STUDY

ECONOMY AND FINANCE

HOUSING POLICIES IN (THE) CRISIS

The Troika Memorandum and the Housing Market in Portugal

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This paper analyses the impact on the housing market of the Memorandum of Understanding on Specific Economic Policy Conditionality, which defined the conditions for the loan granted by the Troika to the Portuguese State in 2011.

It comes to the conclusion that the austerity measures contributed to the intensification of a non-interventionist and neoliberal model of housing policy and fostered dynamics that furthered the fragmentation of the Portuguese metropolitan areas.

The paper also discusses the mitigating measures the Socialist Government took from 2017 aimed at attenuating the imbalances that the intervention period had produced.

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1 INTRODUCTION

Portugal was one of the countries that were hardest hit by the Eurozone crisis that started in 2009. From 2011 to 2014, the country received an international bailout marked by severe austerity measures. On 17 May 2011, the Portuguese Government, the International Monetary Fund, the European Commission and the European Central Bank formally signed the document ›Portugal: Memorandum of Understanding on Specific Economic Policy Conditionality‹, which defined the conditions for the 78 billion euro loan granted by these three bodies (the Troika) to the Portuguese State. This study aims to analyse the demands laid down in the Memorandum of Understanding and its practical repercussions on the housing market.

After the period of financial intervention, the Portuguese housing market underwent rapid changes that limited the general population's access to housing. This scenario is not exclusive to Portugal, as it is a problem that has affected the main European cities. However, in the Portuguese case, the changes started straight after the intervention of the Troika and were part of the country's economic recovery.

In fact, the Memorandum of Understanding had a whole chapter dedicated to the ›housing market‹, so it is clear that housing was an important sector in the financial intervention. From this perspective, this study intends to understand what demands were laid down in the Memorandum, how and to what extent they were put into practice, and what implications they had for the housing market and Portuguese society. At the same time, it identifies which of the implemented measures were a direct consequence of the Memorandum and what the specific contribution of the right-wing government at the time was. The final section of the analysis is dedicated to what has happened since the end of the Troika intervention under the centre-left Government (called *Geringonça*[1]) that came to power in 2015 and reversed some of the austerity measures that had been implemented during the financial crisis.

2 PORTUGUESE HOUSING POLICY UNTIL THE SIGNING OF THE MEMORANDUM

An analysis of the impact of the Troika Memorandum requires an understanding of the Portuguese housing market model during the decades preceding the agreement. The aim of this section is to present a succinct description of the constitutional and legal basis of the model and the policies in the country.

Since April 1976, the Constitution of the Portuguese Republic[2] has enshrined the right to housing (Article 65), setting out that ›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.‹[3] The other points in the same article are, in general, policy guidelines written into the Constitution in order to guarantee this right to housing. In this aspect, the Portuguese Constitution may be considered progressive, as – even in a Western European context – it is uncommon for the Basic Law of a country to provide directly for the right to housing.[4] The right to housing it contains enshrines the basic principles indicated in various international declarations, such as the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), the European Social Charter (1961, revised in 1996), and the Charter of Fundamental Rights of the European Union (2000).

In parallel with the right to housing, the Constitution highlights some important topics, such as ›private construction, subject to the general interest‹, ›access to owned or rented housing‹, support for the ›local community‹ and the fostering of ›the formation of housing and self-building cooperatives‹. It also lays down that the ›State shall adopt a policy that works towards the establishment of a rental system which is compatible with family incomes‹, combining the above presuppositions with the existence of transport networks and social amenities. These practical orientations reinforce the State's responsibility for accessible housing.

The right to housing is included in the Constitution under ›economic, social and cultural rights‹. The same occurs with the right to private property (Art. 62). In contrast to what happens with ›civil and political rights‹, which are normally binding, indisputable and universal, ›economic, social and cultural rights‹ depend on two important factors: a) the elected governments' political and ideological programmes, which define their priorities; b) the State's financial ability to carry out the constitutional goals. This is not a Portuguese particularity: it occurs in other democratic countries and exists in international law.

2.1 RENTING TRENDS FROM 1974 TO 2011

On the issue of renting, it is important to go back in time to understand the factors at play in the 2011 amendments to the law. Already in 1948, during the *Estado Novo,* rents were frozen in the cities of Lisbon and Oporto, and continued to be until the Revolution in 1974. In these years, along with

1 *Trans. note: Geringonça* (contraption): term first used by right-wing parties to denigrate the parliamentary agreement between the Socialist Party, Left Bloc and Portuguese Communist Party, though, as the coalition held together, it became, so to speak, a badge of pride.

2 *Translator's note:* For ease of recognition in subsequent references, English translations have been created for the purpose of this study. The original Portuguese titles are provided in the footnotes. In the present case: *Constituição da República Portuguesa* (CRP).

3 All CRP translations are from the official English version (*Diário da República*).

4 The issue of access to housing has been evolving up to the present; it was expanded beyond Art. 65, when it was also enshrined within Art. 72, ›The elderly‹ (1982 revision of the Constitution), and Art. 70, ›Youth‹ (2001 revision).

the rent freeze, landlords were prevented – barring exceptions – from terminating existing contracts (i.e. open-ended contracts), on a principle established at the time of the First Republic (during World War I), which extended, without interruption, the duration of these contracts.[5] Accordingly, when the Revolution took place in 1974, rents had been frozen in the country's two largest cities since 1948 and at the same time landlords could not cancel the contracts. During the troubled period after the Revolution, the rent freeze that had been in effect in Lisbon and Oporto until 1974 was extended to the whole country.

