamento*)[346]. The dwellings available for rent by this system belong to banks, which repossessed them from those who could not pay their mortgages, mainly middle class people who became unemployed. This housing option was created by an agreement between the Government, Banks and Municipalities to form a temporary administrative entity, which manages the rental contracts.

This rental model meets the needs of those who are not poor enough to become tenants of a social dwelling, but do not have means to pay a free market rent. This system has advantages for Banks too, as, due to the financial crisis, they cannot easily sell the properties they have repossessed.

In line with the "*Communication from the Commission to the European Parliament, the Council, the European economic and Social Committee and the Committee of the Regions – EU Framework for National Roma Integration Strategies up to 2020*", of 05.04.2011, the Portuguese Council of Ministers adopted in 17.04.2013 Resolution no. 25/2013, which approved the Portuguese Strategy for Roma integration (2013-2020), but depending on the existing funds to achieve this aim.

Among the priorities the Portuguese Government defined in this Resolution to face Roma social exclusion are those related to the access to a dwelling, namely to facilitate the acquisition of homeownership and the conclusion of private rental contracts. Concrete legal measures to achieve these goals are not known yet.

Furthermore, Portugal is one of the Members of the EURoma – a European Network made up of representatives of twelve Member States, determined to

[345] http://www.mercadosocialarrendamento.msss.pt/programa_emergencia_social.jsp
[346] http://www.mercadosocialarrendamento.msss.pt/mercado_social_arrendamento.jsp

promote the use of Structural Funds (SF) to enhance the effectiveness of policies targeting Roma people and to promote their social inclusion[347].

(ii)Consumer law and policy

a) Rental housing is not typically a B2C relationship, as the great majority of the landlords are private owners. Nevertheless, when the landlord is a construction company or a private entity whose business is to rent properties, tenants have consumer protection, namely from the following Directives[348]:

The Consumer Sales Guarantees Directive – 99/44/EC was transposed to Portuguese law by Decree-Law no. 67/2003, of 8 April 2003, amended by Decree-Law no. 84/2008, of 21 May, and applies to rental contracts as well.

Consequently, when a rental contract is a B2C relationship, the landlord is liable to the tenant/consumer for any lack of conformity which exists when the dwelling is delivered to the tenant and which arises within a period of 5 years from delivery. However, the landlord will not be liable for defects in the goods if, at the moment of conclusion of the contract, the tenant knew or could not reasonably have been unaware of the lack of conformity.

The Unfair Contract Terms Directive – 93/13/EEC was transposed to Portuguese law by Decree-Law 446/85, of 25 October, as amended by DL 220/95, of 31August, and amended also by DL 249/99 and by DL 323/2001, of 17 December. For example, standard terms of the contract, which establish an anticipated and general exclusion of liability to the landlord towards the tenant, are subject to invalidity, according to Decree-Law no. 446/85. Also, any standard terms which go against tenancy law mandatory rules will be subject to invalidity.

b)In respect of buying a dwelling there is typically a B2C relationship when the seller is a construction company. Consequently the buyer has consumer sales guarantees for a period of 5 years after delivery, as explained above.

Unfair Contract Terms in the purchase of a dwelling are not frequent as, according to art.875º of Civil Code, the contract has to be written by a notary or by a lawyer.

(iii) **Competition and State aid law**

In matters relating to rental housing, in Portugal it is not possible to say that there are cartels or monopolies sharing out markets and fixing prices, as the great majority of landlords are not big companies, but private property owners. Therefore, free competition is naturally ensured[349].

[347] http://www.euromanet.eu/about/index.html

[348] Directive 2011/83/UE has not been transposed to Portuguese law yet.

[349] Carolina Cunha, Miguel Gorjão-Henriques, José Luís da Cruz Vilaça, Gonçalo Anastácio, Manuel Lopes Porto, Lei da Concorrência - Comentário Conimbricense, Almedina, 2013; José Luís Caramelo Gomes, Lições de Direito da Concorrência, Almedina, 2010.

