

# Controlling Retail Development between Restrictiveness and Innovation. Insights from Portugal

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## ABSTRACT

Retail planning policies have become more important in the course of retail change that negatively affected traditional trade centers of several Western European countries after the 1950s. Consequently, governments have begun to more actively control the development and location of new large-scale retail developments. The objective of this article is to analyze the evolution of the policy designed to control the implementation of new retail developments in Portugal. We aim to answer the following research question: "What have been the main characteristics of planning permissions for new retail developments in Portugal?" Besides the theoretical support, our research was based on the analysis of the Portuguese legislation implemented to regulate retail, especially major retail developments. We conclude that, overall, retail planning policies balance between periods characterized by the restrictiveness regarding the opening of new large retail developments and periods where the legislation is smoother, mainly with the objective of increasing innovation in retail, through new formats and companies. Consequently, although ambiguous, this control of retail development has allowed the government to respond both to private promoters and independent retailers.

## 1. INTRODUCTION

The evolution felt in retail in the second half of the last century broke the traditional link that it had with cities, traditionally characterized by its concentration in the main town centre. The appearance of large-scale shopping centres and retail formats such as hypermarkets has led to the development of new retail centralities in peripheral areas. However, this dissemination of retail through peripheral locations was also a consequence of the evolution of cities and societies. The displacement of inhabitants from central locations to new peripheral urbanizations and the increase of the motorization rate constitute two of several changes that fostered retail decentralization. Soon, some impacts began to be felt on town centres causing a decrease of their vitality and viability. Consequently, national governments felt the need to

actively develop policies and instruments to control retail, meeting the needs of different sectors of society. The purpose of this paper is to clarify the process of regulation of retail development in Portugal in the last twenty-five years and, thus, stimulating the debate on retail planning policies. The main research question that underlies this article is as follows: "What have been the main characteristics of planning permissions for new retail developments in Portugal?" To answer this question we have analysed planning regulations, with a focus on all legal documents that serve as the basis of retail planning policies implemented in Portugal. The balance between the implementation of restrictive measures to preserve existing retail sector and traditional centres of commerce and the search for innovation in the sector is an issue explored in this paper. In the next section we will contextualize the procedures usually adopted to control retail. To do so,

we will begin with a brief introductory overview of some approaches adopted in different European countries, namely France, Sweden, England, Denmark, Netherlands and Germany. We choose to incorporate these countries because they fit into what Davies, R. (2004) appointed as countries of restraint, characterized by a tight control over retail development [1]. In the following section, we will analyse the evolution of the main planning permission legislation in Portugal. Finally, some concluding remarks will be drawn. Retail is a very dynamic sector, either from the private but also from the public sector point of view, through new regulations or amendments of existing ones. Therefore, the examples given in this paper about retail planning policies established in other countries should be interpreted as illustrative.

Other type of regulation has been used, such as regulations on opening hours. According to Davies (2004) the predominantly catholic countries of Western Europe have had very strict laws on when stores can or cannot be open, focusing on constraints on Sundays and evenings [1]. However, because it is not the aim of this research, we will focus our analysis on the main land-use planning documents, although some references will be made to other measures.

## 2. THEORY AND METHODOLOGY

According to Davies (1995) the increase of relevance of retail planning policies emerged with the changes in the industry, with the “*huge growth in the sizes of new stores, in the sizes of new shopping centres and in the sizes of leading companies*” [2]. Alongside these changes is the search of new locations for their deployment and, consequently, the negative impacts on independent retail located in traditional centres of commerce. Although not limited to this in-town or out of town retail, it was the debate of how much retail decentralisation was necessary that Davies (1995) assumed to be the cornerstone of retail planning policies [2]. To this author the core of this debate focus on two opposing goals: the search for retail modernization, aiming to improve the efficiency of the industry and the equitability, assuming that the entire population should have access to shopping opportunities. In the last half a century different authors have recognized this ambiguity of goals in retail planning policies (Boddewyn and Hollander (1972), Dawson (1979a).