In the 1980s, as Portugal drew closer to the European social model of free market capitalism and the European Economic Community, these protectionist measures safeguarding tenancies became difficult to uphold. Liberalization of the rental market began in 1985 (though still rather timidly) with the publication of the Rent Law,[6] which, among other things, allowed an ›exceptional correction‹ in rental values. This adjustment pleased neither the tenants, who had their rents increased, nor the landlords, who considered the increases insignificant and out of line with the real situation. As far as new leases were concerned, the Rent Law allowed rents to be set by free negotiation, with annual increases based on the coefficients published by ministerial order.

In 1990, the Urban Rental Regime[7] arose within the context of the liberalization of Portuguese society.[8] For the first time in a number of decades, this regime allowed (new) fixed-term rent contracts for a minimum of five years, thus putting an end to the exclusivity of open-ended contracts. As had been happening since 1985, the Urban Rental Regime provided for the rent to be negotiated between the two sides in a new contract, thereby allowing the rental market to operate according to market rules. In the case of old leases (pre-1990), the Urban Rental Regime left things as they were, i.e. it retained the open-ended model and, thus, outdated rents in relation to the market. In general, this regime opened the door to modernization in the rental sector, with a legally condensed system, the creation of fixed-term contracts, and the provision for periodical rent rises.

The liberalizing trend in the rental market appeared in Portugal at a time when the sector was undergoing a general crisis, partly due to the legislative instability and the absence of a medium or long term return, which led to a dearth of property to let on the market. In addition, the housing stock for letting was run down due to the owners' decapitalization over a number of decades, and the idea of investment in an activity whose yields had for so long been frozen was treated with apprehension. At the same time, bank-financed home ownership grew explosively as a result of the progressive reduction in interest rates. In most situations, the debt/rent-to-income ratio was more favourable with the purchase of a home than with a tenancy.

Even before the Memorandum, the rental market underwent a final alteration of great importance, with the publication in 2006 of the New Urban Rental Regime,[9] which continued the move towards liberalization. This regime returned to the question of bringing the old leases (pre-1990) up to date, in a complex process that ultimately was not widely accepted and failed to please either the tenants or the owners.

The New Urban Rental Regime consolidated the liberal model in the new contracts[10] but to a great extent left the old leases (pre-1990) alone. This situation changed in 2012 as a consequence of the demands of the Troika Memorandum, as we will see later on.

2.2 PUBLIC HOUSING POLICY IN PORTUGAL: A RESPONSE TO EMERGENCIES

The first social housing policy in Portugal was enacted in 1918 and, since then, public housing policy has usually had the task of responding to social emergencies and, in particular, rehousing people living in shanty towns.

Until 1974, the amount of social housing built was not enough to guarantee access to housing for the most deprived parts of the population. The metropolitan areas of Lisbon and Oporto had a period of intensive urbanization between the 1950s and 1970s: part of the population that arrived settled in self-constructed neighbourhoods with precarious housing conditions. In 1990, this situation had not yet been solved.

In 1993, after decades of stalemate that resulted in a limited amount of building in the public housing sector, the Special Programme for Rehousing[11] was presented. Its aim was to rehouse the population living in shanty towns in the Metropolitan Areas of Lisbon and Oporto. In all, the Special Programme for Rehousing meant that around 35,000 housing units were built (of the 48,416 originally planned), in a combined investment of the central and local authorities.

The Special Programme for Rehousing gave new impetus to the construction of public housing: it was the most important social housing policy in Portugal in the entire 20th century. This fact is corroborated not only in the high number of public housing units built in a short space of time but also in the annual State Budgets, which, between 1993 and 2003, recorded an increase in the amounts invested under the heading ›social amenities and housing‹, though these

5 Open-ended contracts were retained and became one of the most controversial features of the Portuguese rental market. Only towards the close of the 20th century was legislation passed allowing fixed-term contracts.

6 *Lei das Rendas.*

7 *Regime de Arrendamento Urbano.*

8 It may be recalled, for example, that this was also the time when banking institutions were given greater freedom and the Portuguese economy in general was (re)adapting to the free market.

9 *Novo Regime de Arrendamento Urbano.*

10 For example, the minimum length of a lease dropped from five to three years.

11 *Programa Especial de Realojamento.*

would fall back to minimal values at the beginning of the 21st century.

2.3 STATE BUDGET ALLOCATIONS TO THE HOUSING SECTOR BETWEEN 1986 AND 2011

A closer look at the State Budget allocations to the housing sector reveals the priorities of housing policy in Portugal in past decades. During the years 1987–2011, which cover the first two and a half decades of Portugal's membership of the European Economic Community/European Union (from accession in 1986 until the bail-out in 2011), public investment in housing in Portugal was overwhelmingly spent on the ›home loan interest subsidy‹ (73 per cent) and to a much smaller extent on rehousing programmes (14 per cent) and incentives to let (8 per cent), as is shown in Chart 1.

Chart 1
Allocations executed in the Budgets 1987–2011. Resolution of the Council of Ministers No. 48/2015.

Instrument	Executed	
	Amount (€)	%
Home loan interest subsidies	7 046 685 145	73.3
Rehousing programmes	1 353 426 012	14.1
Incentives to let	803 874 566	8.4
Building renovation programmes	166 594 609	1.7
Social Security rent benefit	29 223 491	0.3
Direct action programmes	193 944 373	2
Housing Development Contracts	13 868 736	0.1
Total for housing policies	**9 607 616 934**	

The data shows that the ›home loan interest subsidy‹ consumed 73 per cent of the public effort in housing. It is clear that this interest subsidy characterized the history of housing at the end of the 20th century and was the main instrument used by successive governments to guarantee the constitutional right to housing. It was of particular benefit to the middle classes (who had access to loans), the business associated with owning land, the property developers, the construction industry, and banking. Nevertheless, it needs to be pointed out that the subsidy was, in part, the means by which a significant proportion of the Portuguese population could have access to proper housing at the time of a serious housing shortage. However, it is also right to question the preponderance of this support in the Budget, which ultimately had undesirable effects in the short and medium term, as was seen in the high rate of indebtedness among families to Portuguese banking institutions and of these to international institutions.