On the other hand, there is no information regarding whether any subsidies construction companies might have received could have distorted the competition rules.

The tax limitation of 28% on the rents, given to landlords by Act 66-B/2012 (as explained below), does not constitute State aid, as it is not valid for companies, but only for private owners and, furthermore, it does not distort competition, as it is a general measure[350], aimed at stimulating the housing economy.

(iv) **Tax law**

Further to the Memorandum, Portugal had to adopt fiscal measures to reduce the public debt. Rising property taxation was one of the several ways to achieve this goal[351]. According to art.4 of Act no. 55-A/2012, when the taxable value of the property is 1,000,000 Euros or more, the owner has to pay 1% stamp tax a year, apart from the real estate tax.

On the other hand, by virtue of Act 66-B/2012, of 31.12.2012, which amended art.71º of the IRS Code[352], the Government introduced a limit of 28% on rent taxation to stimulate the rental market. For example, a private landlord who pays 40% tax on his general income only pays 28% on the amount he receives from rents.

There are also other fiscal benefits, such as the deduction of up to 500 Euros on tax when landlords of old contracts do major repairs on rented dwellings[353], the aim of which is to stimulate the housing market and renovate old buildings.

(v) **Energy saving rules**

Directive no. 2002/91/CE of the European Parliament and of the Council on the energy performance of buildings was transposed to Portuguese law by Decree-Law no. 78/2006, Decree-Law no. 79/2006 and Decree-Law no. 80/2006, all of 4 April 2006. In line with that Directive, the aim of these legal instruments is to promote the improvement of the energy performance of buildings, taking into account indoor climate requirements and cost-effectiveness[354].

According to art.3º, no. 1 c) of Decree-Law no. 78/2006, when buildings are sold or rented out, an energy performance certificate should be made available by the owner to the prospective buyer or tenant.

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[350] http://ec.europa.eu/competition/state_aid/overview/

[351] José Casalta Nabais; Direito Fiscal, Almedina, 2013

[352] http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/codigos_tributarios/irs/irs75.htm

[353] http://www.portaldahabitacao.pt/pt/portal/reabilitacao/apoios/incentivosfiscais.html

[354] José Eduardo de Oliveira Figueiredo Dias, Ana Raquel Gonçalves Moniz, Pedro Costa Gonçalves, Carla Amado Gomes, João Miranda, José Mário Ferreira de Almeida, Rute Saraiva, Nuno Aleixo, Suzana Tavares da Silva - Temas de Direito da Energia, Cadernos O Direito, n.º 3|2008 Almedina, 2008.

This law was initially compulsory only for new buildings and was extended to all existing buildings on 01.12.2013.

Directive 2012/27/EU of the European Parliament and of the Council of 25.10.2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC has not been transposed to Portuguese law yet.

(vi) **Private international law including international procedural law**

Contracts relating to the acquisition of the ownership or another right *in rem* on immovable property and tenancy contracts between citizens from other Member States raise the question of which law should govern the contract.

Furthermore, in the case of conflict between the parties there is the need to determine the right jurisdiction to judge this type of conflict.

The solutions provided by the Portuguese system for these problems are not much different from those provided by other Member States, as it is a matter of European Regulations, namely Regulation (EC) no. 593/2008 of the European Parliament and of the Council, of 17 June 2008, on the law applicable to contractual obligations (Rome I) and Council Regulation (EC) no. 44/2001, of 22 December 2000, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I)[355].

1.Tenancy contracts:

According to art.4º of Regulation no. 593/2008 (Rome I), when the parties do not agree differently the following rules are applicable:

With regard to a tenancy contract for temporary private use for a period of no more than 6 consecutive months, if both landlord and tenant have their habitual residence in another Member State, this type of contract shall be governed by the law where both parties have their habitual residence [art.4º, no.1, d)].

Nevertheless, in respect of formal validity, tenancy contracts shall be subject to the requirements of form of the law of the country where the property is situated if by that law: those requirements are imposed irrespective of the country where the contract is concluded and irrespective of the law governing the contract; and those requirements cannot be derogated from by agreement [art.11º, no. 5].

