

Article

The Dysfunctional Rental Market in Portugal: A Policy Review

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Abstract: In Portugal, due to the rental market's inability to respond to the constant mismatch between supply and demand over the course of decades, things have become increasingly residual and dysfunctional within the scope of the homeownership market. Through analysis of various laws and legislative changes over the last century, as well as the participant observation acquired by the author's two-and-a-half years of experience as a stakeholder in the sector, this paper aims to review rental policies in Portugal and the multiple impacts they have had on reproducing various weaknesses in the rental market. The paper concludes with some policy recommendations that advocate how government action is decisive in shaping housing and rental policy, establishing a legal and regulatory framework able to transmit credibility, stability and security to the contractual forms between supply and demand, in keeping with an effective right to housing through affordable renting.

Keywords: rent freeze; rent regulation policies; rental regimes; rental market; Portugal



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1. Introduction

National housing strategies intentionally promote different ways to consume and provide housing through policy reforms defining housing rights and standards, channelling investment by regulating financial institutions, and providing tax incentives and subsidies, ideally in order to shape fairer market processes and improve access to adequate and affordable housing for all [1,2]. Since the 1970s, many countries have made concerted efforts to promote homeownership, while simultaneously improving the affordability of rental housing. This has, however, led to more households relying on the private rental sector, a factor that temporarily enables regulation of the proper functioning of the housing market. The private rental sector is increasingly viewed by governments across the European Union as a crucial input into the mix of housing services that can provide accessible accommodation for households unable or unwilling to enter homeownership or social rented housing [3,4]

The narratives around rent regulation over decades, on the one hand, incorporate the discourse of private rental market deregulation, advocating the free market and landlord property rights, which in theory increases the housing supply to the market. On the other hand, stricter and more social rent regulations advocate rent controls, longer lease agreements and more rights for tenants to protect them against both rents over the market level and sudden large increases in rent, or, when the aims involve keeping rents permanently below market levels, creating opportunities for affordable housing in keeping with the right to housing [5,6].

The aftermath of the 2007–2008 financial economic crisis demonstrated how many real-estate agents and companies developed the buy-to-rent market, taking advantage of the strangulation of bank credit for homeownership mortgages in the wake of the subprime crisis, to increase rents to speculative values aligned with the increasing demand in the sector [7,8]. Therefore, regulation of the private rental market has become an essential factor for the governance of contemporary cities, for urban redevelopment and for the stabilisation and economic dynamics of real estate. It has assumed a central role in the definition and implementation of urban and social policies through guaranteeing the right

to housing as a prerequisite for access to other rights, as well as strongly influencing the general quality of life of citizens [9,10].

Rent regulation provides an essential component of housing-market governance, fostering a healthy balance and congruence between supply and demand. For instance, Kemp and Kofner [11] demonstrate how on the demand side, security of tenure and softly regulated rents in Germany have helped ensure high levels of demand for rental housing among better-off households who might otherwise have been prompted to consider homeownership. Additionally, despite German landlords eventually complaining about rent regulation and security of tenure having a negative impact on the extraction of surplus value by moderating the levels of rent they can charge, these have largely been compensated for by government-guaranteed tax incentives. However, in comparison, in the United Kingdom, unregulated rents and weak security of tenure are not conducive to long-term renting. Free-market rents and insecurity of tenure are consistent with a sector that has largely focused on short-term tenants and highly mobile households.

The private rental sector is growing in many advanced economies due to declining homeownership and retrenchment in social housing resulting in the coming of age of “generation rent” and “build to rent”, with new demand caused by younger individuals excluded from home buying and the traditional routes to homeownership [12–14]. On the contrary, in Portugal, due to the inability of the rental market to respond to the constant mismatch between supply and demand over various decades, all the national scientific and technical studies on housing [15], as well as official statistics, point to a decline in the number of leases in proportion to the scale of the homeownership market in the last decades of the 20th century, although a slight increase will be registered in the first two decades of the 21st century (Figure 1). Sociodemographic and professional changes, as well as greater mutability in the composition of families (new types of households: single parents, singles, couples without children), associated with eventual increases in residential mobility due to employment flexibility and labour market uncertainties, all suggest greater flexibility in the housing market. However, the rental market—by its nature more easily adaptable to individual and family options—attains a much lower proportion than those opting to acquire a home in Portugal. The national rental market, in addition to being scarce, is also very uncertain, fragile and does not return guarantees either for supply or demand [16], in addition to the very high (at around 28%) tax burden on legal lease agreements, which also acts as an invitation to informal leasing in a country where the sector is not subject to any type of inspection or monitoring.

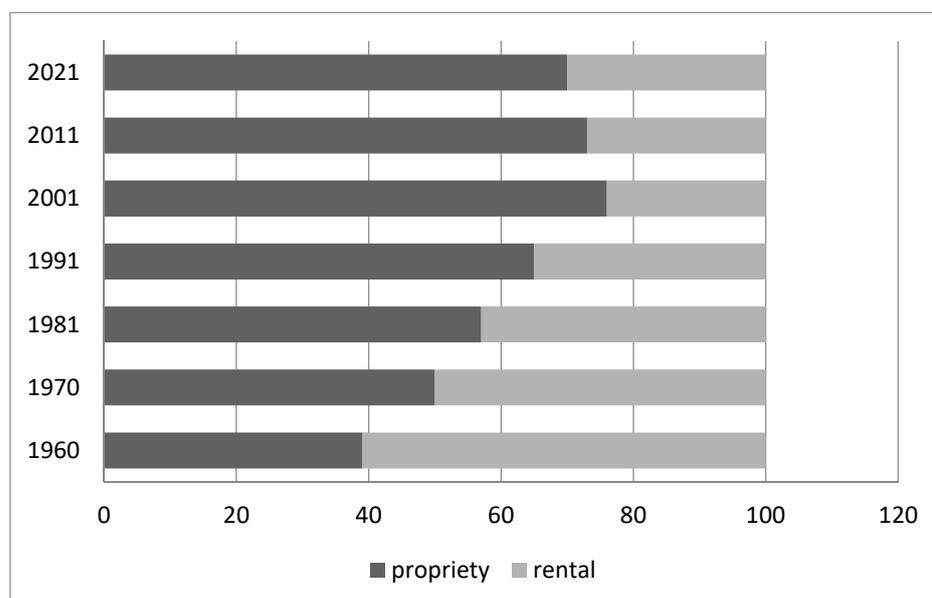


Figure 1. Houses by occupation regime: ownership and rental (1960–2021). Source: [17–23].