It should not be forgotten that the home loan interest subsidy is not an exclusively Portuguese instrument: it belongs to the range of typically neoliberal measures of ›support for the individual‹, which presuppose limited direct state intervention in the housing market. This includes, for example, rejection of the model of direct intervention based on increasing the supply of public housing or housing built with state aid and marketed at reduced prices. In Portugal, this situation ultimately produced a particularly unbalanced state of affairs as, unlike that in various other European countries, there was never a policy of intervention allowing consolidation of a significant public housing stock prior to the transition to the ›support for the individual‹ measures.

In addition, Chart 1 reveals that rehousing projects accounted for around 16 per cent of the total invested between 1987 and 2011. This central government support meant that tens of thousands of municipal housing units could be built throughout the country, especially under the auspices of the Special Programme for Rehousing, thus significantly increasing the public housing stock. It is also important to note that this national plan arrived rather late when compared to similar policies announced in European countries that undertook extensive slum clearance between 1920 and 1930 and were strongly committed to public housing construction in the post-war environment of the fifties, sixties and seventies. At the moment, the public housing stock in Portugal corresponds to 120,000 units belonging to municipalities (mostly), autonomous regions and central government: they house around 113,000 households, encompassing 270,000 individuals (2.5 per cent of the Portuguese population). The roughly 120,000 public housing units represent only two per cent of the national housing stock.

Besides the direct action mentioned above, attention should also be paid to the indirect action contained in the ›Housing Development Contracts'[12], for which the amount executed represented 0.1 per cent. In summary, these contracts are agreements between the central government and private enterprises or housing associations for the construction of ›Cost-Controlled Housing‹ (affordable housing).[13] The amount executed in Cost-Controlled Housing building-support shows how minimal private and housing association participation was. Moreover, most of the literature recognizes that the private enterprises and housing associations eligible for support to build low-cost housing did not choose to rent the units and retain the property but rather chose to sell them immediately, which meant that this housing was soon part of the regular housing market.

It may also be seen in Chart 1 that the ›incentives to let‹ received 8.4 per cent of the total invested between 1987 and 2011. For these kinds of incentive, a programme was created in 1992 (and changed later, in 2007) which aimed to help young people enter the rental market, using a model for subsidizing them that was difficult to apply in the largest cities in the country. According to the data of the Housing and Urban Renewal Institute[14], the year with the greatest State Budget allocation for these programmes was 2002 (roughly 52 million euros), with the amount decreasing until, in 2011, it came down to a budget provision similar to that of 1994 (about 20 million euros).

12 *Contratos de Desenvolvimento para Habitação.*
13 *Habitação de Custos Controlados.*
14 *Instituto da Habitação e da Reabilitação Urbana.*

Finally, there remains the investment in ›building renovation programmes‹, with a very limited executed amount of 1.7 per cent. It is worth mentioning on this subject that around the turn of the century various programmes were announced, aimed at encouraging the renovation of housing. In various forms, this set of incentives aimed, generally speaking, to promote the renewal of the national property stock, especially in the more important urban centres, which presented a significant number of decaying buildings. As Chart 1 makes clear, the renewal programmes had a very minor acceptance by the potentially interested parties.

A little before the financial crisis, most of the institutional and strategic documents on public funding for housing policies (such as the Strategic Housing Plan 2008/2012)[15] made frequent mention of the fact that new (and more) renewal incentives needed to be created and that this would be the main challenge facing Portuguese cities in the coming decades.

2.4 SIGNS OF CRISIS

At the first signs of the financial crisis, the Portuguese government created tax and financial incentives to attract foreign investment, e.g. the Special Tax Regime for Non-Habitual Residents, in 2009.[16] As we shall see, the worsening of the crisis and the request for financial assistance led to the consolidation and extension, in various fields, of this type of initiative to open up, flexibilize and liberalize the housing market. The growing foreign investment in real estate and the continuing arrival of foreigners buying houses in Portugal, attracted by the tax incentives, ultimately had highly significant impacts on the access of resident families to housing.

In the decades preceding the Memorandum, the Portuguese State voluntarily adopted a fairly non-interventionist role in housing policies (Chart 2).

Chart 2
General trends in housing policy in the decades preceding the Memorandum (2011).

- In the rental market, the legislation continuously reinforced the liberalization and flexibilization models;
- The construction of public housing was intrinsically associated with the Special Programme for Rehousing (of 1993);
- The construction of Cost-Controlled Housing (affordable housing) by private enterprise and housing associations represented a minimal part of the market;
- There was always great difficulty in putting renewal incentives into practice;
- Between 1987 and 2011, state aid was dominated by support for the individual, with home loan interest subsidies and a variety of tax policies fostering access to ownership.

15 *Plano Estratégico de Habitação 2008/2013.*

16 *Regime Fiscal Especial para Residentes Não Habituais.*

In effect, it may be assumed that, in 2011, the Portuguese State tended towards an attitude of *laissez faire, laissez aller, laissez passer,* following an eminently liberal and capitalist economic model that allowed the property market to operate freely.

3 DECONSTRUCTION OF THE MEMORANDUM

On 17 May 2011, the Portuguese Government, the International Monetary Fund, the European Commission and the European Central Bank formally signed the document ›Portugal: Memorandum of Understanding on Specific Economic Policy Conditionality‹, which defined the conditions for the 78 billion euro loan granted by these three bodies (the Troika) to the Portuguese State. The Memorandum of Understanding (Memorandum in this paper) deepened the cuts planned in public expenditure, with a view to balancing the government accounts, in a political, social and economic climate that was commonly called ›austerity‹. In addition to an analysis of the 2011 Memorandum, this paper analyses the periodic Reviews that were carried out during the ›financial assistance‹ process.[17]

The Memorandum is organized under eight sections,[18] of which the sixth exclusively covers the ›Housing market‹, with the following general aims:

> 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.

