

Multiple land ownership and detailed plans implementation:

Challenges for the Portuguese planning framework

Ana Morais de Sá
Beatriz Condessa
Marco Couto Rodrigues

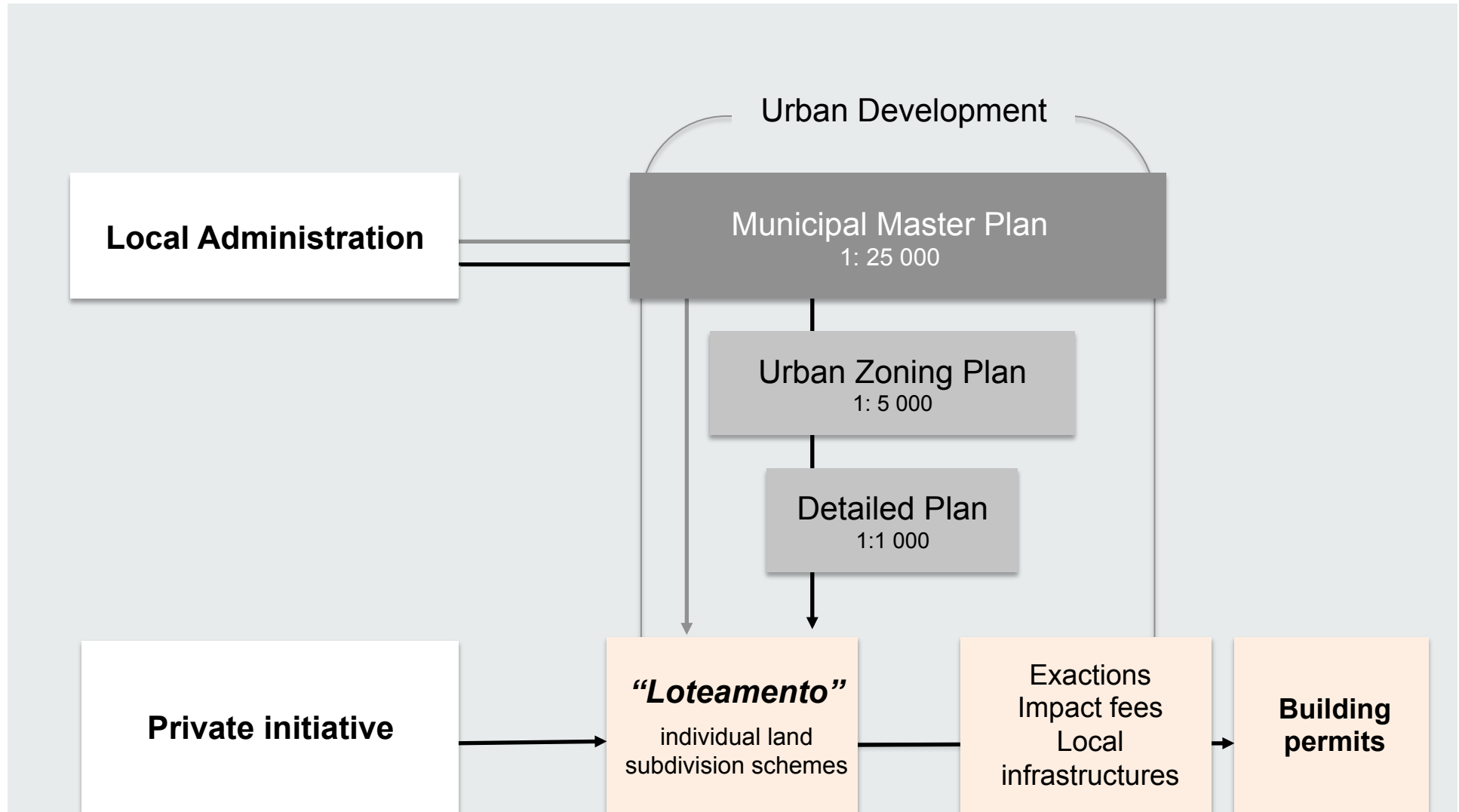
ana.morais.sa@tecnico.ulisboa.pt
beatriz.condessa@tecnico.ulisboa.pt
marco.couto@tecnico.ulisboa.pt

Urban Development in Portugal: Legal Framework and Practice

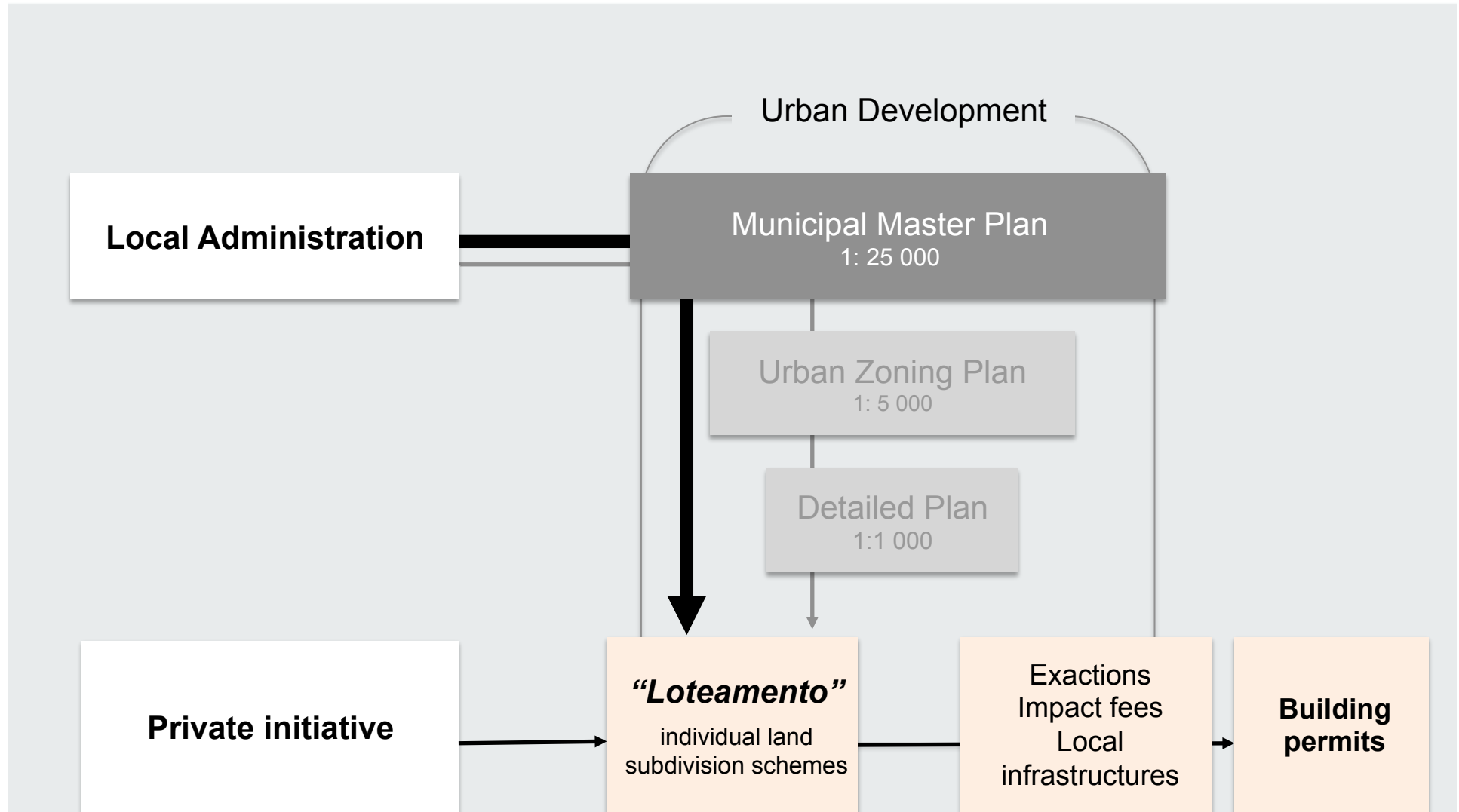
UD in Portugal: Legal Framework

Plan	covered area	mandatory	objective
Master Plan	Total area of municipality	Yes	Structure (Strategic)
Urban Zoning Plan	Total or partial urban area	No	Zoning
Detailed Plan	Urban areas, fringe areas or rural areas	No	Urban design (Programmatic)