In Portugal, the percentage of classic habitual residence family dwellings occupied by tenants and others decreased from 61% in 1960 to 24% in 2001, thereby attaining historic lows. This correspondingly reflects how the property-occupancy regime accounts for three-quarters of the housing market in national terms.

We may explain the slide in rentals recorded between 1960 and 2001 by pointing to government regulations that devalued the rental market and blocked increases in rents and/or any shortening of the duration of contracts; thus, any conditions more favourable to landlords. Simultaneously, around 75% of state housing investment was channelled into subsidising interest on mortgage credit, thus implementing a homeownership policy that boosted the share of homeownership at the cost of the rental sector. The preliminary results of the 2021 Census already indicate a slight increase in the latter and suggest a weighting in the order of 30%. This slight increase in rental properties since the turn of the century is inherently bound up with both the restrictions on access to housing credit imposed since 2011 and the surge in housing prices since 2014, in addition to increasing precariousness and labour flexibility that contribute to greater flexibility in the housing market by slightly increasing the demand for rented houses.

The erosion of the state's role in defining rental policy, leaving it trailing in the wake of private initiative—much of it decapitalised—while simultaneously massively funding banking support for granting mortgage credits for the acquisition of a home ever since the 1980s was associated with the touristification and financialization of real estate in the post-2008–2009 economic crisis period [24]. These factors have combined to produce the rental market situation that Portugal faces today: a country of landowners in which leasing is an increasingly reduced-occupancy regime. Hence, this constitutes a paradigmatic case of mismatch between supply and demand [25] in a market that has historically fluctuated between the freezing of rents, the decapitalisation of owners and other restrictions on the market, and total liberalisation that raises rent values to prohibitive levels and gentrifies the centres of the major cities through the resulting expulsion of tenants. In the Portuguese case, the rental market not only does not work but also does not comply with its economic and social functions in city areas.

Seeking to fill the existing gap in the national and international literature on the Portuguese case, this paper aims to review rental policies in Portugal, especially in the 21st century, and the multiple impacts they have had on reproducing various of the weaknesses in the sector. Thus, the main questions for our study are: How did rental systems evolve in Portugal over the last century? What influence did the successive alternations in rental policies have on the efficiency of the Portuguese rental market? What political measures might bring about positive and balanced growth in the rental market, thereby adjusting supply and demand?

In order to answer these questions, and in addition to a short review of the national and international literature on the housing question and private rental markets, our methodological approach line deployed qualitative methods and techniques. This involved critical content analysis of social media and publicity materials published by both homeowners and tenants' associations, which were then cross-referenced with micro ethnographic fieldwork analysis of the performance of these different associations and movements in the public arena (debates, forums, demonstrations, presence in the press), taking into account the research-action work undertaken by the author as an activist and stakeholder in the last three years. I also performed content analysis of various laws and legislative changes to the private rental sector enabling the macro analysis of their impacts on market functioning.

The structure of this paper is as follows. The first section addresses the beginnings of rent regulation and frozen rents through to the 1990s and analyses some reforms made in the early years of this century that unsuccessfully sought to modernise the private rental market. In the second section, we explore the neoliberal shock to the rental market in the aftermath of the economic and financial crisis of 2008–2009 and the social consequences of these measures, specifically gentrification and the increase in evictions. In the third section, we approach the reactions of the left-wing government that took office in 2015 and

enacted legislative measures to provide additional protection to tenants. The fourth section considers the opportunity for taking advantage of the immense vacant housing stock in Portugal as a means of increasing supply and revitalising the rental market. This article concludes with a summary of its main findings and some policy recommendations.

2. The Beginnings of Rent Regulation and the Subsequent Attempts to Modernise and Liberalise the Rental Market

The right to housing was enshrined in the 1976 Constitution of the Portuguese Republic, along with other social and cultural rights of great importance to the quality of life and social development of the population, such as the rights to social security, health, education, and spatial and environment planning. However, it is now consensual in Portuguese housing studies that this has been one of the most marginalised sectors of the Welfare State throughout the democratic period, whether in terms of budgetary allocations and public expenditure allocation, or the failure to design a strategic vision for public policies capable of consequently producing the concrete actions able to overcome and/or mitigate the structural housing needs experienced by populations. The right to housing is a constitutional right, but is dependent on the financing capacities of successive governments; thus, the legislation passed over the years has taken erratic directions, unfolding into specific programs and piecemeal measures, without any real guidance from the basic and general principles and rules of a uniform Public Housing Policy. Rather, it has run according to the interests and opportunities of the political cycles and powers of the moment and remains hostage to the functioning interests of the markets and banks [26–29].

Along with this lack of coordination over the scales, themes, target audiences and territories that housing policies have experienced in recent decades, which lack overall coherence, the evolution of the right to housing in Portugal was transversally influenced by the characteristics/dynamics of the Portuguese housing market itself, which have themselves not facilitated development. These include the crisis in the welfare state, which is already retarded and with scant provision; the residual weighting of social or public housing compared to other developed countries (2% in total); a very rigid housing market, with little mobility and with high concentration in the homeownership regime; along with a fragile and unreliable rental market, both in terms of supply and demand. Added to these weaknesses, following Portugal's accession to the European Economic Community in 1986, the latter two trends have been strengthened within the scope of the deepening liberalisation and flexibilization of the private rental system and, more recently, the financialization of the housing market in general [30–34].

More specifically, the most significant legal and regulatory framework for the Portuguese rental market took root over a century ago, initiating a process of strong state regulation. However, this has not necessarily always translated into rent regulations or rental regimes capable of contributing to a market adjusted to the needed balance between supply (landlords) and demand (tenants). Rather, it reproduces the structural problems in the sector that have now dragged on for decades.

A century ago, following the proclamation of the Republic and influenced by the context of World War I, Portugal began to enact urban leasing regulations for the entire country, with several legislative initiatives passed between 1914 and 1917. Rents were frozen throughout this period on the grounds of a transitional measure imposed by the economic consequences of the war. Similarly, the terms for resolving lease agreements were limited, alongside the scope for eviction actions and the mandatory leasing of degraded buildings. In short, this phase initiated regulation in two specific areas of great importance to the development of the rental market: the freedom to contract by the landlord and the ability to raise the rents in effect.