The ›Housing market‹ section is divided into three topics: a rental market; b) administrative procedures for renovation; c) property taxation. The three areas will be analysed separately below.

3.1 THE RENTAL MARKET

For the rental market, the Memorandum states that, by the end of 2011, the Government should propose changes to the New Urban Rental Regime of 2006, in order ›to ensure balanced rights and obligations of landlords and tenants, considering the socially vulnerable‹.

From the start, common sense dictates that it would be difficult ›to ensure balanced rights and obligations of landlords and tenants‹ or to take into account the ›socially vulnerable‹, in light of the fact that the demands were directed at strengthening the landlords' position and making the tenants more vulnerable (Chart 3).

17 These Reviews were not merely a matter of protocol or of monitoring the Memorandum. The release of further instalments of the international loan depended on these appraisals.

18 That is: 1) Fiscal policy; 2) Financial sector regulation and supervision; 3) Fiscal-structural measures; 4) Labour market and education; 5) Goods and services markets; 6) Housing market; 7) Framework conditions; 8) Competition, public procurement and business environment.

Chart 3
Rental market demands at the Memorandum.

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 notice period 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.

Despite the questions that could be raised from the outset regarding the contradiction between the means and the ends in the Memorandum, the demands were written into law in the middle of August 2012, roughly eight months late in relation to the requirements of the agreement. This law did not revoke the New Urban Rental Regime of 2006, but extensively updated and thus altered the legal framework for urban tenancy and parts of the Civil Code and the Code of Civil Procedure. The alterations impacted two areas: i) new leases; ii) old leases signed before the Urban Rental Regime (i.e. 1990).

As far as the new leases were concerned, the aim of the changes was to make the rental market more attractive and extend the liberalization and flexibilization model that had been gaining traction since 1990, with the Urban Rental Regime, and 2006, with the New Urban Rental Regime. For example, the length of contracts was reduced to the minimum possible – a day – and an effort was made to expedite cases of eviction, among other measures that, in general, sought to strengthen the landlords' position and intrinsically relate the rental market to the free market, with the smallest amount of state intervention.

The most controversial changes involved old contracts, for which a transition period/regime was set up, forcing the transfer of these contracts to the New Urban Rental Regime. This meant that old contracts were no longer protected by the automatic extension they had always enjoyed (i.e. as open-ended contracts). Moreover, at the end of the transition period, it was essential for the two sides (i.e. the landlord and the tenant) to come to an agreement on the amount of the rent in the new contract, which would now be subject to the New Urban Rental Regime. In effect, the landlords' demands for market rates led to many thousands of families having to leave the homes they had rented for decades as they could not afford the new rent.

In summary, the alterations in the rental market were based on a neoliberal model that aimed to make leases more flexible and strengthen the owners' position, to the detriment of existing or potential tenants. In the years that followed, this set of changes had a highly significant impact on the social and urban fabric of the cities of Lisbon and Oporto, as this paper explains below.

3.2 ADMINISTRATIVE PROCEDURES FOR RENOVATION

Regarding the administrative procedures for fostering renovation, the changes were divided between two pieces of legislation published somewhat later than the time set out in the Memorandum, which had indicated the third quarter of 2011.

Chart 4
Administrative procedures for renovation: demands in the Memorandum.

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 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 building subject to renewal works with due regard of tenants needs and respect of their living conditions; iii) allow landlords to request termination of the lease contract for major renovation works (affecting the structure and stability of the building) with a maximum 6 months' notice; iv) standardize the rules determining the level of conservation status of property and the conditions for the demolition of buildings in ruin.

In the field of renovation, the first piece of legislation was published in the summer of 2012 and aimed to expedite and boost urban renewal and simplified prior vetting procedures for urban projects, among other measures aimed at administrative flexibilization and streamlining.

The second piece of legislation was published in April 2014[19] and created the exception of allowing the refurbishment of buildings for housing purposes without demanding that they were necessarily structurally improved, thus ignoring the technical and security regulations that had formerly had to be satisfied, under the pretext of minimizing the financial costs of this intervention. In defence of these exceptional measures, the preamble of this exceptional regime states that renewal represents only 6.5 per cent of the construction industry's activity in Portugal (the European average is 37 per cent) and that around two million units need renovating, i.e. roughly 34 per cent of the national housing stock.

19 *Regime Excepcional para a Reabilitação Urbana.*

It should be noted that these legal alterations were drawn up against the background of containment and a downturn in the Portuguese economy and at a time when the property market had stagnated and foreign and domestic investment had come to a halt – which, in practical terms, resulted in marked restraint in renovation and new construction. For this reason, these two pieces of legislation aimed not only at boosting renovation but also stimulating the construction industry and all the activities connected with it.

3.3 PROPERTY TAXATION

The Memorandum's intention regarding property taxation involved an increase in the annual State revenue.
The demands showed in the Chart 5 were put into practice in 2012, with the extensive re-assessment of the national housing stock and the suppression of income tax deductibility on mortgage interest payments.

The final point in the Memorandum required a comprehensive review of the functioning of the Portuguese housing market with the support of international experts. It was planned for the second quarter of 2013, though it failed to take place (or was not made public).

Chart 5
Property taxation: demands in the Memorandum.
6.3. 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];
6.4. 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;
6.5. The Government will undertake a comprehensive review of the functioning of the housing market with the support of internationally-reputed experts. [Q2-2013].