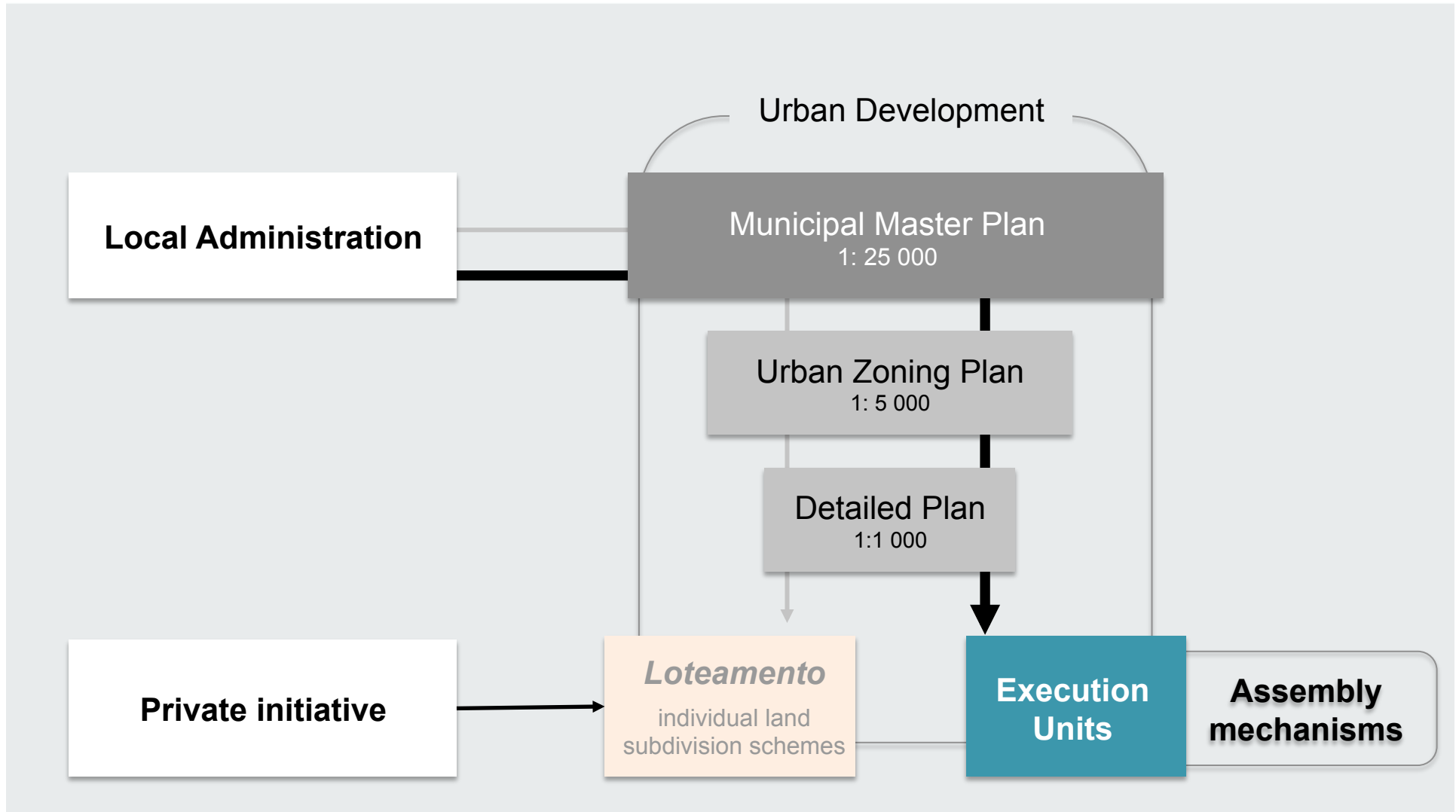
UD in Portugal: Legal Framework



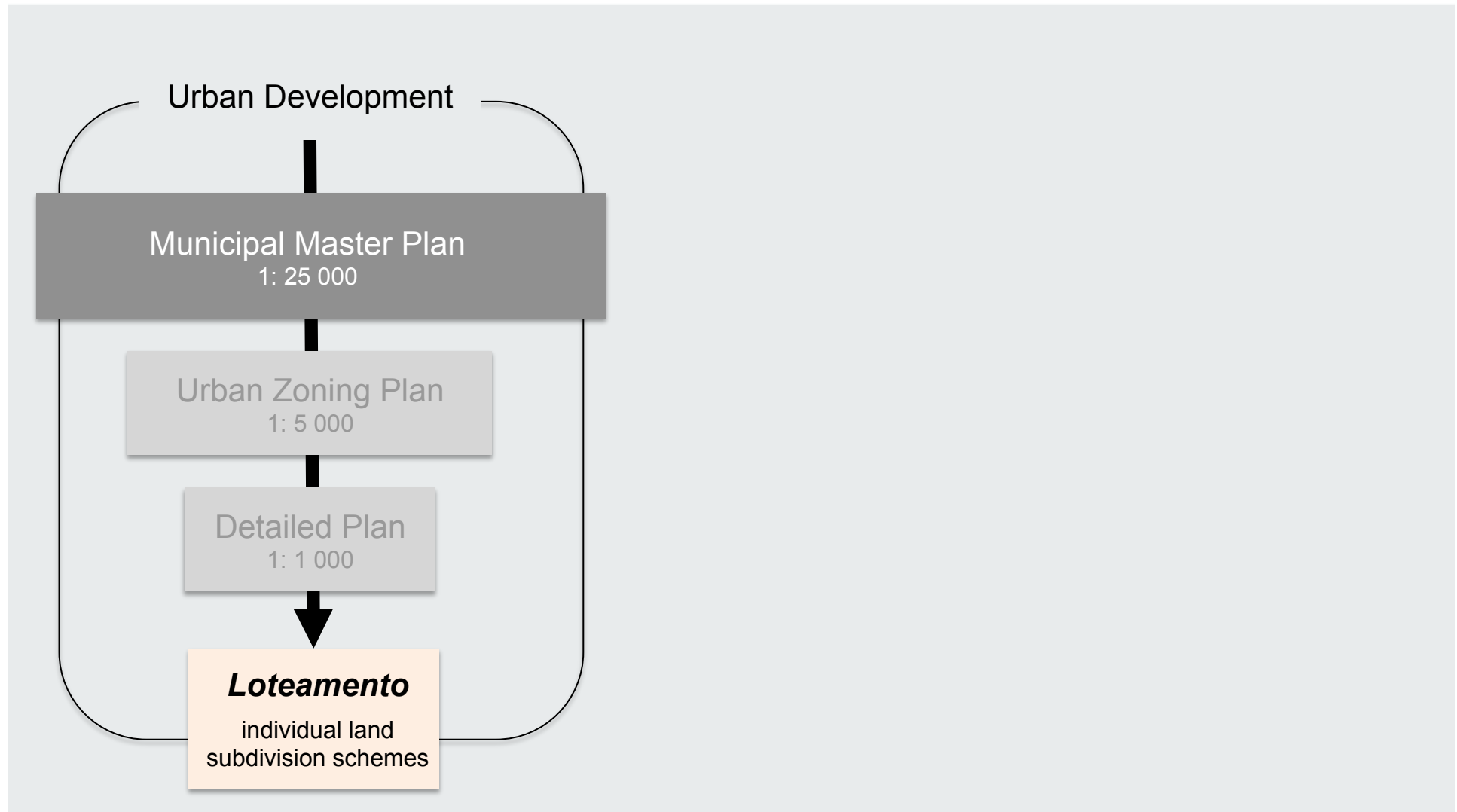
UD in Portugal: Legal Framework



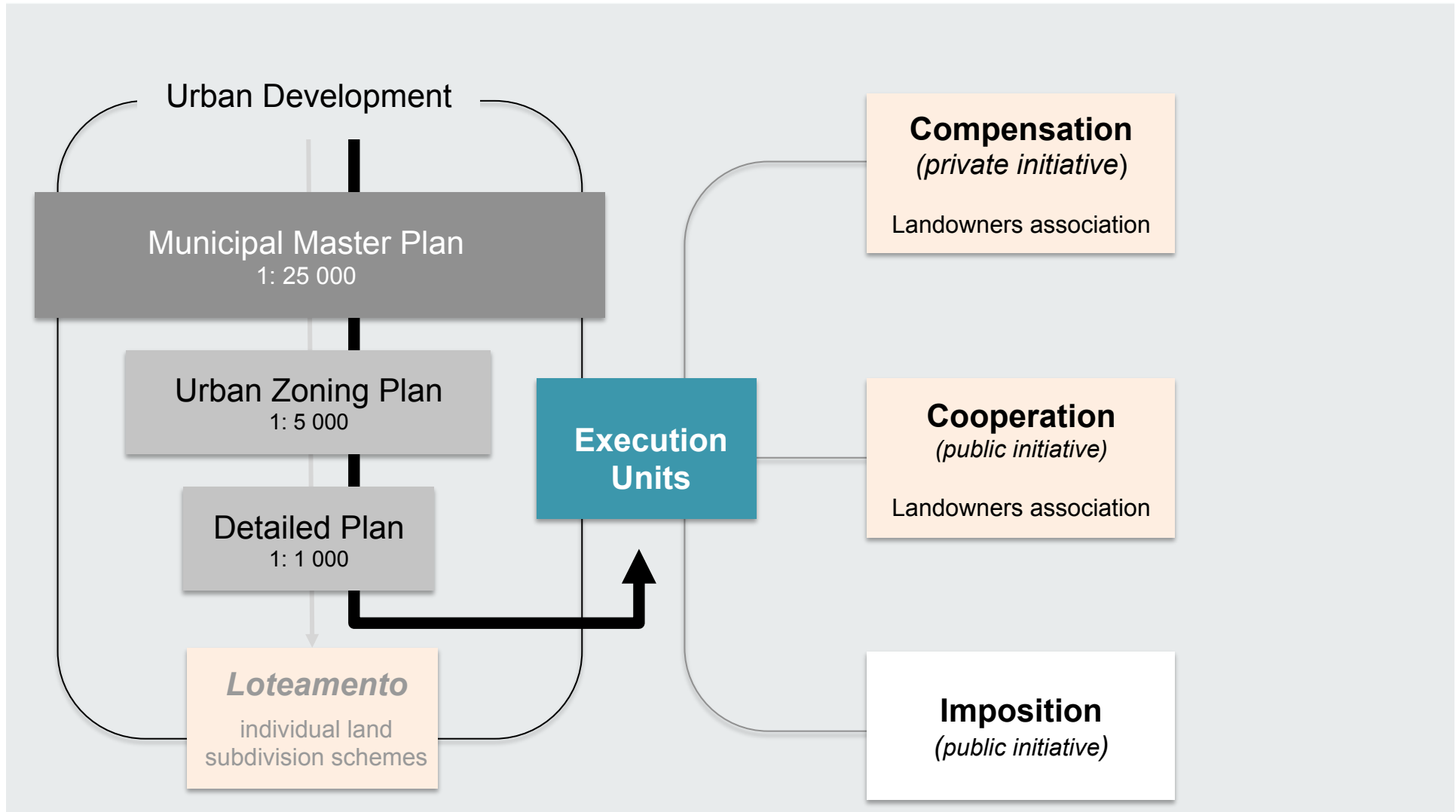