The urban leasing regime reform, implemented by Law No. 2030 of 22 July 1948, allowed for rents to be updated even if maintaining this restriction in the two largest urban centres of Lisbon and Oporto. In addition, this limited the terms for terminating leases, endowing them with characteristics of perpetuity. This regime extended beyond

the end of fascism in the mid-1970s. The evolution of urban leasing that accompanied and followed the 1974–1975 democratic revolution took up many of the paths trodden during the 1914–1918 war; however, it did this without learning the necessary lessons. Furthermore, the situation was more serious as it stemmed from a situation that had been gradually deteriorating since 1948. The various legislative changes that followed the 1974–75 revolution against fascism deepened various restrictions on economic freedom within the scope of urban leasing. The rent freeze was again extended to the entire country and assessments to update contracts were all suspended. The right of owners to terminate contracts still remained suspended, and the imposition of leasing agreements took place as a means of legalising the occupations/invasions for housing purposes. We would note that the state's intervention in the rental market, for the first time, reached so far as to establish maximum limits for the rent values of first and new contracts.

There were also several timid initiatives to re-establish the conditions for the normal functioning of the rental market, establishing the criteria for annual rent rises based on coefficients set by the government in order to unfreeze the rental sector. In the 1990s, Decree-Law 321-B/90, of October 15, proclaimed changing the urban rental market to make it more attractive and dynamic as its main objective. This regime proposed, among other aspects, the restoration of the temporary nature of leases, allowing for the signing of limited-duration contracts and combating the degradation of properties by regulating for a renovation works regime. However, this legislation did not come up with any effective solutions for solving the frozen rents problem, essentially maintaining its application to any contracts signed before 1990 [27].

The new urban lease regime (NRAU), approved by Law 6/2006 of February 27, took up the challenge of resolving the problem of the pre-1990 leases with rents now far lower than the market value. In fact, the consensus generated by this law was not based so much on criticism of the old regime, but rather on the sheer need to resolve the issue of old contracts. Thus, this established a system for gradually raising these longstanding rents, with this regime applying to all contracts even while providing a transitional regime to safeguard the legitimate expectations of tenants and landlords in the rent contracts that were entered into before this law came into effect. Furthermore, it also sought to respond to the need to renovate the real-estate stock and, to this end, the need to legislate the terms for carrying out conservation and rehabilitation works.

However, it was effectively Law 30/2012 that brought about the sharp liberalisation of the urban rental-market-to-be, including state-backed evictions for the first time in our country's urban history (See Lisbon Tenants Association bulletin: <http://www.ail.pt/Portals/0/pdf/publicacoes/newsletter/AILNoticias14.pdf>, accessed on 25 November 2021). One of the important reforms proposed by the Troika's Memorandum of Understanding precisely involved amendments to the 2006 NRAU, resulting in the promulgation of a new NRAU in November 2012. (The rental market reform appeared as an urgent measure within the scope of the economic, financial and budgetary reality resulting from the economic and financial crisis of 2008–2009 as one means of safeguarding the success of the commitments underlying the International Financial Assistance Program in Portugal. The Memorandum of Economic and Financial Policies, also known as the Memorandum of Understanding or the Troika Plan, is an understanding agreement signed in May 2011 between the Portuguese state and the International Monetary Fund, the European Commission and the European Central Bank, and is designed to balance the public accounts and increased competitiveness in Portugal as a necessary condition for the loan of around EUR 80 billion granted to the Portuguese state by these three entities. The memorandum proposed various actions aimed at stabilizing public debt at around 2013 levels.) This regime established that the rent contracts prior to 1990, still a substantial proportion of the Portuguese leases, would be raised, reinforcing the landlord's position in negotiations between the parties and facilitating the transition of the aforementioned contracts to the new regime in shorter periods of time, with the maximum amount stipulated as the annual value corresponding to 1/15 of the lease. This also changed the substantive lease regime,

particularly by attributing the parties with greater freedom to determine the terms relating to the duration of lease agreements. The promulgation of the 2012 NRAU was proof that the 2006 urban lease reform introduced important changes in the sector but did not achieve the expected results as regards the old leases. The continued demand for houses to rent and the lack of market supply at affordable prices demonstrated the need and politically justified the emergence of the 2012 NRAU.

3. The Neoliberal Shock in the Aftermath of the Economic and Financial Crisis of 2008–2009 and the Collateral Social Damage: Gentrification and Evictions

As mentioned earlier, the 2012 NRAU was the subject of vigorous social protest, in keeping with claims that the updated mechanism imposed levels of rent inaccessible to many tenants because the values were established without adequate social support and necessarily impact households with lower socioeconomic levels (see several protests in: <https://www.dn.pt/politica/cerca-de-100-inquilinos-manifestam-se-contra-nova-lei-2310040.html>, accessed on 25 November 2021; <https://www.jn.pt/local/galerias/centenas-em-manifestacao-para-exigir-habitacao-para-todos-9892862.html>, accessed on 25 November 2021). Despite the various social countermeasures provided in the law to protect households in economic need, the elderly and the disabled, the truth remains that there were drastic impacts. These were reflected in several waves of eviction, which were particularly felt in the inner-city areas where the pre-1990 contracts and lower rents predominated.

Through the advancing legitimacy of simpler and more expeditious eviction mechanisms for the fulfilment of contracts, especially in the case of default by tenants, the confidence of owners that private rental and short-term rental products would provide safer investments was reinforced. The 2012 law provided the necessary legal lever applied by the market to unblock the tens of thousands of empty buildings in the historic centre and/or those that sheltered needy populations that paid very low rents. This served to prepare the inner city to receive an injection of foreign and private capital that would materialise in the housing stock on the condition of effectively reproducing real-estate capital. These buildings occupy a privileged and central location in noble areas of the city, but are associated with poor conservation, thus creating opportunities for real-estate speculation and the extraction of capital gains. Real-estate developers, following rehabilitation works, sell the buildings at a much higher price than what they paid, and also when they are very degraded. This maximizes the rent-gap principle (the differential between the present ground rent at the date of the lease in an advanced state of degradation and the future and potential rent due to renovation of usage and function).