Chart 6
Deconstruction of the Memorandum: chart summarising the demands for the housing market.

Rental market	Administrative procedures for renovation	Property taxation
– Limitation of open-ended contracts (old leases); – Limitation of the possibility of transmitting housing to first degree relatives; – Phasing-out of rent control mechanisms; – Reduction in the notice period for the termination of leases; – Provision of extrajudicial procedures aimed at shortening the period for litigious eviction to three months.	– Simplification of the procedures and formalities for renovation; – Simplification of the requirements for the rehousing of tenants forced out on account of renovation work; – Enabling of termination of leases on account of renovation work.	– An increase in state revenue; – A closer match between taxable and market values in urban property; – More frequent property valuation; – Precedence of recurrent property taxation *(IMI)* over transfer taxation *(IMT);* – Greater limitation of property taxation *(IMI)* exemptions; – Promotion of a more attractive and competitive rental market (to the detriment of home acquisition with a loan); – Significant increase in taxes on vacant property; – Creation of a committee of international experts to evaluate the functioning of the Portuguese housing market.

4 REPERCUSSIONS OF THE MEMORANDUM ON HOUSING POLICY

In general, the changes put into effect in the housing market in accordance with the requirements of the Memorandum were intended to boost the property and renovation markets, freeing them from the protectionism and safeguards provided for in existing law.

On the rental side, no substantial alterations were made to the new type of contract, though the liberalizing trend initiated in 1990 was maintained. But the same cannot be said for the old leases, which were estimated at around 255,000. The old leases (pre-1990) had hitherto been protected by their open-ended nature, i.e. automatic renewability, without the landlord's ability to terminate them. As rents had long been frozen, these leases reflected a significant discrepancy between the rents paid by tenants and market rates, a situation that, in the eyes of the Troika (and the landlords), needed rectification.

It should be stressed that the changes introduced in the rental market up to 2011, in particular in 1990 with the Urban Rental Regime and in 2006 with the New Urban Rental Regime, had the sense and prudence not to alter the old leases, due, at the outset, to the predictable social and urban effects that that kind of reform would produce. On this point, it is worth emphasizing that the absence of change in the situation regarding old leases, as seen in 1990 and 2006, was in itself a form of continuing to intervene in the market.

In 2012, with the Memorandum as a pretext, the opportunity was taken to change the situation of the old leases by creating a ›transition period‹ that, ultimately, forced the transfer from the old leases to the New Urban Rental Regime. Where families did not have the financial means to pay a rent similar to the market rates, the leases were not renewed and, as a consequence, the tenants – often individuals in a very weak position due to age and illiteracy – were evicted from their dwellings.

This shift was among the socially and politically most contested in the broad array of measures that emerged from the Memorandum in the most varied fields: it was also labelled the Eviction Law, as a result of its direct effects, or the Cristas Law, after the minister at the time. According to the 2018 report of the *Balcão Nacional do Arrendamento* (evictions office at the Justice Ministry), around 5,000 evictions were registered between 2013 and 2018, though it is accepted that this number fails to identify all those carried out – it stands, therefore, as incomplete information on what happened at the time.

Furthermore, with regard to renting, the Monitoring Committee of the Urban Lease Reform was set up within the framework of the various Reviews of the Memorandum in order to monitor the progress of the amendments to the law provided for in 2012. The 10th Revision of the Memorandum, presented in February 2014, stated that the 2012 alterations were beginning to have an impact on the rental market, though it drew attention to the absence of official data allowing the changes in the rental market to be monitored more effectively, and criticized the Government's inaction on the survey of unofficial, parallel-market rental agreements, i.e. leases not declared for tax purposes.

On the question of renovation incentives, the most serious controversy involved the temporary regulations that exempted renovation work from compliance with the norms established for accessibility, acoustics, energy efficiency, thermal quality, and gas and telecommunication installations, as well as those for minimal areas, the installation of lifts, and ceiling heights. They were introduced as exceptional regulations to respond to the need to stimulate renovation and make it less costly, as exemption from the norms hitherto applied could reduce costs by between 30 per cent and 50 per cent. In a certain way, this regime was based on creating a facilitating (if not *facile*) environment that made urban renewal operations less costly while ignoring issues of quality and security that should be the most important.

As a result, a significant proportion of the buildings recently renovated do not comply with the technical norms in effect until 2014, a situation that is particularly important in the historic centres on account of the difficulties and requirements that always existed for housing renewal in these compact urban spaces. It is even highly probable that many thousands of individuals who bought property renovated in very recent years had no idea that they were buying property restored under extraordinary regulations that disregarded requirements considered, until a short time before, indispensable. Due to the contention aroused, this regime was repealed in 2019, though projects pending at the date of repeal could still be carried out.

Immediately in 2012, on the question of taxation, the Government began a broad process of updating the taxable value of property and raising the tax on certain properties, in order to revitalize the housing market and increase tax revenue.

Regarding housing, the only point that does not seem to have received a response from the Portuguese Government was the requirement to make a detailed study of the domestic housing market with the ›support of internationally-reputed experts‹.

5 ›POST-TROIKA‹ HOUSING POLICY

5.1 HOUSING AS A FINANCIAL INVESTMENT

Besides the measures directly imposed by the Memorandum or attached during the Reviews, prominence should also be given to the policies announced in virtue of the particular economic times that the country experienced.

An example of these is the ›Residence Permit for Investment Activity‹, commonly called the *Vistos Gold* (Golden Visa) programme. It allows non-European citizens to request Portuguese nationality (and a European Union passport) after investing in the country. This includes investments in the property sector of 500,000 euros, or 350,000 euros in the case of investments in heritage restoration. According to data supplied by the Portuguese Immigration and Borders Service, property investment virtually monopolized the reasons for granting around 15,000 permits between 2012 and 2018. It may be remembered that this measure followed the Special Tax Regime for Non-Habitual Residents, dating from 2009.