UD in Portugal: Legal Framework (since 1999)



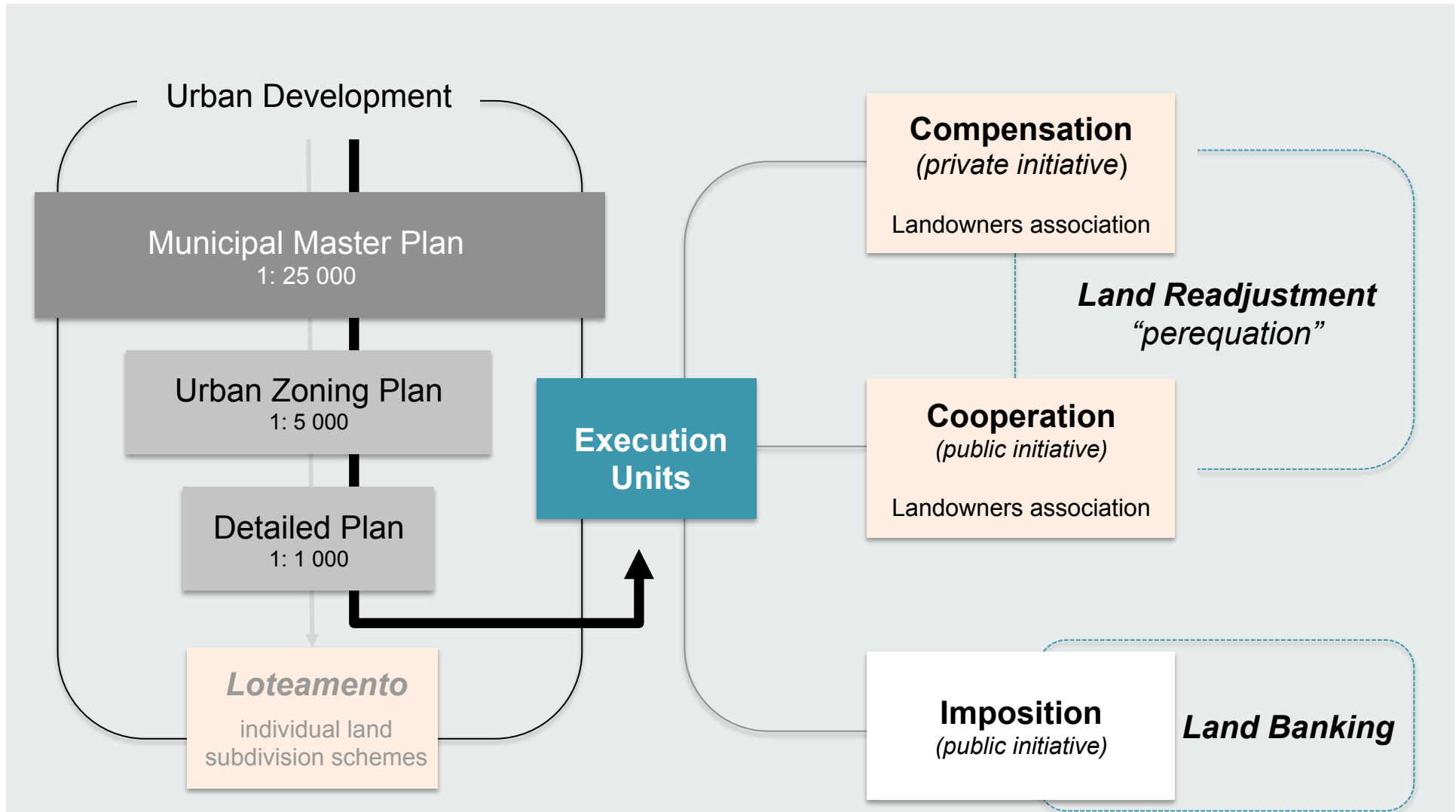
UD in Portugal: Legal Framework (since 1999)



UD in Portugal: Legal Framework (since 1999)