Following implementation of the 2012 NRAU, the largest impacts on the sector emerged in terms of the duration and type of contracts, in keeping with the transition from old contracts to the new regime and the streamlining of eviction procedures. As regards the duration of contracts, the 2012 law introduced greater flexibility and freedom, effectively favouring contracts of varying durations and shorter contracts without any minimum term in order for supply and demand to adjust more easily. The contract-termination mechanism was reinforced, with tenants incurring a two-month delay in their rent payments subject to a rapid eviction process. On the other hand, in line with fostering the national urban rehabilitation strategy, which was recognised as a key facet in the country's economic recovery, the ending of contracts (even for indefinite periods) is now fast-tracked whenever landlords either wish to carry out demolition or wide-reaching renovation works or whenever they claim to need the housing for themselves or their descendants. These reasons, carrying out in-depth construction works, and the delayed tenant responses to the intentions of their landlords to raise their rents constitute the two main reasons rendering eviction an indisputable feature of this new urban rental law.

In Lisbon, the central district of Santa Maria Maior, for example, has lost almost two thousand inhabitants since 2013. This reflects the departure of more than one inhabitant per day in the four years from 2013 to 2017. Depopulation is not a recent phenomenon in the historic centre of Lisbon, and National Institute of Statistics records indicate how this

demographic bleeding reaches back to the 1960s. Where 160,000 inhabitants resided, 40,000 now reside. During the second half of the last century, this process mainly interrelated with the growing suburbanisation and the consequent formation of the Metropolitan Area of Lisbon. The latest population census figures from 2011 do not capture the aggravated population loss of recent years triggered by the evictions under the new 2012 rent law or the impact of short-term rentals on the local housing market. The number of recent evictions in the historic centre of Lisbon thus remains unknown, and the lack of diagnostic studies prevents the proving of what seems to be clear evidence for those who live or spend their daily lives in the traditional inner-city neighbourhoods but remains invisible to the broader gaze of public opinion and civil society.

However, several residents' associations and campaigners defending the right to housing testify to hundreds of cases in recent years, especially in the central districts of Santa Maria Maior, Misericórdia and São Vicente, which would account for quite a significant proportion in a universe of residents totalling only a few thousand; even more so when dealing with vulnerable populations and those at social risk. Faced with a scenario of increasingly high rents, coupled with the low wages received by most Portuguese workers, the number of evictions has skyrocketed. According to the latest data from the BNA—the National Leasing Bank, evictions have doubled since 2013, and an average of 5.5 tenants are evicted daily across the country. According to data from the Ministry of Justice, the number of evictions in 2016 was 91.7% higher than the number recorded three years earlier, which may reflect evidence of the dynamics described. In the case of Santa Maria Maior, 2000 households were evicted between 2014 and 2018, according to the District Council. This ranks as more than one family a day undergoing eviction from an area of the city that is already greatly underpopulated (see the article in the *New York Times*: <https://www.nytimes.com/2018/05/23/world/europe/lisbon-portugal-revival.html>, accessed on 25 November 2021).

There are exceptions to these NRAU 2012 rules in cases where tenants are aged 65 or older or experience disabilities of greater than 60%. In the case of refurbishment and deep restoration works, the landlord must relocate the tenant in the same municipality or provide compensation. In terms of raising rents, this protection guaranteed by age and the degree of disability or even by proven economic need (when the annual household income is less than five times national minimum wage) was only originally to remain in effect for a transitional period of five years, following which the level of rent would be raised to free-market values. However, this five-year term (from 2012 to 2017) has been successively extended, first to eight years (2020) and recently to ten years (2022), thereby protecting the poorest and most vulnerable by delaying the transition from old contracts to this new regime.

Another controversial aspect interrelates with the NRAU 2012 stipulation that, in order to update an old pre-1990 contract, the landlord must notify the tenant in writing and set out a new contract proposal, hence providing a new duration and rent level. The tenant then has 30 days to reply, and should he/she not do so, the proposal is deemed to have been accepted. The contract—which has, in the meantime, expired—is transferred to the NRAU, and may later be terminated. This norm raised many social and political criticisms at the time of enactment due to the reduced amount of time tenants had to answer landlord proposals (30 days), potentially catching people off guard, especially as such tenants are an ageing, often only semi-literate population. Failure to respond within the stated period meant tenants automatically accepted the terms of their landlord's rental proposal, both in terms of the increased rent level and the new contract duration.

We would recall that the Portuguese Constitutional Court declared this NRAU 2012 rule unconstitutional in October 2020, hence coming out against tenants with old rents having their contracts terminated for not having not responded to their landlords in a timely manner whilst being unaware of the effects this lack of response might have. This procedure was considered unconstitutional whenever tenants were not informed of the

alternatives for assistance and when landlords did not warn of the effects associated with the eventual silence of tenants.

4. Legislative Changes by the Left-Wing Government and Additional Tenant Protection

The issue of housing has dominated political debates since late 2016 and became a banner slogan for the second half of the “geringonça” government legislature (2015–2019), visible in the founding of the Ministry of Housing, the State Secretary of Housing and the launch and public discussion of the New Generation of Housing Policies and the Basic Housing Law in 2018 and 2019, respectively. (The middle class was heavily attacked during the post-financial crisis austerity period (2009–2015) but has recovered income since 2015 under a left-wing government backed by the Socialist Party, the Communist Party, and the left-wing Bloc. This recovery has been termed a “geringonça” economic miracle, with this Portuguese slang word meaning something neglected or a poorly constructed and clumsy construction, an apparatus or mechanism of complex construction but that still works and complies with the function for which it was built.)

With the rise to power of the Socialist Party supported by the “gerigonça” left-wing coalition in 2015, this neoliberalisation trend in the rental market, which deepened under the centre-right government of Prime Minister Passos Coelho (2011–2014), ended up slowing down from the perspective of both the norms and the legislation. This happened in the face of strong social pressures applied by urban social movements and tenant associations and in defence of the right to housing, with the housing problem re-entering the political, social and media agenda and since escalating and generalizing through public opinion, especially in 2017, the year of municipal elections.

That year, with the left fully in government, and on the verge of the transitional period of old rents ending (i.e., five years after NRAU 2012), and with a new wave of evictions on the horizon, an extension for eight years was promulgated (another three years in relation to the five years initially established) for the transitional period for updating old rents, through Law No. 43/2017, of 14 June. In this context, the transitional period for updating rental payments established prior to 1990 extended until 2020 and applied to all tenants on very low average incomes, aged 65 years or over or with a disability equal to or greater than 60%. At the same time, there were changes in the Civil Code related to leases, specifically, increasing the duration of contracts (up from two to five years) and raising the period for non-payment of rent (up from two to three months).