Example: If a German, who has his habitual residence in Germany, owns a house in Portugal and rents this house for 5 months to another German, who has his

[355] Luís de Lima Pinheiro; Estudos de Direito Internacional Privado Vol. II - Contratos, Obrigações Extracontratuais, Insolvência, Operações Bancárias, Operações sobre Instrumentos Financeiros e Reconhecimento de Decisões Estrangeiras; Almedina, 2009

habitual residence in Germany too, this contract is governed by German law. Nevertheless, this contract has to be concluded in written form, according to art.11, no. 5 (Rome I), as Portuguese law is mandatory when requiring written form as a condition for the validity of any tenancy contract – art.1069º Portuguese Civil Code.

A tenancy contract for a period of more than 6 consecutive months shall be governed by Portuguese law, as it is the law of the country where the property is located.

This solution is valid as well when the landlord and tenant do not have the same nationality or do not have their habitual residence in the same Member State [art.4º, no. 1 c)].

In the case of conflict between landlord and tenant, the following procedural rules are applicable:

According to art.22 of Council Regulation (EC) no. 44/2001, of 22 December 2000, Portuguese courts have exclusive jurisdiction, regardless of the domicile of the parties, as courts of the Member State in which the property is situated.

However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of 6 consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State.

2. Contracts relating to the acquisition of ownership or another right *in rem:*

With regard to contracts for the acquisition of ownership or another right *in rem* on immovable property located in Portugal, between citizens from other Member States, when the parties do not agree differently, these contracts shall be governed by Portuguese law, as it is the law of the country where the property is located. [art.4º, no.1 c) Rome I]

In the case of conflict between the parties to this type of contract, according to art.22 of Council Regulation (EC) no. 44/2001, of 22 December 2000 (Brussels I), Portuguese courts have exclusive jurisdiction, regardless of domicile of the parties, as courts of the Member State in which the property is situated.

(vii) **Anti-discrimination legislation**

Beyond the Portuguese Constitution, which states the principle of equality and forbids any type of discrimination in general, there is anti-discrimination legislation concerning specific contracts and other issues[356].

[356] Ana Maria Guerra Martins - A Igualdade e a Não Discriminação dos Nacionais de Estados Terceiros Legalmente Residentes na União Europeia - Da Origem na Integração Económica ao Fundamento na Dignidade do Ser Humano, Almedina, 2010.

Regarding anti-discrimination on the matter of buying a property or renting a dwelling, there are the following Acts:

- Act 18/2004, of 11May, transposed Directive no. 2000/43/CE and forbids discrimination based on race, ethnic origin or nationality;
- Act 14/2008, of 12 March, transposed Directive no. 2004/113/CE and forbids discrimination based on the gender/sex of the buyer candidate or the tenant candidate;
- Act 46/2006, of 28 August, forbids discrimination based on disability or health reasons (such as AIDS).

(viii) **Constitutional law affecting the EU and the European Convention of Human Rights**

Fundamental rights enshrined in international legal instruments ratified by Portugal are compatible with the Portuguese Constitution and have constitutional value in Portuguese law, according to art.8º and art.16º of CRP:

Article 8º of the Portuguese Constitution states:

(*International law)*
1. The norms and principles of general or common international law form an integral part of Portuguese law.
2. The norms contained in duly ratified or approved international conventions come into force in Portuguese internal law once they have been officially published, and remain so for as long as they are internationally binding on the Portuguese state.
3. The norms issued by the competent organs of international organisations to which Portugal belongs come directly into force in Portuguese internal law, on condition that this is laid down in the respective constituent treaties.
4. The provisions of the treaties that govern the European Union and the norms issued by its institutions in the exercise of their respective competences are applicable in Portuguese internal law in accordance with Union law and with respect for the fundamental principles of a democratic state based on the rule of law.

