



European Construction Sector Observatory

Policy measure fact sheet

Portugal

New Urban Lease Regime

Thematic Objectives 1 & 3

January 2017

Implementing body:	Institute for Housing and Urban Rehabilitation (IHRU)
Key features & objectives:	Adjustment of the Tenancy Law aiming at granting parties more flexibility regarding the duration of contracts and the negotiation of previously existing rent values. Set up a new regime for construction work in rented building and a new special eviction procedure.
Implementation date:	12 th November 2012
Targeted beneficiaries:	Actual and potential landlords and/or tenants of properties in Portugal
Targeted sub-sectors:	Rental housing sector, Property sector (Estate Agents, Letting Agents)
Budget (EUR):	No budget indicated for the legislation

In a nutshell

Over the last decades, Portugal has experienced a significant rise in its new housing stock, in quality and in quantity. The number of households in Portugal has grown by 4.7% since 2008, reaching 4.06 million in 2014¹. For many years, the strict urban rental regime discouraged people from renting or putting their properties for rental. Only 13 % of housing in Portugal were leased in 2011 according to the Census².

The existing building stock faced the prevalence of a strict urban rental regime, that didn't allow the flexibility needed. On one hand rents were frozen, eviction processes were time consuming and expensive, and on the other hand, there was no investment made by the owner to improve the quality of the properties and mortgages were low. The average monthly payment for mortgages was 291 euros in 2001 and 395 euros in 2011. Regarding dwellings rented after 1990, the rent ranged between 300 and 400 euros³. The results were a tendency towards ownership with a boost on new construction for sale but also

degradation of rental market properties together with insufficient quantity in rental supply⁴. The 2011 census data shows, that for instance in Lisbon out of a total of 50.225 vacant houses in 2011, only 10.903 were available for rent⁵.

After the crash of the markets, the construction sector started suffering the consequences of the financial crisis, people who needed houses weren't able to afford them and the market was flooded with empty houses. According to the 2011 Census, 12.5% of the dwelling were unoccupied⁶.

In this situation, the Portuguese Government detected the need to make the rental market more flexible. Although some attempts to boost the rental market had been made previously in 1990 and 2006 with the entry into force of the Urban Lease Law⁷ and the New Urban Lease Law⁸ respectively, these laws didn't reach the desired effects. According to 2011 Census, 70% of leases subsisting under the regime set up before 1990 involved rents under 100 euros⁹.

As a consequence of the 2011 Economic Adjustment Programme, and in accordance with the Memorandum of Understanding between the Portuguese State, the European Commission, the European Central Bank and the International Monetary Fund, on 14 August 2012, the Portuguese Government published 3 legal measures intended as a structural reform of the current Portuguese urban lease regime¹⁰.

The rationale behind the measure was to introduce a more flexible legislation that would make the rental market more dynamic and competitive. The legislation, also searched to facilitate the introduction of new buildings in the market, without forcing the developers to sell at a low price. Furthermore, it was envisaged that the new regime would impulse urban rehabilitation, offering the Portuguese housing solutions more adjusted to their needs, less consuming of their income and that encourage their mobility through the country in their search for jobs¹¹.

General description

The New Urban Rental Regime seeks to promote the urban rental market by:

- a) Adjusting the regime of allocation, namely giving the parts greater freedom in the definition of rules regarding the duration of rental contracts¹²;
- b) Adjusting the transitory regime of the contracts signed before the Law no. 6/2006, of 27th of February, reinforcing the negotiation between the parties and easing the transition of said contracts to the new regime, in a short period of time¹³; and
- c) Creating a new special proceeding of foreclosure, that allows for a quicker eviction and reallocation¹⁴.

Some exceptions have been made, vis-à-vis contracts signed before 1990 by tenant older than 65 or with a proven disability of at least 60%¹⁵. Moreover, a 5 years' transition period has been introduced for contracts signed under the previous regime.