The control of retail is usually made through the national planning system and/or by specific regulation [7]. In the first case we may exemplify with Sweden, where besides some occasionally non-mandatory guidelines from the Swedish National Board of Housing, Building and Planning (Boverket) the control over retail location is made through the national document “Planning and building act” and municipal

plans “Comprehensive plan”, “Detailed development plan” and “Building, demolition or site improvement permit”. In this country almost all of the decision lies in city councils through what is known as planning monopoly [8], [9]. In Denmark this process is similar with the control of retail being made through the Planning Act [10]. Nevertheless, as opposed to what happens in Sweden, the defence of town centres is one of the main points considered in the Danish national retail planning policies [11]. In Germany the control of retail is also made through the land-use planning, especially with *Baugesetzbuch* and *Baunutzungsverordnung*, plans that control the location and size of new retail stores [12], [13]. In the Netherlands, a country with restrictive retail planning policies towards the implementation of new establishments, the control is also made through land-use planning, namely through the PDV policy (*Perifere Detailhandels Vestiging*) implemented in 1973 and GDV policy (*Geconcentreerde grootschalige detailhandelsvestiging*) in the 1990s, allowing the control of the location of peripheral and large scale retail [14], [15]. In an opposite way, in France, in 1973, mainly after the rapid growth of the number of hypermarkets, the control of retail, was made through the implementation of the *Loi d'orientation du commerce et de l'artisanat*, usually known as *Loi Royer*, aiming to stagnate the decline of small retail [16], [17], [18]. In England, since the adoption of Town Centre First policy in mid-1990s, the regulation of retail has been done through the 1996 revised Planning policy guidance (PPG6) which has brought a new set of instruments, such as the sequential approach [19] and the concept of flexibility [20]. In this period, the need test, already applied since the 1970s, acquired a relevance it did not have before [21]. Subsequently this planning policy was replaced by Planning Policy Statement 6 in 2005 [22], Planning Policy Statement 4 in 2009 [23] and National Planning Policy Framework in 2012 [24].

In all of these countries there is a control of the implementation of new large stores or shopping centres. Nevertheless the reach of the implemented measures varies and represents a political choice from the respective national government. Usually it is argued that in an extreme situation the restrictions on planning permissions will limit retail innovation. This was the case in the Netherlands, when it was argued that PDV policy was too protectionist, thus opening the path to GDV policy [25]. Considering that, in an opposite way, the absence of restrictions may introduce negative impacts on the existing retail sector and on the traditional centres of commerce, in most countries a mixed solution was adopted, i.e., not limiting new stores and formats but controlling it and introducing a positive discrimination of independent retail. Thus, not rarely, opposite measures can occur simultaneous in the

same country, for instance, allowing the implementation of new stores and, recognizing the impacts they will produced, new instruments and measures are implemented to support the modernization of independent retail and rehabilitating the public space of the traditional centres of commerce. Examples can be found on the urbanistic interventions aimed to pedestrianize several High Streets or in town centre management schemes already disseminated through different European countries.

### 3. RESULTS AND DISCUSSION

#### 3.1. Retail planning in Portugal

In Portugal, until the 1980s and 1990s, retail sector was characterized by small establishments, commonly with a family-based management, mainly located in town centres. In that period, following some changes that had previously happened in other countries of Western Europe, Portuguese retail sector was affected by the entrepreneurial concentration, the affirmation of cities polycentric structure and the consumption society [26]. Due to impacts caused by large retail structures that progressively opened in some Portuguese cities during the 1980s, the representatives of independent retail put some pressure on the government to establish rules to control their implementation [27]. The chosen process was not

completely restrictive. Nevertheless, it required that large commercial developments undergo an authorization process [28]. Consequently, in 1989, the first law with restrictions on the licensing of large-scale retail was approved [29]. With this law, all retail establishments over 3,000 sq. m. had to have a previous approval (in 1991 this restriction was extended to wholesale). In 1992 this law was amended and began to incorporate all establishments larger than 2,000 sq.m. In a process similar to the one occurred in France upon the implementation of *Loi Royer* [30], [31], [32], private promoters reacted in order to circumvent this regulation and, consequently, a large amount of new establishments sized from 1,500 to 1,999 sq. m were open [33]. Since then, some amendments have been made to that law and two significant changes are perceptible. The first was the introduction in 1995 of the population criteria, assuming that in smaller settlements the impacts of a large-scale retail store would be higher.