Art.16º of the Portuguese Constitution states:

(Scope and interpretation of fundamental rights)
1. The fundamental rights enshrined in the Constitution shall not exclude any others set out in applicable international laws and legal rules.
2. The constitutional precepts concerning fundamental rights must be interpreted and completed in harmony with the Universal Declaration of Human Rights.

According to these rules, fundamental rights enshrined in the European Convention on Human Rights have constitutional value in Portuguese law. This is also valid for the Revised European Social Charter, which was ratified by Portugal on 30.05.2002

and entered into force on 01.07.2002[357] and enshrines the right to housing in its article 31º[358].

Despite the fact that the ECHR does not present an article specifically dedicated to the right to housing, its art.8º has been seen as a rule which comprises the right to housing whilst protecting the right to respect for one's home[359].

On the other hand, the Portuguese Constitution, in art.65º[360], states that the right to housing is a fundamental social right. The Government has a duty to develop housing policies to facilitate people's access to a dwelling, but it does not mean that anybody in need has the personal right to require a dwelling directly from the Government or other public authority.

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[357] http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=163&CM=&DF=&CL=ENG

[358] Article 31 –The right to housing**:** *With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:*

1.to promote access to housing of an adequate standard;

2.to prevent and reduce homelessness with a view to its gradual elimination;

3.to make the price of housing accessible to those without adequate resources.

[359] Art.8º ECHR: 1.*Everyone has the right to respect for his private and family life, his home and his correspondence.*

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

[360] **Article 65 (Housing and urbanism)**

1. Everyone has the right for himself and his family to have an adequately sized dwelling that provides hygienic and comfortable conditions and preserves personal and family privacy.

2. In order to ensure the right to housing, the state is charged with:

a) Programming and implementing a housing policy that is incorporated into general town and country planning instruments and supported by urbanisation plans that guarantee the existence of an adequate network of transport and social facilities;

b) In cooperation with the autonomous regions and local authorities, promoting the construction of low-cost and social housing;

c) Stimulating both private construction, subject to the general interest, and access to owned or rented housing;

d) Encouraging and supporting local community and popular initiatives that work towards the resolution of the respective housing problems and foster the formation of housing and self-building cooperatives.

3. ***The state shall adopt a policy that works towards the establishment of a rental system which is compatible with family incomes and provides access to individual housing.***

4. The state, the autonomous regions and local authorities shall define the rules governing the occupancy, use and transformation of urban land, particularly by means of planning instruments and within the overall framework of the laws concerning town and country planning and urbanism, and shall expropriate land that proves necessary to the fulfilment of public-interest urbanisation goals.

5. ***The participation of the interested parties in the drawing up of urban planning instruments and any other physical town and country planning instruments is guaranteed.***

(ix) Harmonisation and unification of general contract law

For the last five decades, at least, the area of housing leases has not been a realm of total freedom of contract, due to the social implications of this matter. In fact, for different types of policy reasons, landlords' power to terminate a contract or to increase rents was always the object of restrictions.

With the Portuguese Constitution of 1976 the right to housing became a fundamental right and therefore the housing law has always presented mandatory rules to protect the tenant against arbitrary termination of a contract.

Even with the legal reform operated by Act 31/2012, which significantly liberalised tenancy law, tenants of old contracts (formalised before 15.11.1990) have kept their protection against contract termination and rent increase (as explained above). Also in the legal regime for new contracts there are a few mandatory rules which impose restrictions on a landlord's power to terminate the contract (as explained above).

Due to its social and deep national background, housing leases have not been included in European projects aimed at the harmonization of private law, such as the Draft Common Frame of Reference – DCFR containing Principles, Definitions and Model Rules of European Private Law[361]. However, this option has been subject to criticism[362], as it did not take into account the social dimension in labour, tenancy and consumer credit law[363].

On the other hand, the most significant efforts towards the harmonisation and unification of general contract law are visible in sales law, namely with the publication of the Optional Common European Sales Law[364]. This optional instrument is a parallel regime the Member States can adopt as part of their national law, but does not replace the existing national sales law. This Instrument will co-exist together with the current national contract law systems.