In addition to the tax exemptions for non-habitual European residents and the purchase of citizenship set out in the *Vistos Gold* programme, there are also exemptions for property investment funds, which have bought various residential buildings in the centre of Lisbon. These are sometimes sold and re-sold in a short space of time at progressively higher prices. Frequently, moreover, the buildings acquired have no residential use, acting instead as a financial investment and asset. In effect, tax exemptions and foreign investment incentives boost abusive competition for Portuguese families: they have an annual income that can hardly compete with households from other European countries and, in contrast to the successive benefits for foreign investment, they have been targeted with a heavier tax burden.

Another development that has helped to transform the main Portuguese cities is that of *Alojamento Local* (short-term rental). When the Memorandum was signed in May 2011, short-term rental was relatively minor in Portugal, with only a few hundred hosts, and still reflected the basic concept of the sharing economy. In more recent years, it has multiplied to the point that today there are over 80,000 places throughout the country, including a significant part in the centre of the Metropolitan Areas of Lisbon and Oporto.[20]

In the 2008 legislation, short-term rental regulation was rudimentary; in 2014, it was largely permissive and tolerant, thus allowing the rampant expansion of short-term rentals in urban areas under the greatest pressure from tourism. For this growth in short-term rentals, rental market liberalization was also important, as it meant that numerous apartments used for permanent residence were transformed – once the tenants were gone – into short-term tourist accommodation. The more recent legislation, of 2018, partially assigned responsibility to the local authorities and thereby allowed municipalities such as Lisbon, Loures and Mafra to restrict new registrations in areas suffering the greatest tourism and/or property pressures.

On the question of renovation, plans were made for various financial instruments, of which the most important, the Financial Instrument for Urban Renewal and Revitalization,[21] is integrated into PORTUGAL 2020[22] and co-financed by European funds. This financial instrument grants loans on favourable terms to support urban renewal throughout the country. It is to be noted that most of the situations in which public financial assistance has been involved have not been subjected to guarantees that the renovated buildings will be placed on the housing market at reduced prices, as would be expected of building works that have benefited from public investment. On the contrary, this financial instrument is essentially a renewal instrument designed for projects developed on a business basis.

Chart 7

›Post-Troika‹: summary of the measures not provided for in the Memorandum but implemented (or accentuated) in this period, with repercussions on the housing market.

- Special Tax Regime for Non-Habitual Residents (2009 [before the Memorandum]);
- Exemptions for property investment funds and other large owners;
- Residence Permits for Investment Activities (*Vistos Gold* programme) (2012);
- (Permissive) short-term rental legislation (2008 and 2014);
- Conception of the Financial Instrument for Urban Renewal and Revitalization 2020 (IFRRU 2020).

5.2 THE *GERINGONÇA* AND HOUSING: MITIGATION OR CHANGE OF COURSE?

In November 2015, the centre-right government, which had been in power during the agreement with the Troika, was replaced by a minority government in the form of the Socialist Party in a parliamentary alliance with the Left Bloc and the Portuguese Communist Party. In July 2017, as a consequence of the growing pressure on the housing market, this *Geringonça* government created the State Secretariat for Housing, which swiftly presented the ›New Generation of Housing Policies‹.[23]

To underpin the development of the policies provided for in the New Generation of Housing Policies, the State Secretariat for Housing urged the Housing and Urban Renewal Institute to quantify the number of families with serious housing needs. The result was the National Survey of Re-housing Needs, presented in February 2018.[24] In this survey, 120 municipalities reported no housing needs at all and 187 identified 25,762 families living in ›patently unsatisfactory situations‹. Of this total, almost three quarters were living in the Metropolitan Areas of Lisbon (54 per cent) and Oporto (20 per cent).

20 Around 22.5 per cent of all short-term rental establishments are concentrated in the city of Lisbon. Information provided by the National Local Accommodation Register of *Turismo de Portugal*.

21 *Instrumento Financeiro para a Reabilitação e Revitalização Urbana* (IFRRU 2020).

22 The framework for the application of European Union funds for development of the country.

23 *Nova Geração de Políticas de Habitação.*

24 *Levantamento nacional das necessidades de realojamento habitacional.*

Of the broad range of policies provided for in the New Generation of Housing Policies, with most of them focusing on building renovation, it is worth pointing out First [Floor] Right[25] (a play on words) and Way In,[26] which replaced the old rehousing programmes. First Right (2018) and Way In (2018) operate as the new legal mechanisms for resolving the most serious housing problems. In the case of First Right, the aim is to provide proper housing for those who live in degrading conditions. At the time when the measure was agreed, the Government estimated the investment required at 700 million euros, up to 2024, in a process coordinated by the Housing and Urban Renewal Institute and implemented by the municipalities. In its turn, the policy Way In – Support Programme for Urgent Accommodation is applied where accommodation is needed by those who have been temporarily or permanently deprived of their home as a result of unpredictable events, or in response to migratory phenomena. This programme provides for the direct involvement of municipalities affected by exceptional events and was tested for the first time in the second half of 2018, at the time of the wildfires in Monchique, Algarve.

Alongside these measures, attention should be drawn to the Affordable Rent Programme (2019).[27] Its objective is to assist with access to the rental market and respond to the new housing needs of the country, which, in the period following the crisis, has seen an unusual rise in the value of property per square metre, far above the growth rate of the country or family incomes. This recent programme has been the object of criticism and debate as it is difficult to apply in the areas where the property situation is under the greatest pressure, in particular the municipalities of Lisbon and Oporto.