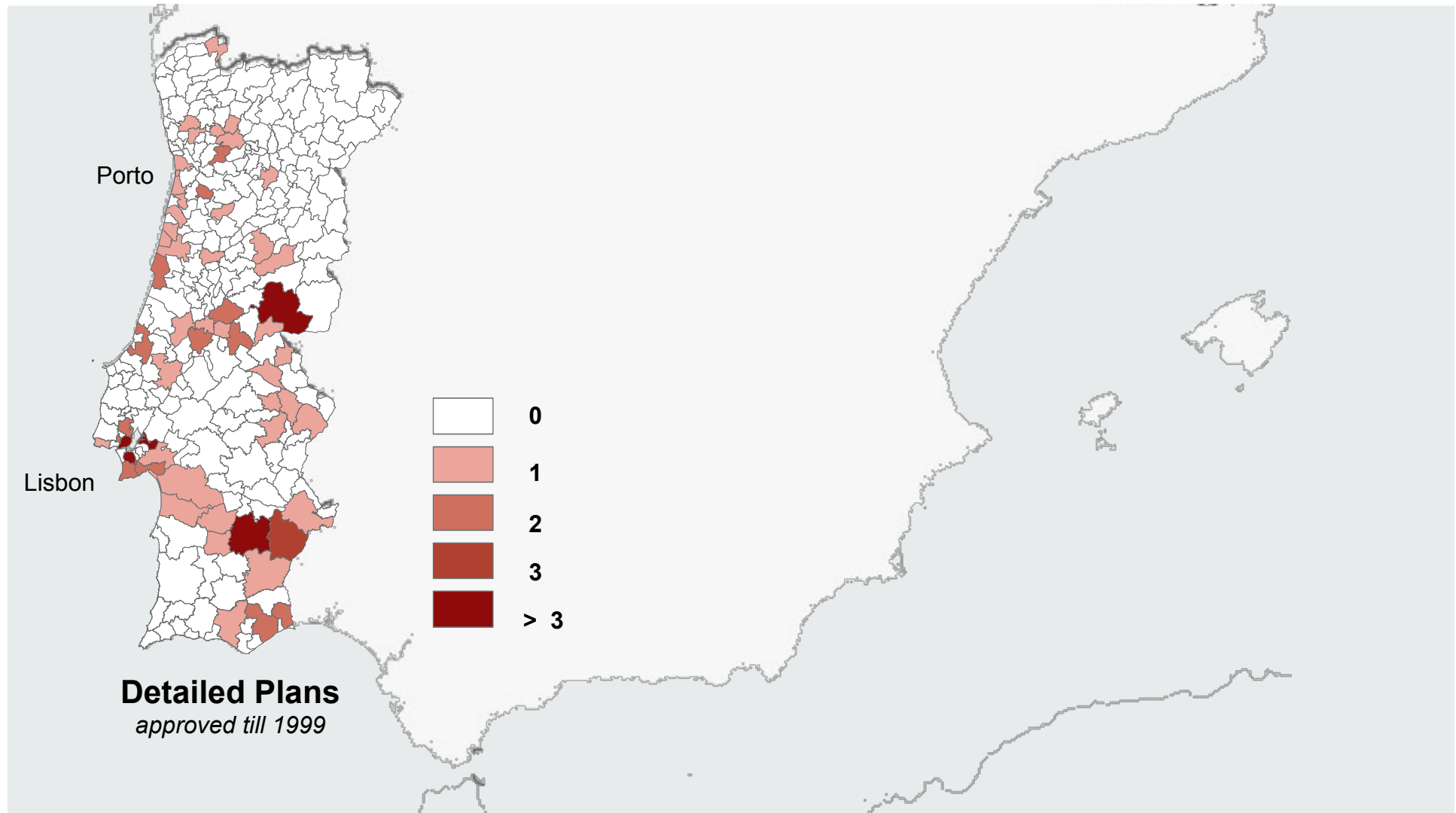
UD in Portugal: Legal Framework (since 1999)



UD in Portugal: Legal Framework (since 1999)

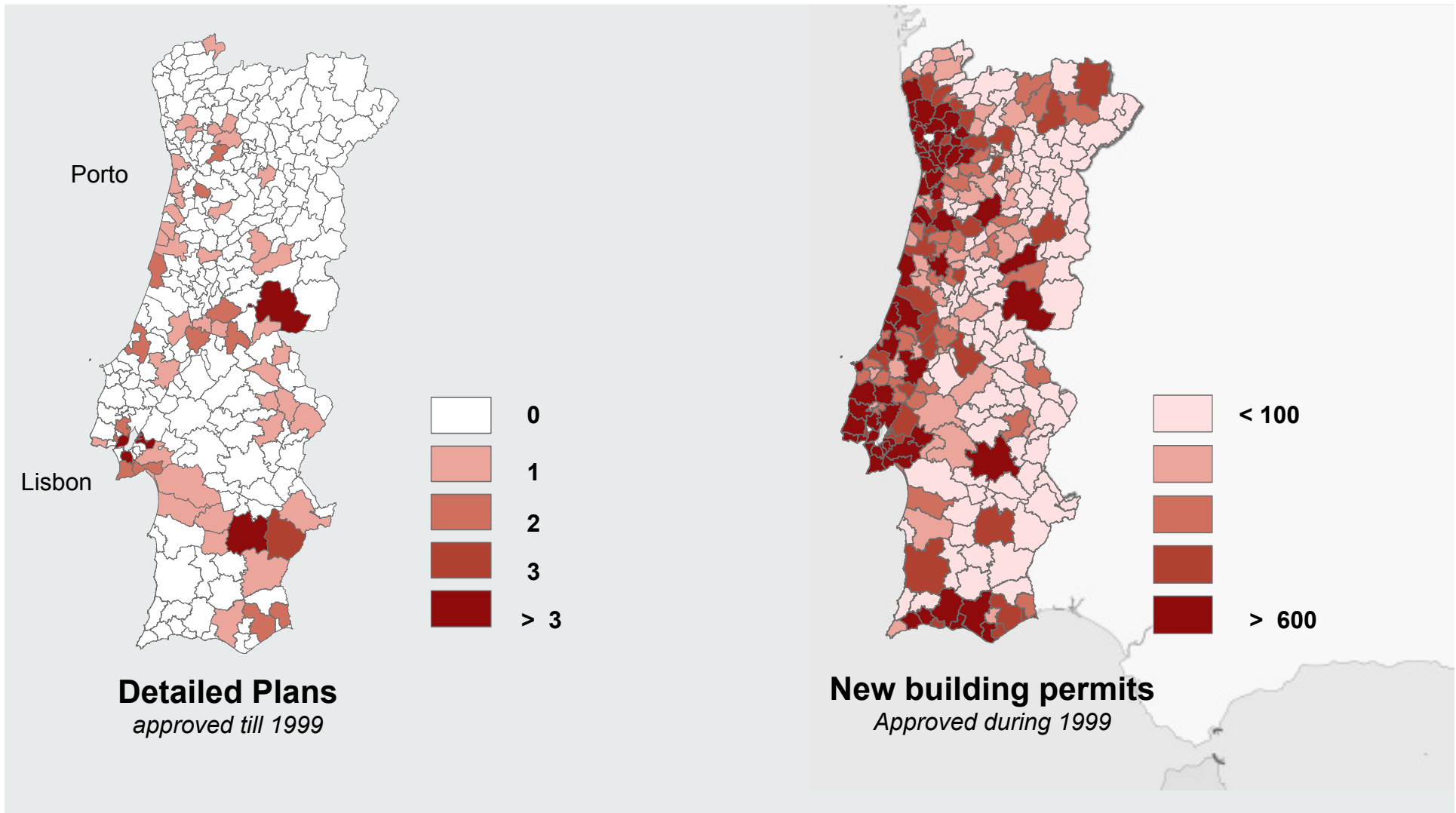
UD approach	Plans	implementation	Public participation	Applicability in recent years
Systematic	All types	Compensation Cooperation Imposition	Passive Active Active	Scarce
No systematic	All types	No assembly mechanisms	Passive	Frequent