[361] http://ec.europa.eu/justice/policies/civil/docs/dcfr_outline_edition_en.pdf

[362] As Luca Nogler and Udo Reifner say about the ignored social dimension of the DCFR: "The Draft Common Frame of Reference has been already criticized for its dogmatic weakness and political implications, extended scope on a limited basis, its fragmented relationship to national legal cultures. In this essay we want to focus on the vertical questions of whether the DCFR would threaten and undermine the social *acquis* of continental European social contract law. Such an approach shares a common basis with the critique by the Manifesto group on the deficit in social justice, shared by an increasing number of authors"; www.lex.unict.it/eurolabor/ricerca/presentazione

[363] http://www.eusoco.eu/wp-content/uploads/2013/10/eusoco_book_outline.pdf

[364] http://ec.europa.eu/justice/contract/files/common_sales_law/regulation_sales_law_en.pdf

(x) <u>Fundamental freedoms</u> (*e.g. Austrian discussion on secondary homes; licence to buy house needed?*)

There are no legal restrictions to buying or renting a dwelling, even a secondary home or a holiday home. Since for anybody who has financial means to buy a property or pay the rent, no additional conditions are required.

Furthermore, there is a programme to attract investors to buy real estate in Portugal obtaining a Golden Residence Permit.

- Act 29/2012 of 9 August, art.90-A: New legal provisions open up the possibility of applying for a residence permit for those who have entered the country regularly (holders of valid Schengen Visas, or beneficiaries of Visa exemption), by acquiring real estate worth at least 500,000 Euros[365]. The new regulations offer non EU Citizens a simple and fast way for property investors to receive a Five Year Residence Permit (Golden visa**)**. The Portuguese Residency Permit allows free travel in Schengen countries as well as being able to work or study in Portugal. Additionally, there is the opportunity for a Portuguese Passport or permanent residency after 6 years. The residence permit is originally issued for one year and then renewed for successive periods of two years, provided that the minimum stay periods are maintained: 7 days during the first year; 14 days in the following two-year periods.

8. Typical national cases (with short solutions) to be proposed by each team

10 typical national cases (from Court decisions)

1.Tenant's liability for non-consented works on a rented place:
A tenant built a new WC and a corridor without the landlord's permission.
Consequences: the landlord sued the tenant based on breach of the contract and asked for damages.
Court decision: the contract was resolved and the tenant was liable for damages.
http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/853822250282e066802579c700525892?OpenDocument&Highlight=0,arrendamento

2. **Landlord's liability for repairs needed on the rented place**:
A tenant asked the landlord to repair the walls, the floor and the electric wiring system of the house, which had been damaged by leakage from a water pipe.

[365] http://secomunidades.pt/ari/

As the landlord did not repair the house, the tenant hired a third person to do that job and sued the landlord to get compensation for the money paid.
Court decision: the court decided in favour of the tenant.
http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/39f5a7eceb7bcbe780257a0c0047e830?OpenDocument&Highlight=0,arrendamento

3.**The tenant does not pay the rent**:
The tenant did not pay the rent for 3 months. The landlord sued him to get the resolution of the contract and the tenant's eviction.
The tenant deposited the late rent in a bank account before the court decision.
Court decision: the contract was not resolved by the court and the tenant was not evicted.
http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/f50006a93665f584802579f0004de347?OpenDocument&Highlight=0,arrendamento

4. **Increasing the rent in old contracts**:
A contract was formalised in 1980 and, therefore, the tenant paid a low rent. In 2006 a new law entitled the landlord to increase the rent up to 4% of the value of the premises. The landlord asked the tenant verbally to pay the new rent. The tenant paid the updated rent for 6 months and he went back to paying the old value again because the law says the landlord has to use a registered letter.
The landlord sued the tenant based on "*venire contra factum proprio*".
Court decision: the court decided that the landlord and the tenant had reached an agreement about the new rent and therefore the tenant was obliged to pay that rent.
http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/20671e686422232e802579db00374f71?OpenDocument&Highlight=0,arrendamento