Within the general framework of the New Generation of Housing Policies, the Effective Right to Long-Term Housing[28] was established, with the goal of offering another housing option. The Tenants' and Landlords' Association, however, generally received it with mistrust. In January 2019, the government set up the instrument of a Property Investment and Management Company.[29] This type of company is similar to a Real Estate Investment Trust, seeking to attract (more) property investment to Portugal. The creation of this instrument had already been the intention of the former right-wing government.

On the topic of the State Secretariat for Housing, it is also important to stress the effort made to publish housing market data, an issue indicated as one of the negative points in the 10th Review of the Memorandum, in February 2014. In recent years, at the request of the State Secretariat for Housing, the National Statistical Institute has been compiling, processing and publishing a wide range of housing market information. The disclosure of this information has been of fundamental importance for the analysis and assessment of recent changes in the housing field.

During the *Geringonça,* the Portuguese Parliament passed various measures aimed at attenuating the imbalances that the intervention period produced, especially with respect to the rental market and the need to strengthen the security and stability of urban renting, e.g.:

- An extension of the transition period for the updating of old leases, to eight to ten years (depending on the tenants' economic situation);
- An increase in the grace period for rent arrears, from two to three months;
- A moratorium on evictions, suspending eviction proceedings against vulnerable tenants (individuals aged 65 or more and/or seriously disabled);
- A ban on the harassment of tenants;
- Changes in pre-emptive rights (a situation triggered by Fidelidade's sale of two thousand housing units to an international property fund);
- Debt forgiveness in neighbourhoods managed by the Housing and Urban Renewal Institute.

In addition to these mitigating measures, the most important process that may (and should) have repercussions in the medium and long term relates to the Basic Law on Housing, which has been in effect since 1 October 2019 and (finally) translates into law the assumptions on the right to housing that have been enshrined in the Constitution of the Portuguese Republic since 1976.

After the memorandum and under the *Geringonça* government the Portuguese real estate market was still rising and in Lisbon and Oporto access to housing was restricted, even for the middle class. Some of these trends were directly caused by the (neoliberal) changes made between 2011 and 2014.

The *Geringonça* government's response (establishing the State Secretariat for Housing, which designed the New Generation of Housing Policies in 2017), the creation of new programmes and the updating of the legal framework for Portuguese housing in the following two years, was a starting point for change in the country's housing policy. However, changes in the housing market always need time, and the policies created in 2018 and 2019 have not yet had time to produce practical results. In this sense, the changes have been mainly theoretical and legal. Now it is necessary to wait for the developments and practical results.

25 *Primeiro Direito.*

26 *Porta de Entrada – Programa de Apoio ao Alojamento Urgente.*

27 *Programa de Arrendamento Acessível.*

28 *Direito Real de Habitação Duradoura.*

29 *Sociedades de Investimento e Gestão Imobiliária.*

Chart 8
The Geringonça and Housing:
summary of the (most important) measures implemented

- Compilation and publication by the National Statistical Institute of housing market statistical information (since 2016);
- Establishment of the State Secretariat for Housing (July 2017);
- The New Generation of Housing Policies (gradually since October 2017):
  - National Survey of Re-housing Needs (February 2018);
  - First Right (2018);
  - Way In – Support Programme for Urgent Accommodation (2018);
  - Affordable Rent Programme (2019);
  - Effective Right to Long-Term Housing (2020);
- Operationalization of the Financial Instrument for Urban Renewal and Revitalization 2020 (originally from 2015);
- Legal changes to short-term renting (2018);
- Property Investment Trusts (2019);
- Repeal of the Extraordinary Regulations on Urban Renewal (2019);
- Measures directed towards the rental market: a) an extension to the transition period for the updating of old leases, to eight to ten years (depending on the tenants' economic situation); b) an increase in the grace period for rent arrears from two to three months; c) a moratorium on evictions, suspending eviction proceedings against vulnerable tenants (individuals aged 65 or more and/or seriously disabled); d) a ban on the harassment of tenants; e) changes in pre-emptive rights; f) debt forgiveness in neighbourhoods managed by the Housing and Urban Renewal Institute;
- Basic Law on Housing (October 2019).

6 WINNERS AND LOSERS WITH THE MEMORANDUM – THE FINAL ASSESSMENT?

Enshrined in the Constitution since 1976, the right to housing is based on aims that assume the State will intervene in maintaining the balance in the housing market. Despite this constitutional advance in guaranteeing human dignity, succeeding decades did not reflect a medium or long term political strategy to solve the housing problem. On the contrary, housing strategy proved to be inconstant, rudimentary, and applicable on a case-by-case basis. Regarding what was put into practice, there was not always a guarantee of coherence, continuity or systematization over time.

Of significance in the broader puzzle of housing policy is the coherence in the support for the individual – in particular with the home loan interest subsidy – which has been consolidated by the successive power-holders among the parties of government and presupposes limited state intervention in the housing market. This liberalizing trend is to be seen not only in the home loan interest subsidy but also the absence of major public policies promoting public housing, as well as the operating model for the rental market, which was gradually liberalized with the Rent Law (1985), Urban Rental Regime (1990) and New Urban Rental Regime (2006).

Furthermore, this development, which emphasized the view of housing as a financial asset is clearly related to the economic situation(s) that the country has lived through: in particular, the period of democratic normalization and of convergence with the European Economic Community (achieved in 1986), in addition to the International Monetary Fund intervention in 1977 and 1983, which always restricted the extension of public policies, including housing policies. One result of this, among others, was the primacy given to home loan interest subsidies and to tax incentives for landlords.