The second was the substitution of this last criterion for another related with entrepreneurial environment. Consequently, the opening of an establishment from a multiple chain would always require prior authorization, even if it was a small retail store located in a town centre. Instead, the opening of an independent medium-size store did not require that authorization.

Table 1. Decision criteria for the approval of large-scale retail establishments [34].

Decision criteria	Year of legislation						
	1989	1991	1992	1995	1997	2004	2009
Size							
Population							
Entrepreneurial							

Table 2. Entity responsible for the approval, according to the type of establishment [35].

Entity responsible for approval	Type of establishment
Regional Directorate of Economy	Retail establishments with sales area between 500 sq m and 1,500 sq m, not belonging to the same company that uses one or more emblems or not part of a entrepreneurial group; Retail stores of non-food integrated into shopping centers; Wholesale establishments in self-service; Retail stores, including the ones who expand their sales areas less than 20%
Regional commission	Retail establishments with more than 3,000sq m of sales area and the stores who expand their sales areas more than 20%
Municipal commission	The remaining cases

Until 1997 the decision of approval fell back on the Ministry of Retail and Tourism. Following some changes in the government structure but also as recognition of the relevance of retail to the economy, in that year the Ministry of Economy became responsible for the approvals. Following an approach that was

previously applied in France with *Commission Départementale d'Urbanisme Commercial* and *Commission Nationale d'Urbanisme Commercial* [4], in 2004 the decision was decentralized to the Regional Directorate of Economy and to a regional and municipal commission. In part, this was the recognition of the

relevance of large retail structures, whose impacts extend beyond the municipality's borders where they are located.

The regional Directorate of Economy became responsible for the approval of single stores between 500 and 1,500 sq. m while the regional commission decided the approval of stores of more than 3,000 sq. m and retail structures.

The regional commission integrated several elements from the municipal level, specifically the mayor from the municipality where a new retail development was proposed and the respective local chamber of commerce. The consumers association, not

necessarily with a predefined territory of intervention, was also incorporated in this commission. The municipal commission became in charge of the approval of the remaining authorization applications. Because it was supposed to only incorporate the approval of stores whose catchment area would not go beyond the municipalities' borders, the majority of the elements were from this territorial level. On the basis of this commission decision-making process is decentralized, allowing city councils to decide about the implementation of stores with small catchment area which, therefore, would not cause negative impacts on a neighbouring municipality.

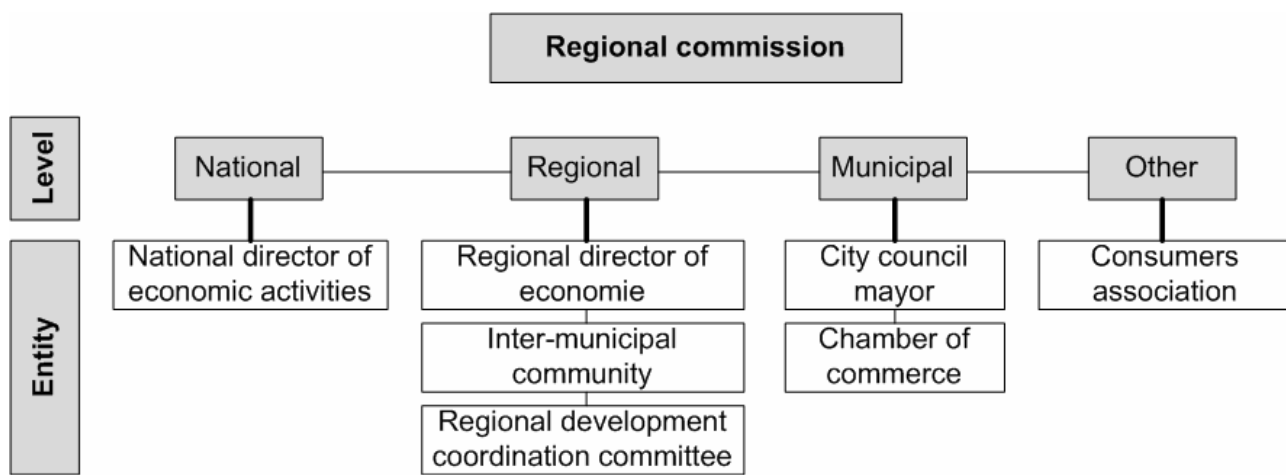


Fig. 1. Elements of the regional commission [35].