5.**Absent tenant. Mental illness**.
A tenant lived alone and suffered from a mental illness. For that reason she went to live with a relative for long periods, but kept her belongings in the rented house, which she returned to occasionally.
The law says the landlord can resolve the contract if the tenant is absent for more than 1 year unless there is a very strong reason not to live in the rented place (e.g. to be in a hospital).
The landlord sued the tenant based on her absence for more than 1 year.
Court decision: the court decided to resolve the contract as the reason for the tenant's absence was not reversible (i.e. not temporary).
http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/5811438e9594ed71802579bf00584644?OpenDocument&Highlight=0,arrendamento

6. **Death of the tenant with an old contract**.

A contract was formalised in 1970. A daughter of the tenant had lived with him since 1986 in the rented place. The tenant died in November 2006. In July 2006 a new law was enacted and denied the right of the descendents to continue the contract if they are more than 26 years old, which was the case (this rule applies only to contracts formalised before July 2006).
The tenant's daughter went to the court and asked for a right of transmission as she had been living in the rented place for more than 20 years.
Court decision: the court denied her the right to continue the contract and decided that she had to leave the rented place.
http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/626ddea4859d8677802579c20053df12?OpenDocument&Highlight=0,arrendamento

7.**Contract made verbally** after July 2006
The contract was made verbally in January 2007. The law enacted in July 2006 says that a contract which lasts for more than 6 months should be recorded in writing and signed. Two months later the tenant stopped paying the rent. The landlord went to court against the tenant saying the contract was null and void due to lack of legal formalities.
Court decision: the court decided that the contract was null and void and consequently the tenant should be evicted and he should pay the rent for the time he had used the place.
http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/48cba1fca4d9ce278025797400505e2d?OpenDocument&Highlight=0,arrendamento

8.**Landlord's right to terminate the contract by specific notice in old contracts**
The contract was formalised in 1975. At that time the landlord did not have the right to terminate the contract by specific notice. In 2006 a new law was enacted which gave the landlord the right to terminate a contract by specific notice except for contracts formalised before 1990. In 2010 the landlord gave specific notice to the tenant to terminate the contract in 2011. As the tenant did not leave the rented place the landlord went to court to get the tenant evicted.
Court decision: the court denied the landlord's right to terminate the contract as it had been formalised in 1975.
http://www.dgsi.pt/jtrp.nsf/c3fb530030ea1c61802568d9005cd5bb/221e389c6d1ea37c80257a13003b06f4?OpenDocument&Highlight=0,arrendamento

9. **The contract expires when an old building has to be demolished**
The contract was formalised in 1965. The landlord had never done the needed repairs to keep the house in good condition.

The Municipality ordered the landlord to demolish the house. The tenant refused to leave the rented place as the degradation of the house was the landlord's responsibility. The landlord went to court asking for termination of the contract.
Court decision: the court decided that the contract had been resolved by the Municipality's order and the tenant had to vacate.
http://www.dgsi.pt/jtrp.nsf/c3fb530030ea1c61802568d9005cd5bb/0e0a40a499cd6faf802578da00350fb9?OpenDocument&Highlight=0,arrendamento

10.**Contract resolution based on tenant's bad behaviour**
The tenant and his relatives repeatedly caused a disturbance in the neighbourhood. The Police were called and seized illegal guns in the rented apartment.
The landlord sued the tenant based on the breach of the contract.
Court decision: the court resolved the contract and ordered the tenant to vacate the rented property.
http://www.dgsi.pt/jtrp.nsf/c3fb530030ea1c61802568d9005cd5bb/06a0860b8924d0998025781d004bb769?OpenDocument&Highlight=0,arrendamento

