



Protecting families' homes from tax execution procedures in Portugal

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The Portuguese Parliament is currently drafting a law to protect families' permanent dwellings from repossession during tax execution procedures. This is an important policy in a context of continued housing and overall socio-economic hardship, in which many families have lost their homes. However, regulation should be carefully designed and monitored in order to maximise effectiveness.

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Description

Since 2012, the Portuguese tax administration has seized over 60 thousand homes due to tax debts. The tax administration's IT system automatically initiates an attachment order procedure whenever the indebted taxpayer has assets declared in his/her own name and the debt exceeds EUR 150. Additionally, till April 2015, the IT system also had an automatic mechanism for initiating the sale of seized properties.

After several cases reported in the media where homes were seized and sold in order to secure debts lower than EUR 2,000, a procedural change was introduced and final responsibility for initiating the sale process was given to the heads of the tax offices. This may have contributed to a decrease in the number of dwellings sold in the last two years to around 6,200. Nonetheless, in 2015, about 2,700 dwellings were sold after having been seized. During the first two months of 2016, the number amounted to 472 and an additional 1,331 properties were in the process of being sold.

In 2015, the Portuguese Social and Economic Council (CES) issued an opinion stating that it was unacceptable to maintain a situation where family homes were being sold at very low prices in order to obtain fiscal revenues. According to the CES, the enforcement

of attachment of a family home should be made impossible, whenever it is proven that the person in question does not have enough resources to ensure his/her own subsistence or that of his/her household.

In the beginning of 2016, three left-wing parties represented in the Portuguese Parliament (the Socialist Party [PS], the Left-Wing Bloc [BE] and the Communist Party [PCP]) presented similar draft laws aiming at protecting families' permanent homes from seizure during tax execution procedures. The subject was on the electoral programme of all three parties.

All three proposals were approved by the Parliament's Plenary in January 2016. Right-wing parties (the Social Democrat Party [PSD] and the Social Democrat Centre [CDS-PP]) voted against them. After approval, the proposals were forwarded for joint discussion within a specific commission.

However, there are some differences between these proposals. The Socialist Party's proposal (which is close to that of the Communist Party) is the most restrictive and only admits unseizability of the dwelling in cases of high vulnerability. For all other cases, the dwelling may be seized but not sold. However, properties subject to the maximum rate of the Municipal Tax on Real Estate Transaction (in 2015, properties over EUR 574,323) may be sold one year after the deadline for

voluntary payment of the oldest debt. The proposal of the Left-Wing Bloc is the least restrictive, arguing for the unseizability of all permanent dwellings.

The seizing of a dwelling occurs when no other assets (e.g. salaries, cars) can be seized. Thus, politicians and political commentators arguing in favour of the planned measure emphasise the need to protect vulnerable families whose home is the last buffer against severe exclusion. They also stress the need to prevent situations of significant disproportionality where the dwelling was seized and sold in order to secure debts representing a negligible part of the property's value.

For those arguing against the planned measure, the measure is an incentive to wilful default, as taxpayers may fail to comply with their tax duties with no risk of losing their home. Additionally, they argue that proper implementation of the measure will be difficult as it implies continuous assessment of the individual situation of households over time in order to establish if the conditions for eligibility are met.

Outlook & Commentary

The objective of the planned measure is certainly relevant from a social inclusion and social protection standpoint. It seems important to protect families' permanent dwellings from repossession during tax execution procedures when all other possibilities are exhausted. Moreover, in many cases, tax debts only represent a small proportion of the dwelling's value.

The tax machinery should not be left to operate blindly, isolated from overall public administration. Besides concerns as to the social impact of house seizures, there are doubts, in many cases, regarding the economic impact of such a measure. Selling the dwelling after seizure, especially when a mortgage is attached, may not lead to full recovery of tax debts.

However, it also seems risky not to create exemptions to such a measure. Regulations should strive to avoid encouraging counter-productive opportunistic behaviour which might exploit the new framework (e.g. wilfully failing to comply with tax obligations). Additionally, it is crucial to thoroughly consider how to determine eligibility. One of the draft laws mentions highly vulnerable families; another mentions insufficient income to ensure the subsistence of the debtor and of his/her household.

In the recent past, access conditions to social protection measures in Portugal using similar wording have restricted eligibility to the poorest fringes of the population, reducing the effectiveness of the measures, with minor gains in efficiency. Hence, a careful assessment of the measure - including through ex-ante impact assessment procedures - is vital, especially considering the country's difficult social and economic situation. The income poverty rate has increased in recent years (reaching 19.5% in 2014) and the Bank of Portugal reports an increase in overdue housing credit ratios, in non-performing housing loans and in the number of families returning their homes to the bank during the crisis years.

Further reading

For the legislation and practicalities, see:

Projeto de Lei 86/XIII/1.^a, available at: <http://tinyurl.com/ztzd7m2>

Projeto de Lei 87/XIII/1.^a, available at: <http://tinyurl.com/hc9emkf>

Projeto de Lei 88/XIII/1.^a, available at: <http://tinyurl.com/jks4hrq>

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