UD in Portugal: Practice



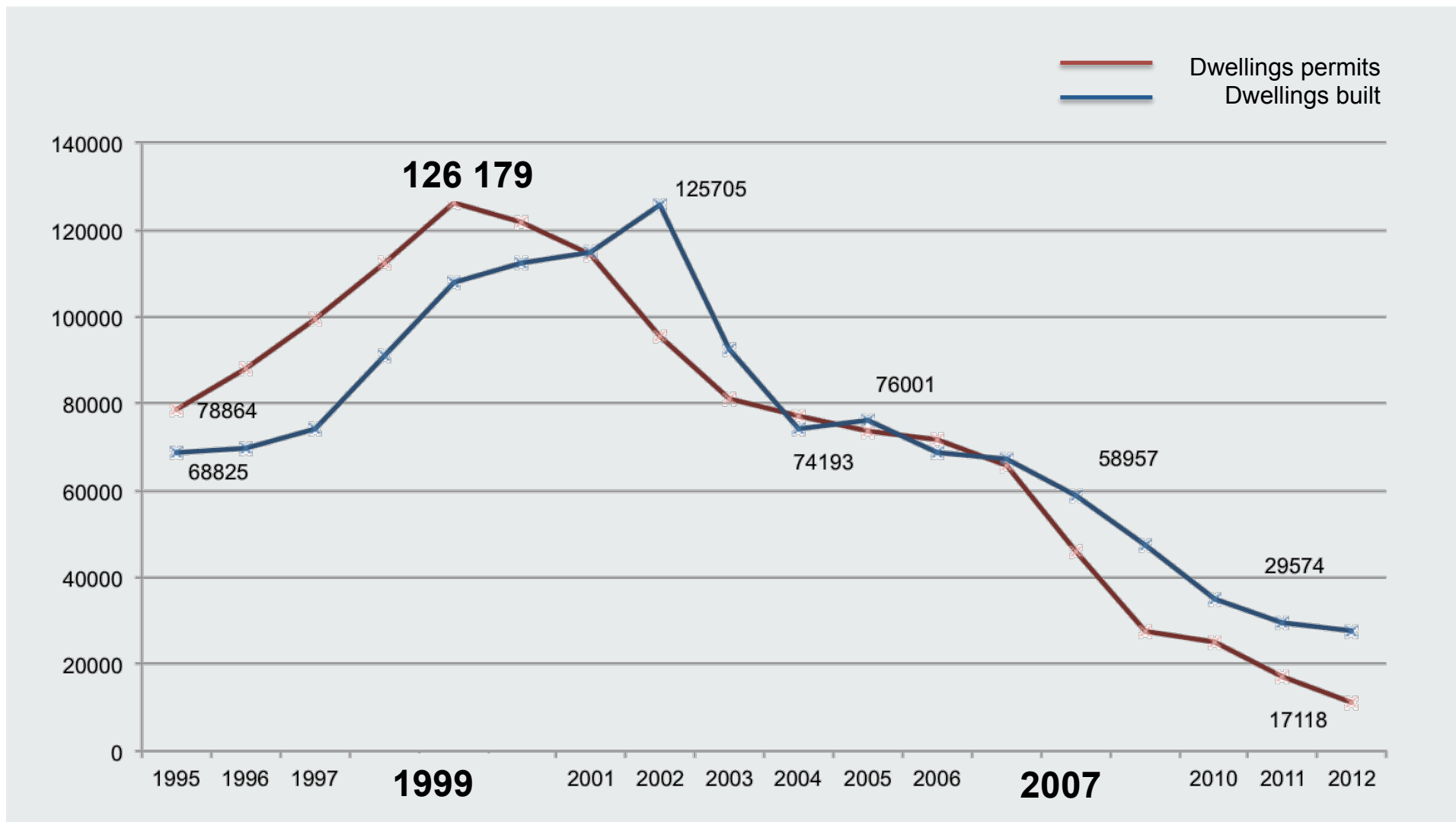
Source: Primary data DGOTDU and Afonso (2009) *in* Morais de Sá (2014).

UD in Portugal: Practice



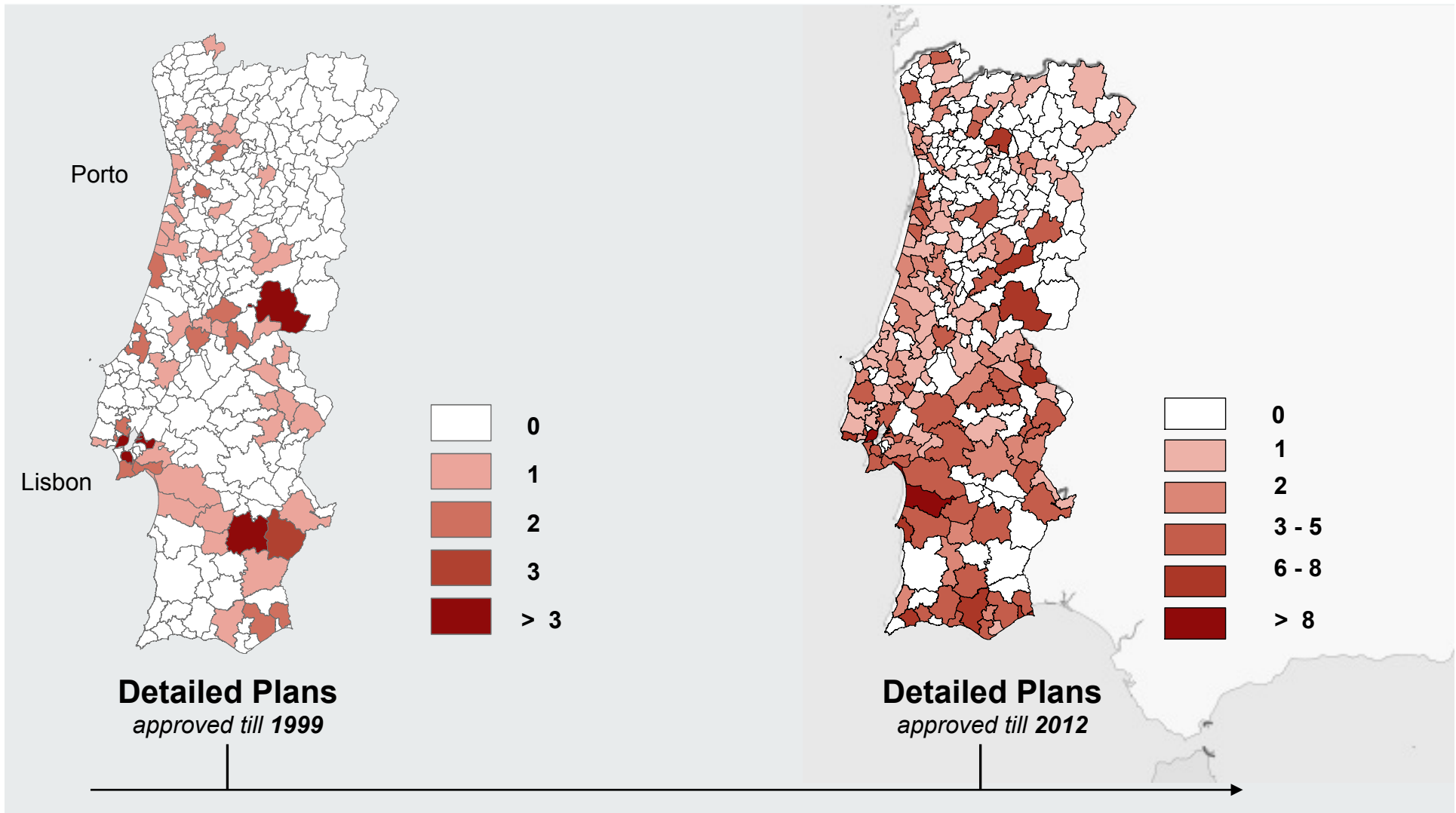
Source: Primary data DGOTDU, Afonso (2009) and INE - PORDATA (Nov. 2013) in Morais de Sá (2014).

UD in Portugal: Practice



Source: Primary data INE (Nov. 2013) in Morais de Sá (2014).