9. Table of Contents

9.1. List of Abbreviations

Al.	Point (*alínea*)
AML	Metropolitan Area of Lisbon
AMP	Metropolitan Area of Porto
Art.	Article
BdP	Bank of Portugal
CC	Civil Code
CIRE	Insolvency and Corporate Recovery Code
CRP	Constitution of the Portuguese Republic
DGPJ	Directorate-General for Justice Policy of the Ministry of Justice
FIIAH	Real Estate Investment Funds for Tenancy with Housing Purposes
IHRU	National Institute for Housing and Rehabilitation
IMI	Tax over Real Estate Property
IMT	Tax of Onerous Transfer of Real Estate Property
INE	Statistics Portugal
IPSS	Social Solidarity Private Institutions
IRS	Personal Income Tax
IRC	Corporate Income Tax
ISFF	Survey in Households' Financial Situation
MoU	Memorandum of Understanding on Specific Economic Policy Conditionality
MSA	Social Market of Tenancy
NRAU	New Urban Tenancy Regime
NUTS	Nomenclature of Territorial Units for Statistics
OCDE	Organisation for Economic Co-operation and Development
OHRU	Housing and Rehabilitation Observatory
PALOP	Portuguese-Speaking African Countries
PER	Special Rehousing Programme
“Porta 65”	Renting by young people
PROHABITA	Access to Housing Financing Programme
p.p.	Percentage points
RAF	Forester Tenancy Regime
RAR	Rural Tenancy Regime
RAU	Urban Tenancy Regime
REIF	Real Estate Investment Funds
SEF	Foreigners and Border Service
SMT	Social Market Tenancy