The now-introduced restructuring reflects a setback on the path to liberalisation of the rental market as outlined above. Social concerns resurfaced at the centre of the legislators’ attention, correspondingly resulting in an increase in the protection attributed to the tenant and, in return, undermining the landlord’s position. These changes sought to extend the protection of tenants, who are traditionally perceived as the weakest party in this type of contract. This aligns with a common understanding that tenants are in a more disadvantaged position in such contractual relationships and hence need the law to provide greater protection against abuse by the other party, the landlord.

Further restraining the liberalising momentum from the last national government, one year later, Law No. 30/2018, of 16 July, established an extraordinary transitional regime to protect elderly or disabled persons who are tenants and have resided in the same location for over 15 years, in these cases, proceeding to temporarily suspend the periods of opposition to the renewal and termination by the landlords of lease agreements and alongside the suspension of special eviction procedures and eviction notices.

In the same year, Law No. 64/2018, of October 29, also guaranteed the exercising of a pre-emptive right by tenants in cases of the owner selling the leased property. This reinforced the power of choice of tenants in any sale of properties in which they live, as they hold the power to cancel sales and transactions that fail to respect their right of preference. However, this law was declared unconstitutional about eighteen months later as it is not certain that stability in housing will be effectively protected by the exercise of pre-emptive

rights, in addition to the fact that the balance of interests between owners and tenants is not safeguarded.

Nevertheless, the worsening of the housing crisis triggered by the 2008–2009 economic and financial crisis had already led many landowners to adopt positions of abuse of power in relation to their tenants, exerting pressure to make them leave their homes, which only intensified the urban social movements and right to housing activism. There were several well-known public cases that put pressure on the government. In terms of the media and political agenda, there was talk of “real estate bullying”. This was defined as any form of pressure, harassment, intimidation or psychological, symbolic or physical violence that is repeatedly and systemically practiced by the landlord, owner or other hegemonic agent of the real-estate sector over the tenant in order to facilitate the departure of resident tenants perceived as obstacles to the real-estate business. Intentionally degrading the building—removing access stairs, for example—subjecting residents to constant interference, or cutting off electricity, gas and water represent some of the techniques deployed by homeowners in the centre of Lisbon to force tenants out of the house and thus gain higher incomes from their properties.

Precisely this pressure from activists and urban social movements in political forums, coupled with strong media coverage, managed to ensure the enactment of Law No. 12/2019 of 12 February, which again added a new amendment to NRAU 2012, establishing that harassment of the lease or sublease holder is prohibited. This was understood as any illegitimate behaviour by landlords, representatives or third parties interested in the acquisition or commercialisation of the leased property, which, with the aim of bringing about vacancy, disturbs, constrains or affects the dignity of the tenant, subtenant or persons who legitimately reside with the tenant; or subjects them to intimidating, hostile, degrading, dangerous, humiliating, destabilising or offensive environments; or seriously prevents or impairs access and fruition of the leased property.

As regards promoting affordable rent, the highlight thus far came with the Affordable Rent Program (PAA) (Decree-Law No. 68/2019, of 22 May), with its core objective of promoting a greater balance between the rental sector and that of homeowners, focusing on fostering new housing supplied by private owners and making the transition between occupancy regimes more flexible, which, in the long term, is expected to provide greater security, stability and attractiveness to the rental market, on both the supply and the demand sides. This provides tax incentives for public and private entities placing their buildings or urban fractions in permanent housing leases up to the rental limits defined by the program (see Table 1).

Table 1. Rent regimes in Portugal: characteristics and impacts.

Rent Regimes	Main Principles	Impacts
Decree-Law of 11 November 1910	Strict fiscal precepts in the field of urban leasing froze rents for a period of one year and extended the advance notice required for opposing the renewal granted compensation to commercial tenants.	Stabilised rent values due to the strong growth of urbanisation. No evictions allowed, protection of tenants started decapitalisation of the owners. Missing criteria and rules to prevent degradation of the physical conditions of buildings
Decree-Laws of 23 November 1914 and 28 September 1917	Froze rents in existing contracts and in new contracts. New contract should maintain the previous rent. Landlords obliged to lease vacant buildings.	Evictions were prohibited. Decapitalisation of the owners maintained. Still missing criteria and rules to prevent degradation of the physical conditions of buildings.

Table 1. Cont.

Rent Regimes	Main Principles	Impacts
Law No. 2030, of 22 June 1948	<p>Sharply limited the situations of contract renewal.</p> <p>Postponed expiry (in case of divorce and/or death of the tenant) and promoted perpetuity.</p> <p>Allowed expropriation for public utility and for surface rights.</p> <p>Rule of automatic contract renewal was maintained under the previous law.</p> <p>Updating rent values only allowed outside Lisbon and Porto.</p> <p>In the two main cities of the country, rents were therefore frozen.</p>	<p>Evictions were prohibited and highly restricted.</p> <p>Perpetuity of contracts protected the main tenant and family.</p> <p>Decapitalisation of the owners maintained.</p> <p>Degradation of physical conditions of buildings worsened.</p>
Decree-Law No. 217/74, of 27 May and Decree-Law No. 155/75, of 25 March	<p>Froze rents on urban buildings for 30 days.</p> <p>Extended the suspension of tax assessments to update rents to all municipalities, previously confined to Lisbon and Porto.</p> <p>Suspended the right of demolition.</p> <p>Established a duty for the owner to lease.</p> <p>Fixed maximum rents for the lease of old buildings.</p> <p>Non-observance of these and other rules was penally repressed.</p> <p>Suspended complaints about leases made on the basis of the expansion of the building or the need for the leased property as the landlord's own house.</p> <p>Legalisation of squatters in dwellings for housing purposes through compulsory lease agreements.</p>	<p>Tight regulation on the freedom to establish the value of rents, evictions and changes in the occupation regime.</p> <p>Landlords' reliance on subsequent tenancy laws ensure financial sustainability in order to maintain the physical quality of leased buildings. Therefore, decapitalisation of the owners visibly worsened the degradation of leased buildings, initiating a process of unsustainability in the rental market, which failed to guarantee habitable conditions.</p> <p>Degradation of physical building conditions further aggravated.</p>
Decree-Law 321-B/90, of October 15 (RAU)	<p>Main objective: to change the urban rental market and make it more attractive and dynamic.</p> <p>Restoration of the temporary nature of the lease.</p> <p>Signing of contracts of limited duration.</p> <p>Combating the degradation of properties, regulating the renovation works regime.</p>	<p>No effective solutions for solving the rent-freeze problem.</p> <p>Maintained the application of contracts concluded before 1990.</p> <p>Degradation of physical conditions of buildings continued.</p> <p>Lack of confidence of landlords/the private sector in the reforms to modernise the rental market and the role of the state.</p> <p>Decrease in the supply of houses for rent.</p>
Law 6/2006 of February 27 (NRAU 2006)	<p>Resolution of the problem of leases prior to 1990 with levels of rent much lower than the market value.</p> <p>Allowed for gradual updating of old rents, calculating the new rents to be based on the value of buildings.</p> <p>Encouraged owners to rehabilitate degraded buildings to improve their property values.</p> <p>For low-income households, the elderly and people with disabilities, an income subsidy was provided when the transitional period ended, to be requested from Social Security.</p>	<p>Allowed for phased updating of old rents.</p> <p>Did not fully liberalise the rental market.</p> <p>Many thousands of the pre-1990 frozen rent contracts were replaced.</p> <p>Degradation of physical conditions of buildings worsened still further.</p> <p>Lack of landlord-sector confidence in the reforms of the state to modernise the rental market.</p> <p>Decrease in the supply of houses for rent.</p>