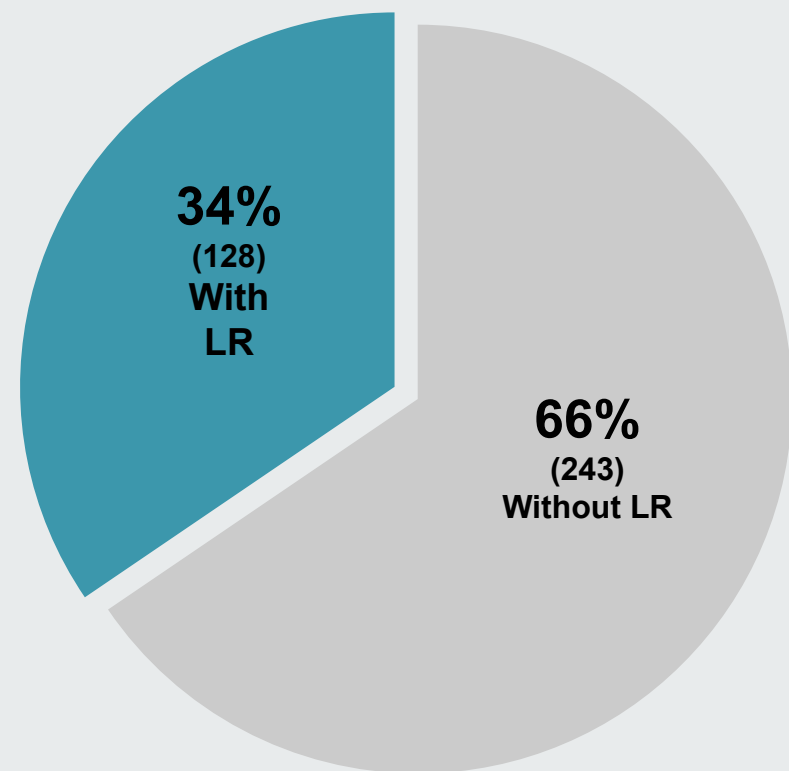
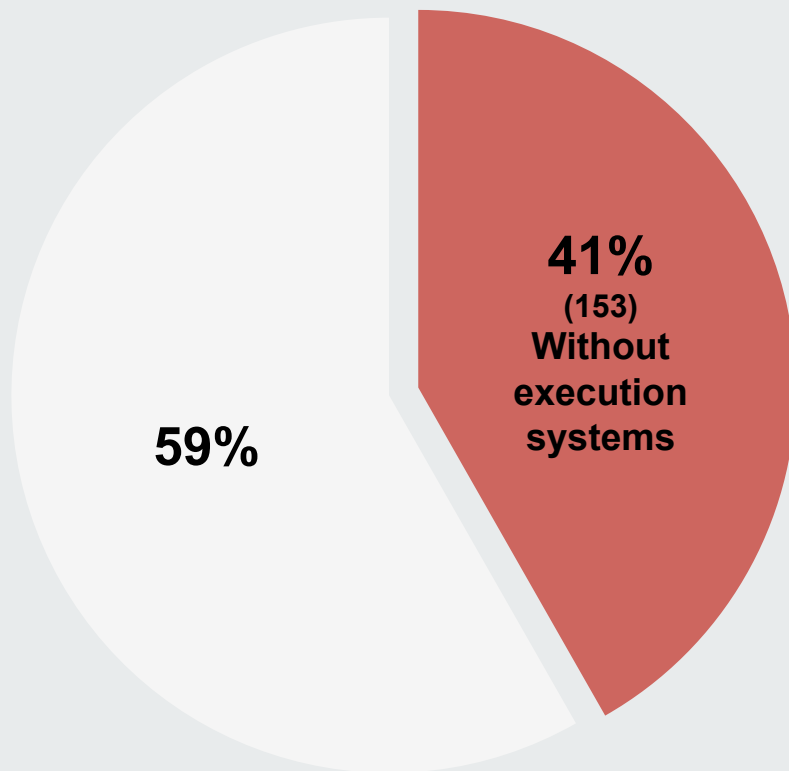
UD in Portugal: Practice



Source: Primary data PERCOM, *Sistema Nacional de Informação Territorial – SNIT* (Jun. 2013) in Morais de Sá (2014).

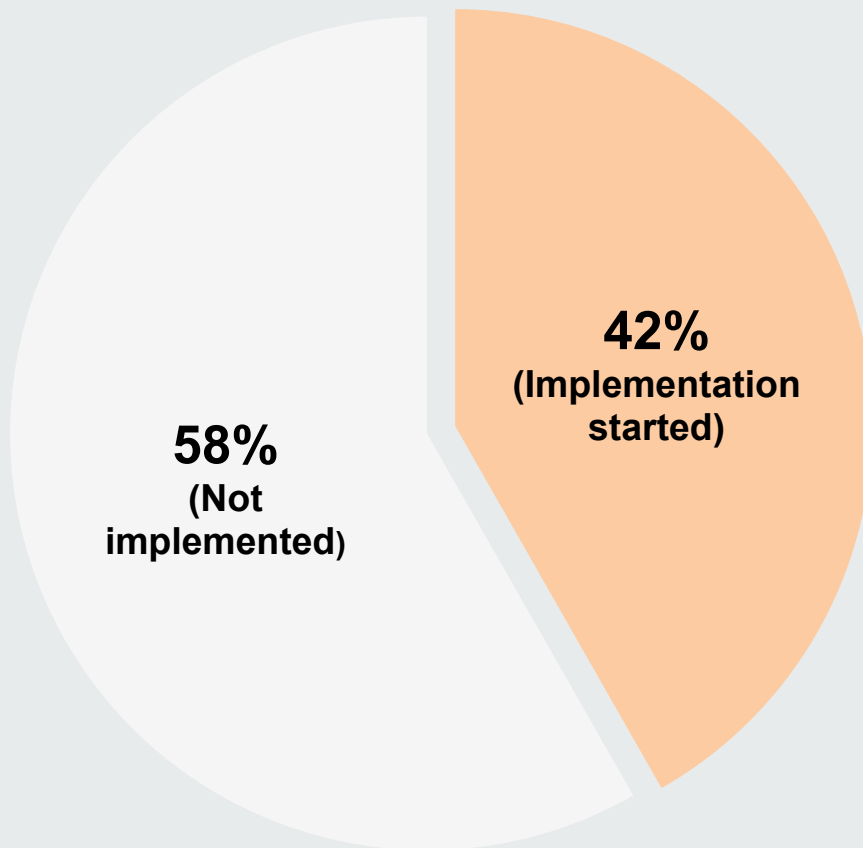
UD in Portugal: Practice

371 Detailed Plans (1999-2012)



Source: PERCOM.

A sample of around 90 Detailed Plans was analysed in more detail



From urban development
without urban plans to
plans **without a plan...**





Municipalities are not **landowners**

Municipalities have scarce resources

Municipalities are (were) **highly dependent on the revenues from urban expansion (land and property taxes, impact fees,...)**

Land ownership patterns are **highly fragmented**

**Obstacles to urban
development**

Cultural/ Social

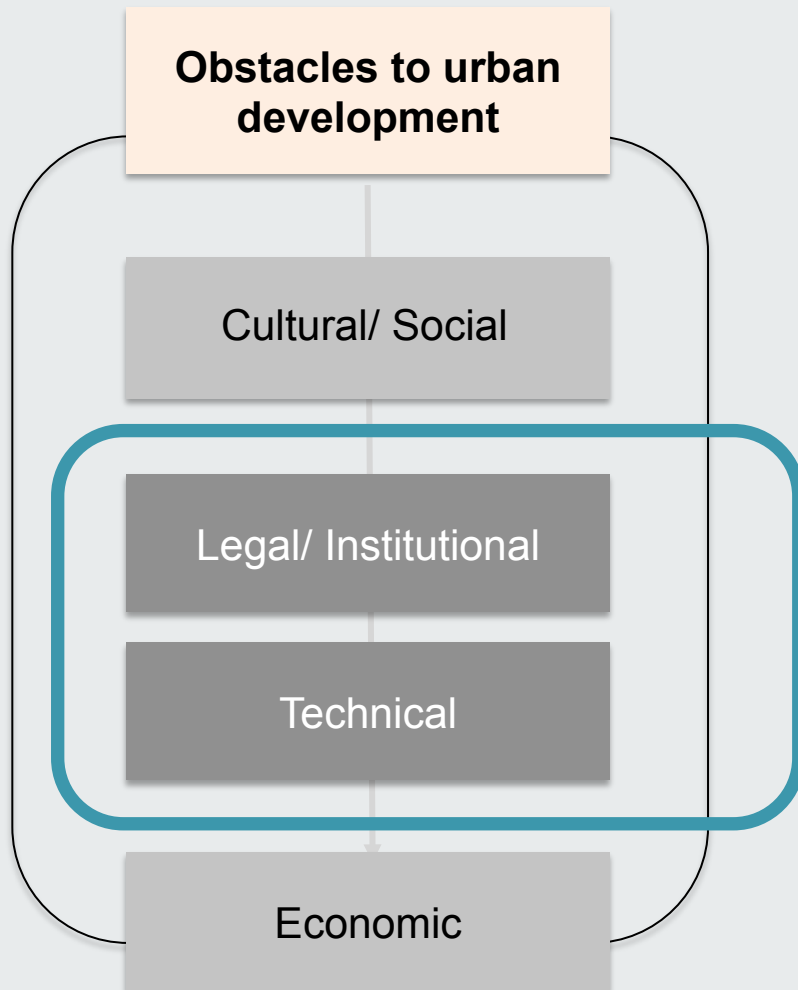
Legal/ Institutional

Technical

Economic

The absence of a ***win-win negotiation culture*** between the public and private sector