Regarding the definition of rules for the **duration of rental contracts**¹⁶ the legislator opted for a regime that grants freedom of stipulation of the parties as regards:

- **Initial term of the contract.** In the absence of an agreement between the parties, a two-year period rental is considered.
- **Automatic renewal period.** In absence of stipulation in the contract the lease will be renewed automatically for the same term. For rental periods under 30 days, non-automatic renewal will be granted.
- **Termination and opposition to renewal.**
 - As far as **opposition to renewal** is concerned, a written communication to the other part with the following delays is necessary:

Contract duration / Communicated by	Landlord	Tenant
>6 years	240 days	120 days
1- 6 years	120 days	60 days
6 months to 1 year	60 days	60 days
<6 months	1/3 initial duration	1/3 initial duration

With regard to the **updating of rents**¹⁷ a new mechanism has been set up. The NRAU establishes that the rent prior to 1990 would be updated, through a process of negotiation between landlord and tenant. The initiative would depend on the landlord, who will need to communicate its intention to the lessee, indicating the amount of rent, type and term of the new lease, value of leased property and copy of the legal description of the property of the tax authorities. The Lessee then has 30 days to either accept, propose a new value or terminate the contract. As

mentioned before, an exception was introduced for tenants older than 65 or with a proven disability. The 5 years' transition period foresees that in case an agreement is not reached between both parties, the landlord can only update the rent to the limit of 1/15 if the property value.

As regards **the fulfilment of the obligation to pay rent**¹⁸, the NRAU considers the termination of the contract and consequent vacancy of the apartment in case of non-payment of 2 months. Repeated delays of more than 8 days in the payment of the rent, when occurred 4 times in a row or interpolated in a period of 12 months, also implies the termination of the contract.

As for the **special eviction procedure (SEP)**¹⁹, it's a mechanism which aims to assure the termination of the lease agreements when the lessee has not freed the property on the date stipulated by law or by agreement between both parties. To guarantee its proceedings an administrative body under the Ministry of Justice, the "Balcao Nacional do Arrendamento" (the BNA) has been established.

Although, SEP is an extrajudicial mechanism, the matter can be transfer to Court if the tenant responds to the lessor claim or requests the suspension of the vacation of the apartment. The Court with jurisdiction over all matters arising from SEP is the Civil Court of the leased residence.

Moreover, a transitional regime²⁰ of transfer of lease agreement owing to death has been established to limit its previous implications.

Achieved or expected results

The implementation process has been controversial. The Government has faced substantial opposition when adjusting the NRAU to new conditions (for instance allocation of the subsidy given to those with rental contracts prior to 1990, and the formula to calculate it, extension of the transitional period, requirement to present energy certifications of buildings...). Concerns about certain aspects regarding the update of rents and the SEP procedure have been raised by both landlords' and tenants' associations²¹.

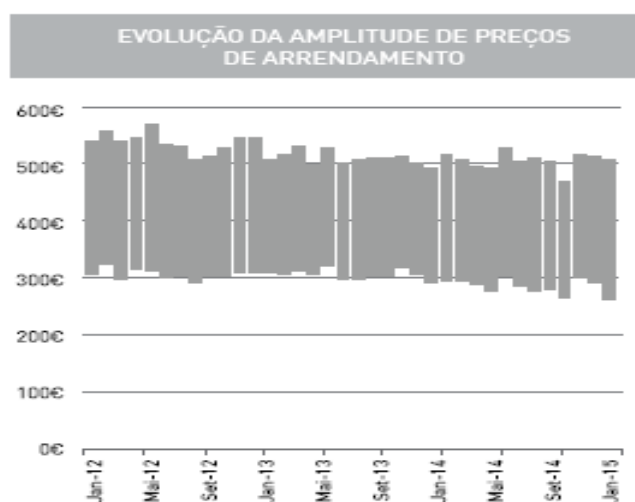
Furthermore, given the initial 5 years' transition period, a complete picture regarding the success of the NRAU is hard to gather. The transition regime set up to protect disadvantage groups hinders the effectiveness of the new regime, furthermore household indebtedness and Portugal's economic situation are potential constrains factors to the full implementation of the NRAU. In spite of all the constraints, 20% of the dwellings in Portugal were rented in 2014, in comparison to the 13% of 2011. This increase shows the potential of the NRAU to achieve its objectives once the transitional regimes are extinct. The "**Comissao de Monitorizaçao da Reforma do Arrendamento Urbano**" was established to monitor the implementation of the NRAU. In this