Table 1. Cont.

Rent Regimes	Main Principles	Impacts
Law of 30/2012 (NRAU 2012)	<p>Contracts prior to 1990 were updated, changing the substantive lease regime, specifically by giving the parties greater freedom in stipulating the rules relating to the duration of lease agreements.</p> <p>Created the special eviction procedure and the National Lease Bank so that properties can be vacated more quickly when the tenant does not do so on the scheduled date.</p>	<p>Unblocked tens of thousands of empty buildings in the historic centre and/or those that sheltered needy populations paying very low rents, but by means of eviction procedures.</p> <p>Intense rehabilitation/renovation works in the housing stock of the inner city and attraction of private capital</p> <p>values of rents were established without adequate social support and necessarily affect households at lower socioeconomic levels: gentrification.</p> <p>Confidence of owners in the idea that private rental and short-term rental products would be a safer investment was reinforced.</p>
Law No. 43/2017, of 14 June	<p>Promulgated an extension for eight years (another three years in relation to the five years initially established by NRAU 2012) to the transitional period for updating old rents.</p> <p>Increase in the period for signing contracts (from two to five years).</p> <p>Increase in the period for non-payment of rent (raised from two to three months).</p>	<p>Setback on the path of liberalisation of the rental market previously outlined as social concerns resurfaced at the centre of the legislator's attention.</p> <p>Deepening of the lack of confidence of the landlords sector in the state reforms to modernise and liberalise the rental market.</p> <p>Decrease in the supply of houses for rent.</p>
Law No. 30/2018, of 16 July	<p>Extraordinary and transitional regime for the protection of elderly or disabled people who are tenants and have resided in the same location for over 15 years.</p> <p>Temporarily suspended the periods of opposition to the renewal and denunciation of lease agreements by the landlords.</p> <p>Suspension of the special eviction procedure and eviction action</p>	<p>Another setback on the path to liberalisation of the rental market previously outlined.</p>
Law No. 12/2019 of 12 February	<p>New amendment to NRAU 2012, establishing that real-estate harassment in the lease or subletting sectors is prohibited.</p>	<p>Created difficulties and obstacles to eviction and criminalised real-estate bullying.</p> <p>Lack of confidence of the landlords sector in the state's reforms to modernise and liberalise the rental market.</p> <p>Decrease in the supply of houses for rent.</p> <p>Increase in rent values in new contracts in the private rental market.</p>
Affordable Rent Program (PAA) Decree-Law No. 68/2019, of 22 May	<p>Main objective of promoting a greater balance between the rental sector and homeowners.</p> <p>Attraction of new housing supply from private owners.</p> <p>Making the transition between occupancy regimes more flexible.</p> <p>Tax incentives for public and private entities that place their buildings or urban fractions in permanent housing leases.</p> <p>Rent cap: limit on the rent level defined by the program.</p>	<p>In the long term, expected to provide greater security, stability and attractiveness to the rental market on both the supply and demand sides.</p> <p>Small increase in the supply of houses for rent, which is</p> <p>yet to impact on the increasing rents in new private-rental market contracts.</p>

Source: Author's own elaboration.

Despite the tax incentives granted, the PAA, launched in July 2019, underwent a slow but promising start for landlords and tenants, attracting only a few dozen homes in the first few months. The proposal focuses almost exclusively on the granting of tax benefits to homeowners and launching an insurance package for leasing and does not even begin to tackle the urgent need to regulate the rental market and overheated leasing terms. In fact,

the acceptance of the “market reference value”, for rents on which the 20% reduction will then be applied to define the supposed accessible rent, seems to entirely ignore the rampant and speculative escalation that rents have been subject to in recent years (see Figures 2 and 3), with constant and uninterrupted increases as well as generous rates of positive annual percentage increases, always in the order of two digits [26,35].

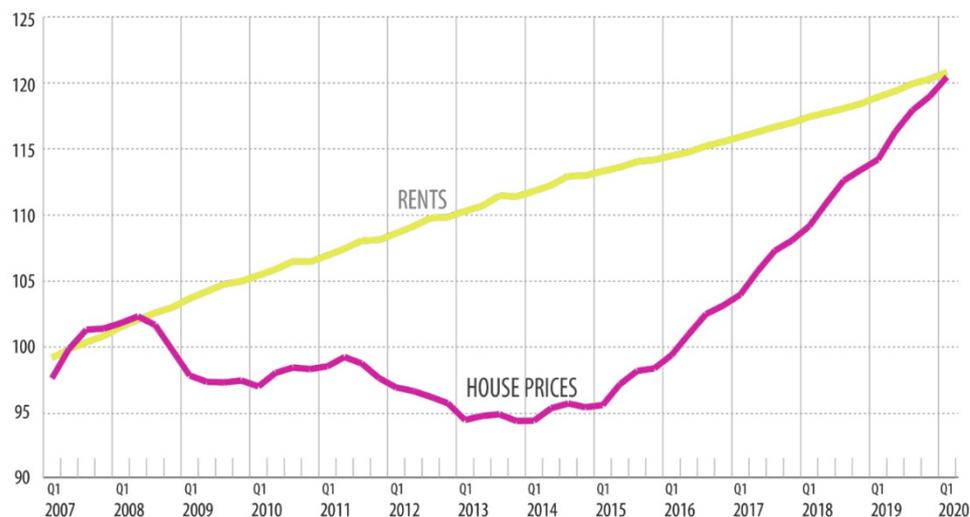


Figure 2. Evolution of rent and housing values indices in Portugal (2007 to 2020) (2007 = 100)
Source: [36].