In 2011, with the signing of the Memorandum of Understanding, this trend towards a non-interventionist and neoliberal model not only continued but quite openly intensified. On the pretext of the need to stimulate and boost the housing market, legislative changes were made: these presupposed an ideological model of flexibilization that addressed the landlords and investors' interests while neglecting those of the tenants and consumers. In a certain way, it may be thought that there was too much enthusiasm for the flexibilization and liberalization of the economy and too little concern for the dignity of all in the matter of housing.

Looking to the rental market, at present tenants find their position more precarious than it was during the 20th century. In 2012, the liberalizing advance reached its culmination in the history of tenancy in Portugal with the amendments to the legal framework for urban renting, which have helped to dehumanize the city centres, ignoring the individuals and crushing them beneath the laws of the free market.

Given that a freely functioning economy is not always a guarantee that human rights will be upheld, and the natural tendency of the market is to favour profit, the most disadvantaged are the first to suffer the consequences of market deregulation. However, as recent years have shown, the repercussions also make themselves felt among the middle classes, who are obliged to move out of the urban areas that economic interests have transformed.

These changes, moreover, were not occasioned by the market *per se,* but rather by the Government itself, which made the decision to deregulate the housing market, upsetting the balance, to the landlords' advantage, and creating a miscellany of incentives and benefits for non-habitual residents, property investment funds, and local and international investors, to the detriment of the general population that is looking for housing. In other words, the alterations were designed to increase economic gains and not to protect families, thus generating a situation of before and after 2011–2014 in the centre of the main Portuguese cities.

In parallel, other points could be raised in relation to the housing market demands of the Memorandum, such as the centralized vision of the country: policies were drawn up largely on the basis of the scenarios obtaining in Lisbon and (also) Oporto.

Though the present scenario is complex and should take other points into consideration, the neoliberal-model alterations promoted by the Memorandum and gladly intensified by the centre-right government of the time have reinforced various perverse social and urban situations, for example, the explosive increase in square-metre values or the eviction of thousands of families from the centre of the country's main cities, pushing them to the edge of the cities and beyond, and to unsuitable housing for the size of their households. In the field of housing, then, we have thousands who became the collateral damage of the Memorandum. Above all, the Memorandum fostered dynamics that furthered the fragmentation of the Portuguese metropolitan areas, which, from the spatial, social and economic point of view, are increasingly more unequal and less cohesive. The multiple effects of this are still to be discovered.

After the Memorandum, housing policy changed from a theoretical standpoint. The *Geringonça* government created a secretariat of state to monitor the housing market and develop new policies. These new policies were initially dubbed as the New Generation of Housing Policies, bringing dynamism to the discussion of the housing problem in Portugal. In fact, in the period after the financial intervention, the Portuguese real estate market went through a unique period, with foreign investment higher than ever before (from individuals and international funds), along with the growth of urban tourism and short-term renting. All these new considerations created a new scenario and new challenges to deal with, and the political response was somewhat lethargic, and even half-hearted, partly on account of a dilemma the Portuguese State was facing. On the one hand, growth in foreign investment and urban tourism supported the Portuguese economic recovery after the financial crisis; on the other hand, the State was meant to guarantee the balance of the housing market and look after the most vulnerable part of the population. In addition, from a more practical point of view, the political measures that emerged in 2018 and 2019 had not had enough time to be put into practice and only the short-term results were available.

Portugal still has a number of basic questions to solve. As identified by public bodies in 2018, about 25,000 families urgently need a new home, with these situations mainly concentrated in the metropolitan areas of Lisbon and Oporto. At the same time, small shanty towns remain in both metropolitan areas, most of them occupied by ethnic minorities. These issues urgently need to be resolved. Furthermore, there is currently a problem of access to housing for the middle class, especially in the largest urban centres. At the same time, it is important to review the legal framework for urban tenancy, which has been outpaced by the accelerated processes of gentrification and ›touristification‹ and by the new actors in the real estate market, e.g. the new real estate agents and companies.

In 2020, an unexpected challenge was added, the Covid-19 pandemic that affected the world economy and, in particular, economies dependent on tourism such as that of Portugal. The housing market has entered a moment of uncertainty and strategies focused on tourism and foreign investment are currently being questioned. More than ever, the pandemic has shown the need to guarantee adequate housing with the proper sanitary conditions, hygiene, privacy, and space, among other considerations.

In the future, it is essential to create policies that alleviate this situation and contribute greater equality and spatial justice to the urban fabric. Above all, governments must genuinely implement the right to housing that is enshrined in the Constitution of the Portuguese Republic.

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HOUSING POLICIES IN (THE) CRISIS

The Troika Memorandum and the Housing Market in Portugal

In 2011, the Portuguese Government, the International Monetary Fund, the European Commission and the European Central Bank formally signed the document ›Portugal: Memorandum of Understanding on Specific Economic Policy Conditionality‹, which defined the conditions for the 78 billion euro loan granted by these three bodies – the Troika – to the Portuguese State. The Memorandum and its periodic Reviews deepened the cuts planned in public expenditure, with a view to balancing the government accounts, in a political, social and economic climate that was commonly called austerity. One of the eight sectors of the Memorandum was dedicated exclusively to the Portuguese ›Housing market‹.

This study analyses the impact of that sector on the housing situation in Portuguese metropolitan areas. After giving an overview of the housing policy trends until the signing of the Memorandum, it discusses in detail the measures in the Memorandum, coming to the conclusion that they contributed to the intensification of a non-interventionist and neoliberal model of housing policies and the deregulation of the housing market. The Memorandum fostered dynamics that furthered the fragmentation of the Portuguese metropolitan areas, which, from the spatial, social and economic point of view, are increasingly more unequal and less cohesive.

The paper also discusses the mitigating measures the Socialist Government took from 2017 on, aimed at attenuating the imbalances that the intervention period had produced, especially with respect to the rental market and the need to strengthen the security and stability of urban renting.

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