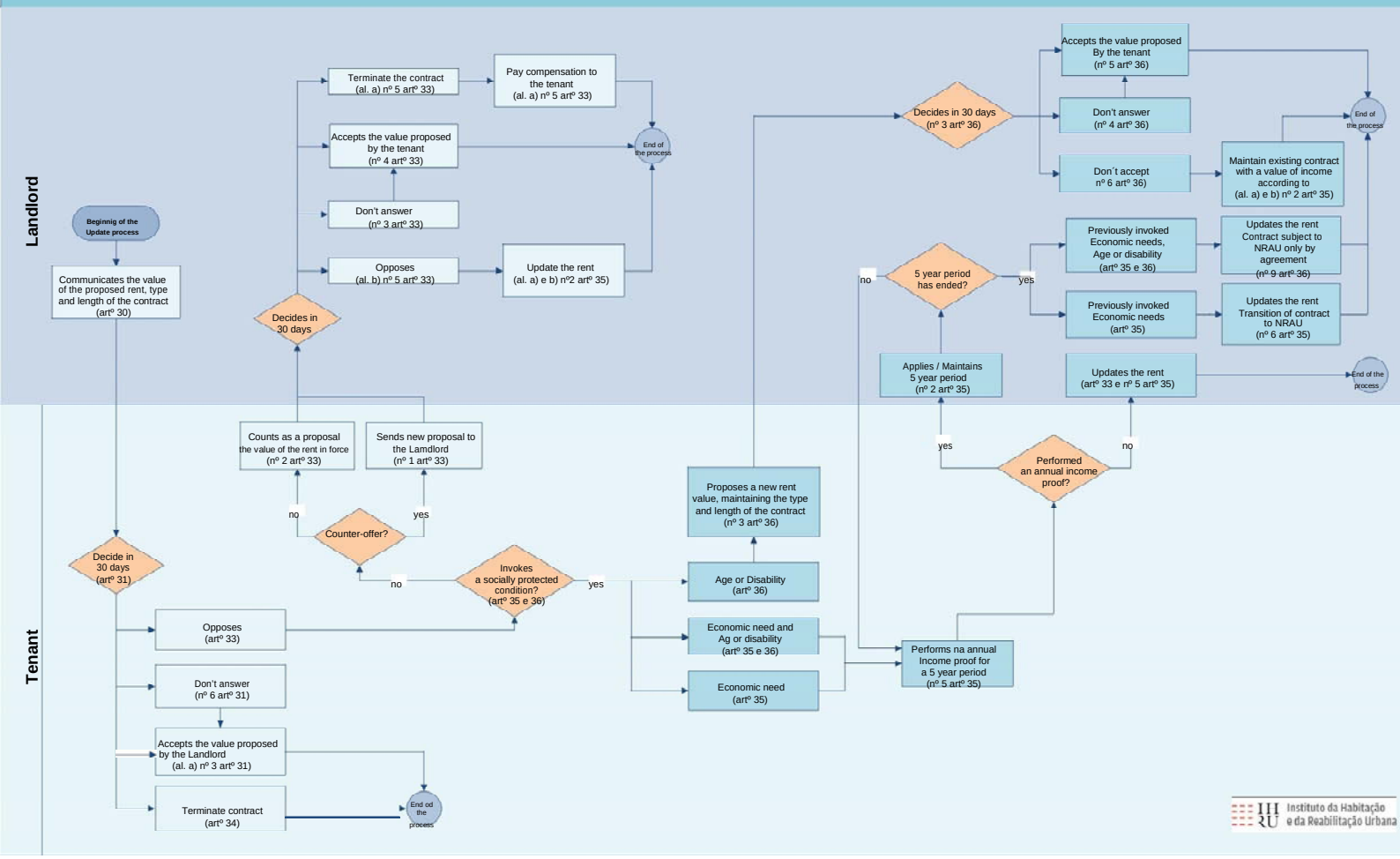
9.2. List of Summary Tables

9.3. List of Tables

9.4. List of figures

ANNEX 1: OLD CONTRACTS

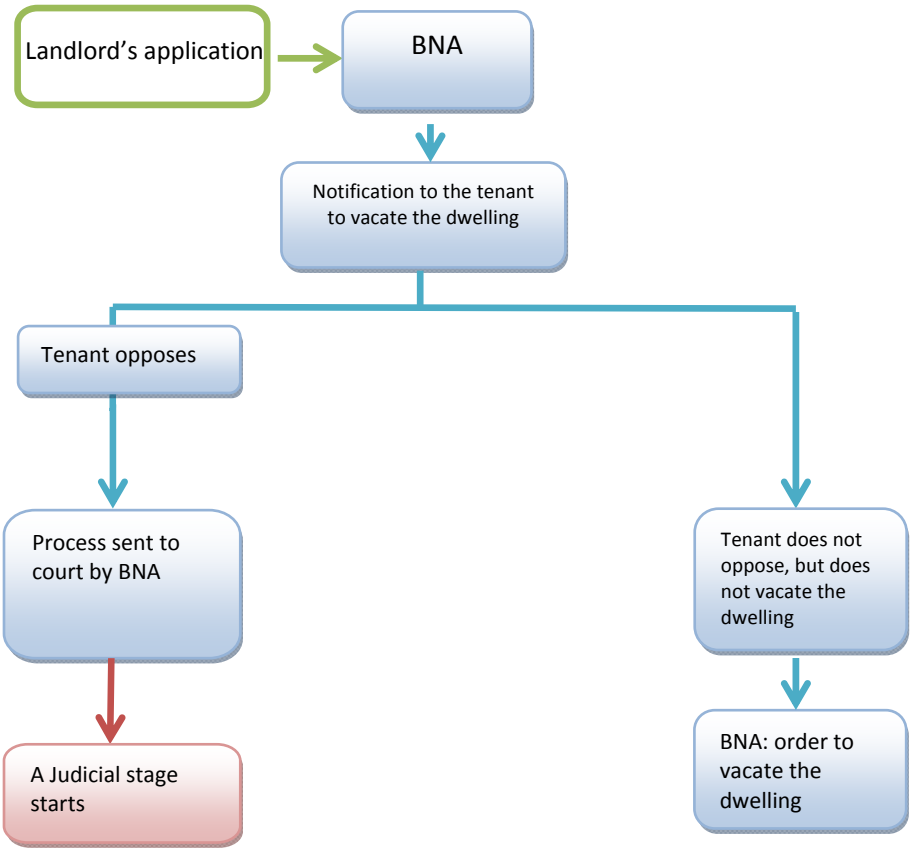
ANNEX n.1 Old contracts: updating rents and termination of the contract



ANNEX 2: BNA SYSTEM

BNA Eviction Process

1. Administrative stage



2. Judicial Stage