The presence of a **severe economic and financial downturn** that affected with particular relevance the real state sector



The lack of a comprehensive integration of the relations between **urban planning process**, **property rights and land market** dynamics:

- The lack of reliable and independent **land valuation mechanisms** embedded in the planning process;
- The lack of efficient and effective **dispute resolution mechanisms** (expropriation);
- The lack of efficient **mechanisms** to induce **voluntary negotiations** (fiscal, regulatory).

Literature review suggests ...

Urban transformation (and Detailed Plans implementation) in a multiple land ownership context is **most efficient** when is grounded in **strong institutions** that:

- **Clearly define and assign property rights;**
- **Enable independent land and property valuation processes and guarantee public dissemination of these values;**
- **Enable the judicial system to handle disputes that often arise in these type of processes.**

(World Bank, 2013)

Portuguese *institutions*

- ~~Clearly define and assign property rights;~~
- ~~Enable independent land and property valuation processes and guarantee public dissemination of these values;~~
- ~~Enable the judicial system to handle disputes that often arise in these type of processes.~~

(World Bank, 2013)

The definition of property rights in the Law

Portuguese legal doctrine deals in a *vague* way with the nature of the so-called “*jus aedificandi*”

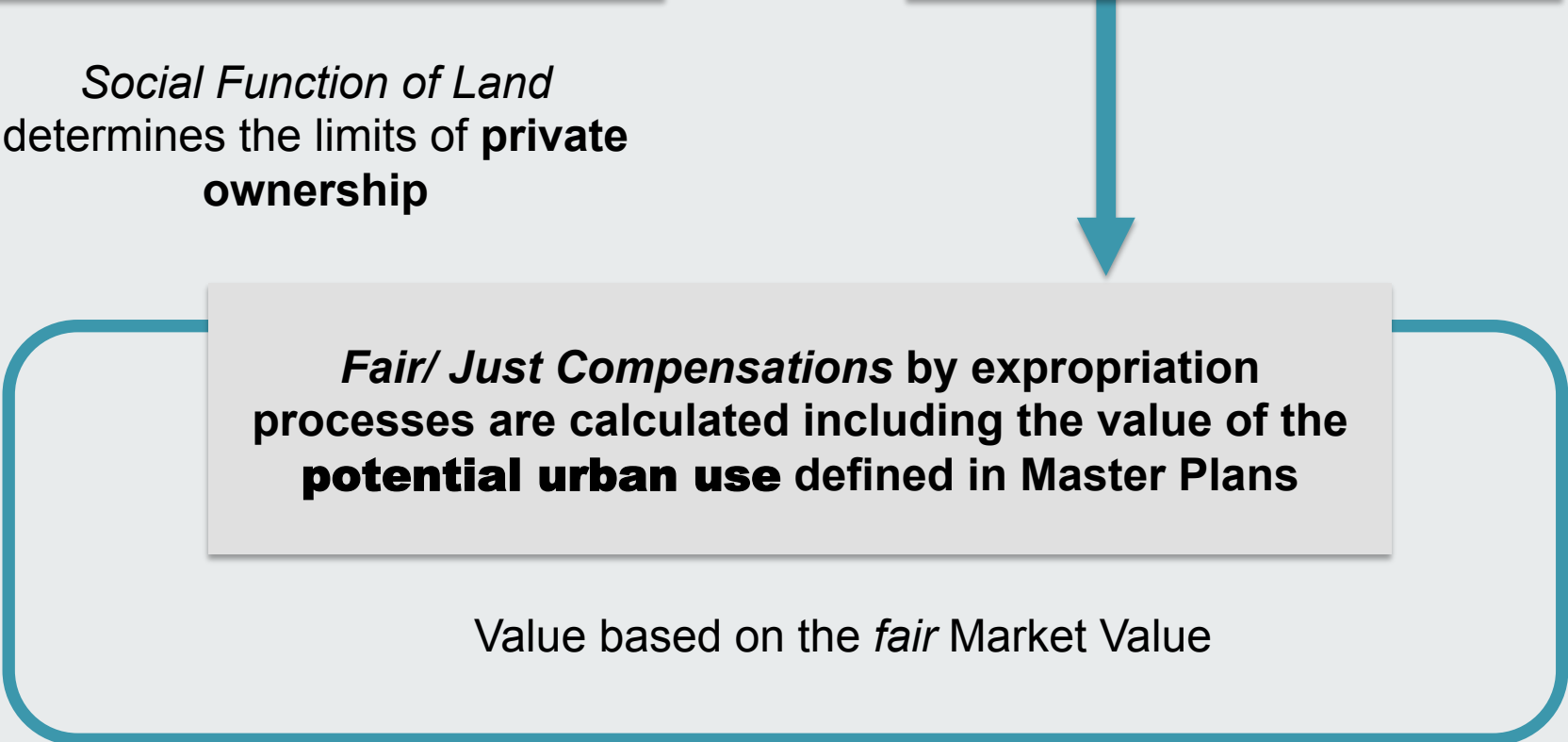
Does the right to build constitute a private faculty, inherent to the right of private ownership of the land (**private law thesis**)?

Does it correspond to a public subjective right attributed by public authorities through plans or building permits (**public law thesis**)?

Planning Legal framework:
public law thesis

Social Function of Land
determines the limits of **private**
ownership

Expropriation Law:
private law thesis



Fair/ Just Compensations by expropriation
processes are calculated including the value of the
potential urban use defined in Master Plans

Value based on the *fair* Market Value



Market Value

estimated value of transaction considering the best use in a normal economic context

Value of just compensation should not include the situations of clear deflation or inflation of speculative values.

That is not the case in Portugal...

**Expropriation Law:
Law 168/99**

“... Arithmetic average of prices observed in the same parish or neighbor parishes, in the three years from the last five, with higher annual average”

Land is assessed by reference to the
most speculated market values

Lack conditions of **transparency and
predictability**

High levels of risk and uncertainty

Urban Park of Almada:

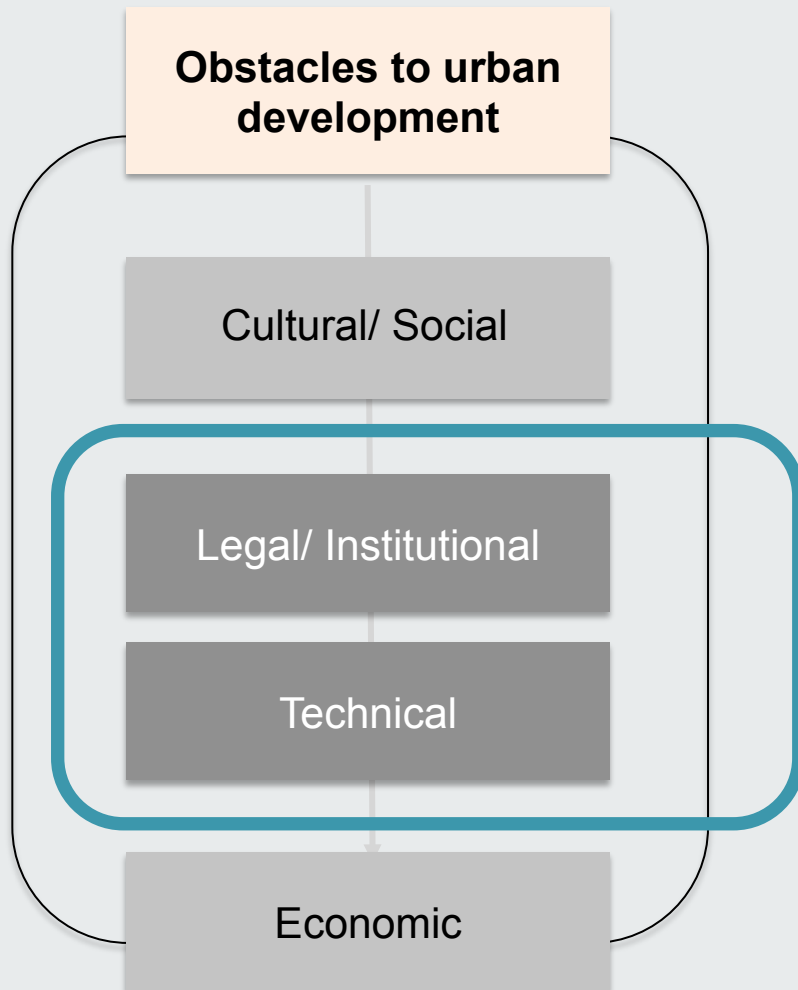
Values can range from € 1.250.000 to € 15.000.000



(Pardal and Lobo, 2011)

High levels of risk and uncertainty

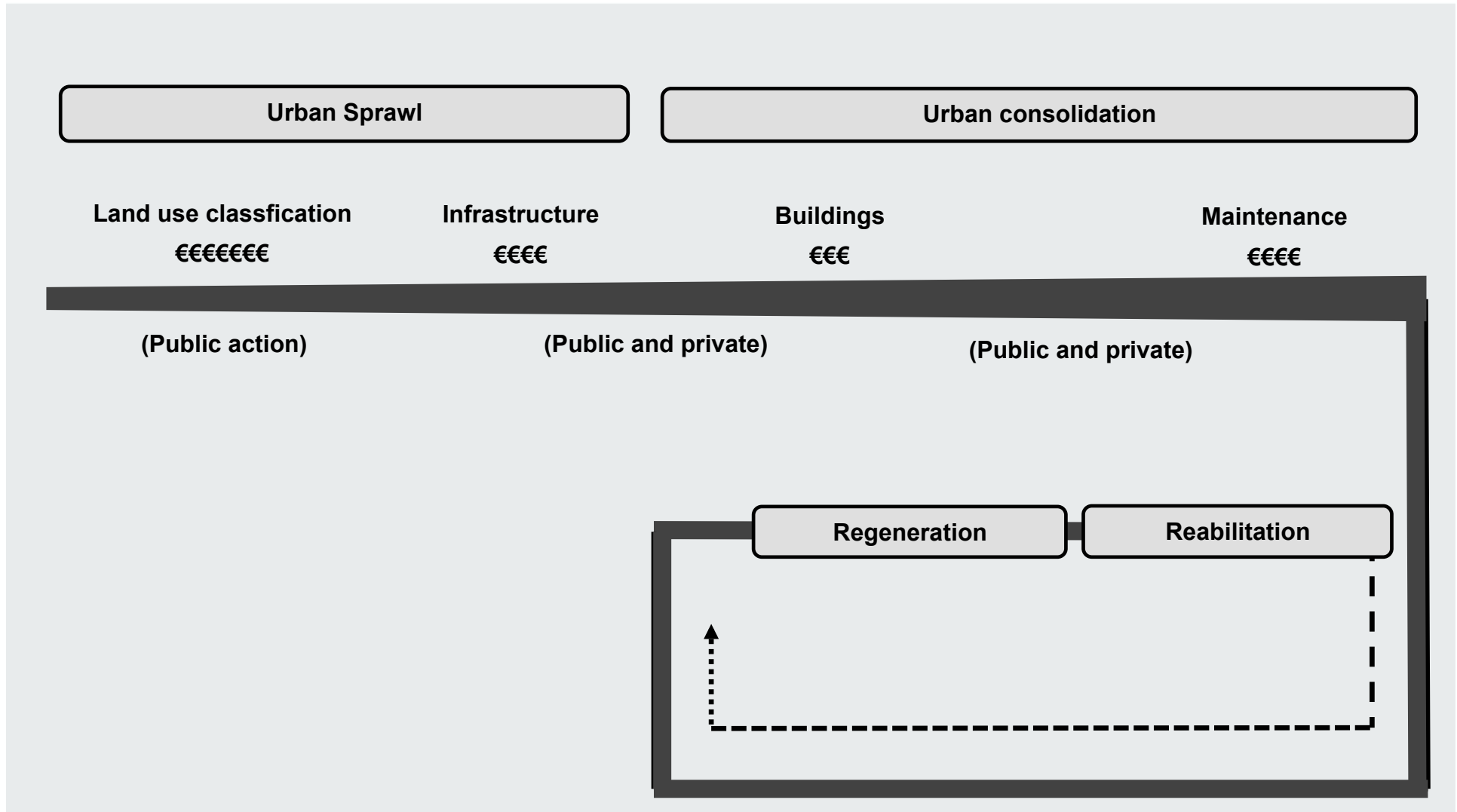
Municipalities do not have effective powers to enforce development or to instigate *voluntary* negotiations



The lack of a comprehensive integration of the relations between **urban planning process**, **property rights** and **land market** dynamics;

- The lack of reliable and independent **land valuation mechanisms** embedded in the planning process;
- The lack of efficient and effective **dispute resolution mechanisms** (expropriation);
- The need for efficient **mechanisms** to induce **voluntary negotiations** (fiscal, regulatory).

Win-win negotiation culture



Win-win negotiation culture

Urban Sprawl

Urban consolidation

Land use classification
€€€€€€€

Infrastructure
€€€€

Buildings
€€€

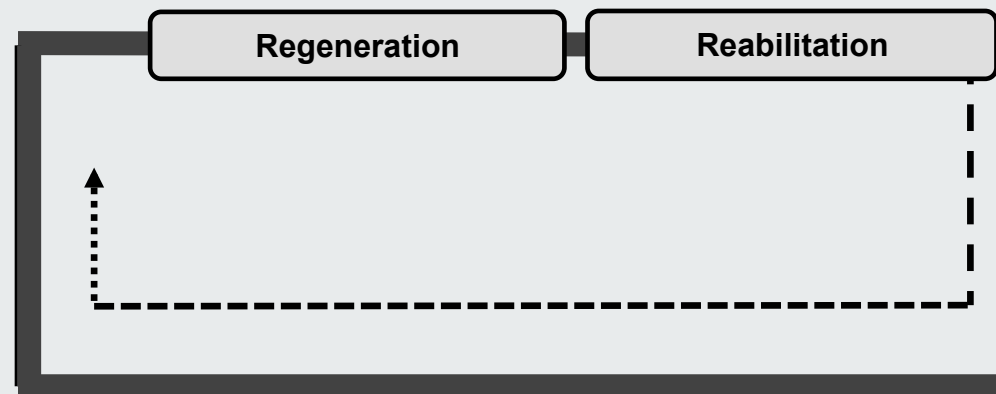
Maintenance
€€€€

(Public action)

(Public and private)

(Public and private)

The need for efficient mechanisms to induce voluntary negotiations along the process: economic, fiscal, urban



Final Remarks:

Make UD within assembly mechanisms more attractive for private agents than other urban development methods:

- Incentives instruments (fiscal, financing, urban)
- Clear regulation rules
- Proactive and supportive Public Administration



Ana Morais de Sá
Beatriz Condessa
Marco Couto Rodrigues

ana.morais.sa@tecnico.ulisboa.pt
beatriz.condessa@tecnico.ulisboa.pt
marco.couto@tecnico.ulisboa.pt

<http://projectopercom.ist.utl.pt>



The Portuguese Foundation for Science and Technology (FCT)
provided the financial support for this research
(Project PERCOM - PTDC/AUR-URB/120509/2010).