regard, the Commission aims to gather quantitative and quality elements, analyse the extent to which the objectives are being met and identify difficulties or shortcoming encountered while implementing the NRAU. It has a multidisciplinary composition and tries to gather the point of view from different stakeholders²². The Commission has published three reports, and has focus on describing the awareness of the citizens regarding the NRAU.

In its last published report in May 2014, the monitoring Commission concluded that, while a communication effort had been carried out by public and private entities to inform, both tenant and landlords, significant cases had been observed in which the lack of knowledge prejudiced tenants or landlords²³.

According to the website CasaYES real estate²⁴ showed that between January 2012 and January 2015, the average value of rent decreased, as is shown in the following chart.

Figure 1: Evolution of rental prices



Source: APEMIP/ CasaYES²⁵

It has been note by the that between January 2010 and January 2014 there has been an increase on the number of available rental properties, matched with a decrease of around 25% of rental value in comparison to 2007 data²⁶.

Instituto Nacional de Estatística (INE) is responsible for determining the coefficient for updating the rentals. If in 2010 rents remained unchanged, there was a residual increase of 0.3% in 2011, 3.19% in 2012, 3.36% in 2013 and 0.99% in 2014. However, after 4 years of increases in 2015, following a negative change in the price index, the rents were frozen. On the 30th of October, INE published a 0.16% increase in rents for 2016²⁷. The indexation for 2017 published at the *Diário da República (Portuguese Official Journal)* by INE is of 1.0054²⁸.

The NRAU, although it has created a flexible and more liberal regime for the lease contracts, hasn't been able to solve the main

structural problems, mainly because of the transition period to update the rents of prior contracts²⁹.

The NRAU has been reviewed by Law nº 79/2014³⁰, of December 19th, which introduced changes regarding the allocation of the subsidy received by 1990's tenants and the administrative procedure. Furthermore, Law-Decree nº 156/2015, of the 10th of August, modified the formula used to calculate the subsidy given to those with rental contracts previous to 18th November 1990.

The Government foresaw to extend the period of updating rents in order to guarantee the right to housing, after the transitional period of five years (ending in 2017), and it's actually considering extending its scope to deprived citizens. There are several legislative proposals under consideration, for instance the Left Bloc (BE)³¹⁻³² presented a bill to extend the transitional period until 2027, also proposing a limitation to the update of rents (maximum 4% of the rent value instead of the 1/15 of the fiscal value of the property)³³ The Portuguese Communist Party (PCP) defends the extension of the transitional period for all tenants whose gross annual income is less than five times the guaranteed minimum annual gross salary (37.100 euros)³⁴. As a result, at the end of October 2016, with the support of most of left wing political parties and the opposition of the Social Democrats and Christian Democrats, a bill was passed to extend the transition period from 5 to 10 years³⁵. Thus, the transitional period for the application of the scheme for the updating of the leases of contracts prior to 1990 will end in 2022. Nevertheless, most political parties have expressed their readiness to make changes and deepen the discussion on the NRAU regime, including the re-extension of the transitional period until 2027 and widening its scope of application.

This amending measure has received mixed reactions from stakeholders³⁶. Whereas the property industry considers the new transition period as a drawback to the achievement of a real rental market³⁷, the tenant associations believe that it will protect the right of the disadvantaged citizens.