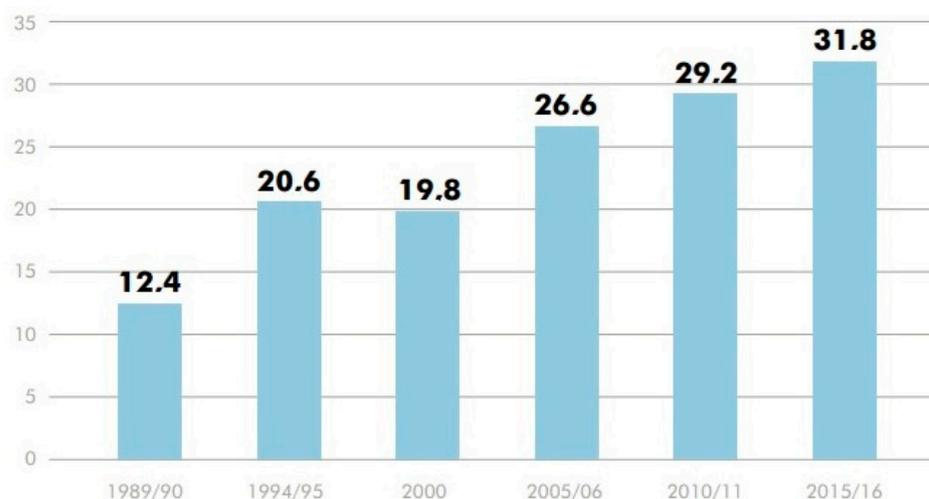


Figure 3. Evolution of average annual household expenditure on housing. (As % of total expenditure.)
Source: [37,38].

There is no all-encompassing statutory definition of affordable housing anywhere in the world. Indeed, there remains a good deal of ambiguity around the way the term ‘affordable’ applies to housing. Aside from covering housing provided through public subsidy, the term is also broadly applied to describe housing of any tenure deemed affordable to a particular household or group by analysing housing costs, income levels and other factors, hence the lack of consensus over what affordability means in housing terms [39]. Affordable housing may refer to housing units that are affordable by the section of society whose income falls below the median household income. Over the past few decades, housing affordability at the household level, and the affordable housing stock more broadly, has gradually declined for most low-, very low- and extremely low-income renters and for some low-income homeowners in many countries, both in the Global North

and the Global South. Housing affordability and affordable housing challenges may have an impact on a household's budget, leaving less to pay for food, utilities, transportation to work, health and childcare expenditures and reducing savings for emergencies, retirement and other opportunities, such as pursuing higher education or starting a small business. These challenges may result in decreased opportunities and a lower overall quality of life [40].

Aalbers [41,42], Madden and Marcuse [43], Wetzstein [44] and many others have explained how the emergent global crisis of urban housing affordability and affordable housing provision results from the way that housing-related household expenses are rising faster than salary and wage increases in many cities and metropolitan areas around the world. This situation was triggered by at least three global post-global financial crisis megatrends of accelerated (re)urbanisation of capital and people, coupled with the financialization of housing, the provision of cheap credit and the rise of intra-society inequality.

Despite improvements in the material and housing conditions of the vast majority of the Portuguese population in the second half of the 20th century, which to a large extent determine well-being and quality of life, the relative weighting of housing expenses in different household consumption expenditures is not uniform. The ratio between the cost of access to housing—that is, the mortgage instalments or the rent value—and the median salary of the household in Lisbon, for example, stands at around 60% [34]. This is more than double the reference benchmarks for effort rates recommended by international organisations as households or individuals should not spend more than 30% of their income on meeting their housing needs. Housing and other associated costs represents one of the final consumption expenditures that weighs most heavily on Portuguese family budgets and has also experienced the most significant upward changes in recent years.

5. Could the Excessive Level of Empty Housing Stock Be an Opportunity for the Affordable Rental Market?

It is difficult to gain any objective and categorical calculation of the total number of vacant houses in the country, as this number is recorded by the population census, and therefore the data we have date back to the last census in 2011, when more than 730,000 properties (approximately 15% of the entire national housing stock) stood empty. Why are so many vacant housing units hoarded and remain off the private rental market?

From the market perspective, the legal and fiscal framework does not provide sufficient incentives for landlords to place these empty houses on the private rental market, which would substantially increase supply and contribute to lower prices. In addition to the successive changes in laws that do not bring stability, confidence and security to market options, there is a poor balance between the respective interests of supply and demand [45]. Roughly speaking, left-wing governments value social protection for tenants; right-wing governments defend the renter interests of landlords, which drives a bipolarised regulatory view with resulting reflections in the dysfunctional market. The most recent political options prevent the total liberalisation of the rental market, delay the necessary reforms to the sector and do not speed up the widespread application of a rent subsidy policy (applied but with very residual effects), placing the social rental market burden on landlords and the private sector. Private property sector agents and actors describe this as a tremendous obstacle to the necessary modernisation of the rental sector and to overcoming the difficulties and lack of confidence of owners in placing their vacant properties on the rental market, which would certainly boost supply.

Furthermore, the number of vacant houses has increased substantially over the last few decades, arising out of a trend towards a housing market greatly oriented towards the construction of new housing, with an increase in the number of vacant properties never designed for habitual residence, but rather for second holiday or temporary/seasonal occupation residence. This also reveals how the Portuguese economy depends on growth generated by the real-estate dynamics linked to new construction (Table 2). This comes at the detriment of the urban rehabilitation of existing buildings, even though the housing

policy targets the paradigm of renovating the existing building stock and attracting vacant buildings back onto the market. Thus, this prioritises progressive transformation in the form of accessing housing: from a model strongly based on the construction of new housing and their acquisition for homeownership to a model in which the rehabilitation of buildings and the private rental market can gain new dynamism.

Table 2. Key housing indicators in Portugal (1970–2011).

	1970	1981	1991	2001	2011
Number of houses per family	1.2	1.2	1.3	1.4	1.5
Homeowners	50%	57%	65%	76%	73%
Vacant houses	373,950	190,331	440,721	543,777	735,128
Precarious housing	—	46,391	27,642	27,319	6612

Source: Pordata and National Statistical Institute.