Perspectives and lessons learned

From a **government perspective**, the NRAU is helping to boost the Urban Rental Market. They Institute for Housing and Urban Rehabilitation considers that the new Regime is helping the developers by facilitating the introduction of their building in the market, as well as, increasing the confidence of the landlords regarding the eviction procedure. Furthermore, the Instituto Habitação e da Reabilitação Urban (IHRU) estimates that the law opens a new market segment for the construction industry, who was, until now, focused only on new construction.

From a **tenants' perspective**, The Associação do Inquilinos Lisbonenses (AIL)³⁸ believes the NRAU is ineffective and should be reformed to protect the disadvantaged citizens. Other actions should be envisaged, regarding conservation of buildings and

urban rehabilitation. These measures would be essential to avoid the excesses of new construction and excessive occupation of the territory.

From a **landlords' perspective**, The Associação Lisbonense de Proprietários (ALP) considers that overall the balance of the NRAU is positive. Although, some minor improvements could be made, for instance, they believe that there is an abusive use of the procedure that grants the possibility of depositing the rent with a banking institution. Regarding the extension of the transition period, they firmly oppose the measure that will reduce the value of rents³⁹.

The **Associação Nacional de Proprietários (ANP)** notes that some constraints still persist, namely lack of guarantees offered by the tenants and the instability of the deadlines of the new contracts, as well as the requirement that the Law imposes on landlords (e.g. to have an energy efficient certificate). Overall however, they consider that the NRAU has contributed to the improvement of the rental market.

From a **business perspective**, the **Associação Portuguesa de Promotores et Investidores Imobiliários (APPII)** considers that a new transitional period for updating the rental contracts prior to 1990. would not benefit anyone. It will entail keeping tenants-particularly the most disadvantaged-in deprived housing⁴⁰. Moreover, they consider that the function of protecting the most disadvantaged is a State responsibility that cannot be passed to the private sector and therefore the extension of the transitional period would be a setback.

Endnotes

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- ² Census 2011
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- ¹³ Ibid
- ¹⁴ Ibid
- ¹⁵ As Novas Regras Transitórias Na Reforma Do NRAU (LEI 31/2014) Fernando de Gravato Morais, JULGAR-Nº19 (2013)
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- ¹⁸ Reform of the Urban Lease Law: Portugal view point (December 2012)-CBRE www.cbre.pt
- ¹⁹ Ibid
- ²⁰ Amendments to the legal framework applicable to urban leases- Briefing- Morais Leitao, Galvao teles, soares da silva- (August 2012)
- ²¹ Comissao de Monitorização da Reforma do Arrendamento Urbano, 3º Relatório (Maio de 2014)
- ²² The Monitoring Commission is formed by representatives from the following entities:
 - Association of Tenants of northern Portugal - AINP;
 - Association of Tenants Lisbonenses - AIL;
 - Lisbonense Owners Association - ALP;
 - National Association of Owners - ANP;
 - Association of Professionals and Real Estate Companies of Portugal - APEMIP;
 - National Association of Portuguese Municipalities - ANMP;
 - Institute for Housing and Urban Rehabilitation - IHRU;
 - Institute of Social Security - ISS;
 - Customs Tax Authority - AT;
 - Director General of the Administration of Justice - DGAJ;
 - Confederation of Trade and Services of Portugal - CCP;
 - Association of Hotels, Restaurants and Similar Portugal - AHRESP.
- ²³ Ibid
- ²⁴ Casayes ibid
- ²⁵ Casayes ibid
- ²⁶ Comissao de Monitorização da Reforma do Arrendamento Urbano, 3º Relatório (Maio de 2014)
- ²⁷ <http://observador.pt/2015/09/10/rendas-deverao-aumentar-016-em-2016-apos-congelamento-registado-este-ano/>
- ²⁸ Aviso nº 11562/2016, Diário da República, 2.ª série — N.º 183 — 22 september 2016
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- ⁴⁰ “Ninguém beneficiará de novo congelamento das rendas”
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