As the reduction of investment in new building construction, intended for permanent housing, is both understandable and inevitable, urban rehabilitation emerges as an inevitable paradigm for preserving built heritage, revitalising city centres and as a means of guaranteeing employment in the construction sector as the engine of the economy. In addition, from the spatial planning perspective, this ensures containment of the urban perimeter and consolidation of the already built urban environment, preventing excessive (sub)urban expansion that is unsustainable from both social and environmental points of view.

However, the dynamics driving new construction are very persistent and interrelated with the way urbanisation has always been an efficient and easy-to-reproduce “capital deposit” sector in a vicious cycle. Moreover, it is difficult to break at the scale of the municipalities, as new constructions feed local finances through the Municipal Property Tax and other taxes and fees, rendering them sustainable. In addition, this sector generates very significant direct and indirect impacts for the Portuguese economy, employment and wealth creation. Furthermore, according to real-estate and civil-construction professionals, this surplus of empty houses is dispersed throughout the territory and not polarised in the metropolitan or urban areas of greatest pressure where this housing stock is needed to respond to new demand. Especially on the coast and in the main district capitals, where the greatest socio-demographic dynamism is concentrated, this view perceives a continuous and sustained mismatch between supply and demand.

6. Final Considerations and Policy Recommendations

Despite all the reform efforts carried out in the last century (see again Table 1), it was not possible to permanently thaw the old rents, develop mechanisms to support families unable to pay their rents and create a climate of confidence to attract investments and boost the supply of houses for rent in the private sector. Therefore, it was equally impossible to resolve the constant mismatch between supply and demand prevailing in the Portuguese rental market. Public authorities, with a small public housing stock, also decapitalised and have been unable to make the rental market a priority in national housing policy, thus delegating responsibility for creating an affordable rental market to the private property sector.

The government’s housing policy is currently subject to widespread debate in Portugal. There is growing pressure for housing policymakers to create more affordable rental housing, a concern that has now been around for over five years, both in national state polices and at the Lisbon and Oporto City Council levels, for instance. Although there are some dissenting voices regarding reintroducing rent regulation as a potential policy instrument to create affordable rental housing, this has not been seriously considered or put it into practice.

The results, in spite of some occasional improvements in the last decade, are very visible: marked deterioration in the housing stock, resulting from the decapitalisation of its

owners due to very low rents and, since the 1980s, major state support for new construction involving massive support for subsidised bank credits to encourage consumers to buy their own home (to the detriment of renting); an increasing number of empty houses in Portugal; a progressive reduction in the supply of houses for rent, both scarce and with rental values inaccessible to most families considering the new, free-market contracts.

In this ongoing and extended housing crisis, which has only worsened over the last few years, it is a categorical imperative that the state makes urban rehabilitation and the affordable rental market an attractive sector for real-estate dynamics, attracting the largest number of private houses possible through more drastic tax exemptions and stimuli at the level of fiscal policy for the private sector, where the overwhelming majority of vacant housing stock is concentrated. In this context, it would even be possible to provide measures to subsidise leasing (directly to the owner) in specific cases of welcoming vulnerable families/individuals or housing emergencies, thus enlarging the stock of affordable public housing.

In this paper, we set out how the huge stock of empty houses may represent an opportunity to mitigate the dysfunctions of the Portuguese rental market, as long as the national government encourages private initiative through a sufficiently attractive fiscal policy that draws these houses into the private rental market. Furthermore, since the beginning of the pandemic, the drop of about 7% in the number of houses assigned to short-term rentals and the migration of many of these to the long-term rental sector, combined with other factors, contributed to rents falling in the city of Lisbon by about 15% in the last six months of 2020 [46].

On the other hand, in areas with high urban pressures, where the percentage of vacancies remains very high, it is the state's obligation to enforce the recently enacted Basic Housing Law, striving to implement the social function of property. Thus, this recommends that more coercive and drastic measures be taken to raise the Municipal Property Tax on unoccupied properties to such an extent that it is not beneficial for owners not to put them to social or economic use. In the event of abandonment motivated by undivided inheritances, a non-existent registration or unknown owner, or the total disinterest of the owner, we would propose the state either takes up administrative ownership or expropriates the property, as happens in other European countries and cities where the housing market is overheated and not adjusting to demand, such as Barcelona, Berlin or Vienna.

A new rental law is necessary to allow for the creation of an environment of trust in the rental market, contrary to the legislation enacted over the last century. This new law should have effective guarantees of protection for landlords, in the case of breach of contracts, but also rights and duties for both parties (landlords and tenants), and this does not, under any circumstances, allow for the eviction of tenants whenever dignified alternatives or sufficient means of subsistence are not duly ensured. In this case of eviction, the family situation must be analysed and the means must be found, whether by the local government or the central state, to adequately support families in the event of their financial inability to maintain housing.

Therefore, it is important to understand how the public problem related to accessible rentals is perceived by the political environment and to compare and contrast this with other experiences and empirical evidence. Government action is decisive and shapes housing policy and forms and regimes of occupation, and is clearly also affecting the private rental market. For example, this might involve the regulation of institutions and the financial market and promoting rent controls through to administrative possession, exercising pre-emptive rights or even expropriation in the case of vacant houses held by large landlords such as real-estate investment trusts, banks or other property developers, especially in areas with strong and unmet demand. However, the state also needs to ensure tax exemptions for property owners who place their houses on the affordable rental market, creating a legal and regulatory framework that transmits credibility, stability and security to the contractual forms between supply and demand, as well as an effective right to housing

through affordable rental, recognising its value as much in economic terms as well as for the social good.

Good governance tools should work together to influence affordability and access to rental market outcomes by: formulating a clear strategy and vision of desired housing outcomes, including adequate supply and access to affordable and adequate rental provision for different household types; acting effectively through legislation and strategic investment and expert administration, while committing to effective rental policy coordination which mediates the many different and contradictory interests, stakeholders and organisations involved in the sector; requiring and enabling all relevant stakeholders in the private and public sectors to play a role in achieving affordable and inclusive housing goals; supporting new housing models promoted through public–common partnerships following the growing trend of third-sector housing in Europe; and establishing and monitoring standards for adequate, affordable and accessible renting across all forms of regime–public rental, private and free-market rental, not-for-profit and co-operative rentals.

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