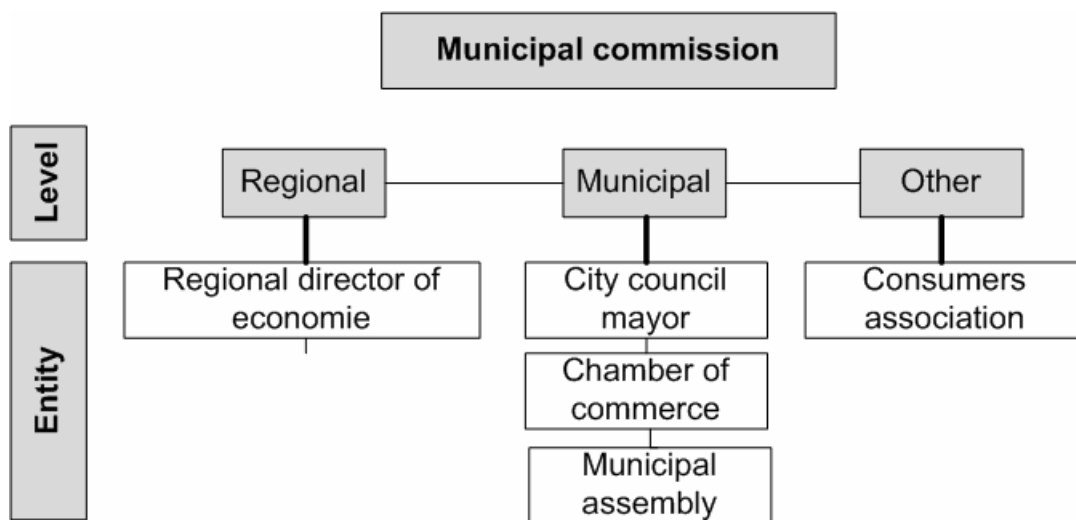


Fig. 2. Elements of the municipal commission [35].

In 2009, the 2004 law was amended by Order nº 21/2009, from 19th of January [36]. Recognizing that some bureaucratic problems were found in the application of the previous legislation, this 2009 revision intended to simplify the authorization process. To do so, the previous three levels of approval were replaced by a single one: COMAC (retail evaluation commission). As we can see in figure 3, in practical

terms, this commission represented an amendment of the previous regional commission, to which was withdrawn the chamber of commerce and consumers association. The removal of these entities from the decision committee meant the loss of power of the local level representatives, emphasized with the exclusion of the municipal commission. Alongside this instrument to control the development of new large retail stores

and shopping centres, the regulation of opening hours has been an active retail planning instrument. Since 1977, this law has been amended five times. Until 1995, due to weak presence of large shopping centres in the Portuguese territory, the stores located in those retail spaces had to comply with the same opening hours of retail located on High Streets.

However, in 1995, recognizing the increasing importance of new forms of commerce, large retail stores (of more than 1.000 or 2.000 sq m according to the number of population in the respective municipality, either located in a shopping centre or in the street, could only be open on Sundays for a period of

six hours, between January and October. Only fifteen years later, with Order n<sup>o</sup>111/2010, from the 15<sup>th</sup> of October, this restriction ceases to occur [37]. Although formally the 1995 regulation continued to exist, the 2010 amendment made it possible for the final decision to be taken by the city council.

This decentralisation led to the permission for all establishments, regardless of their size, to be open on all Sundays. Although this decision was criticized by the representatives of independent retail, the municipalities defended their option, justifying it by claiming that consumers demanded this change.

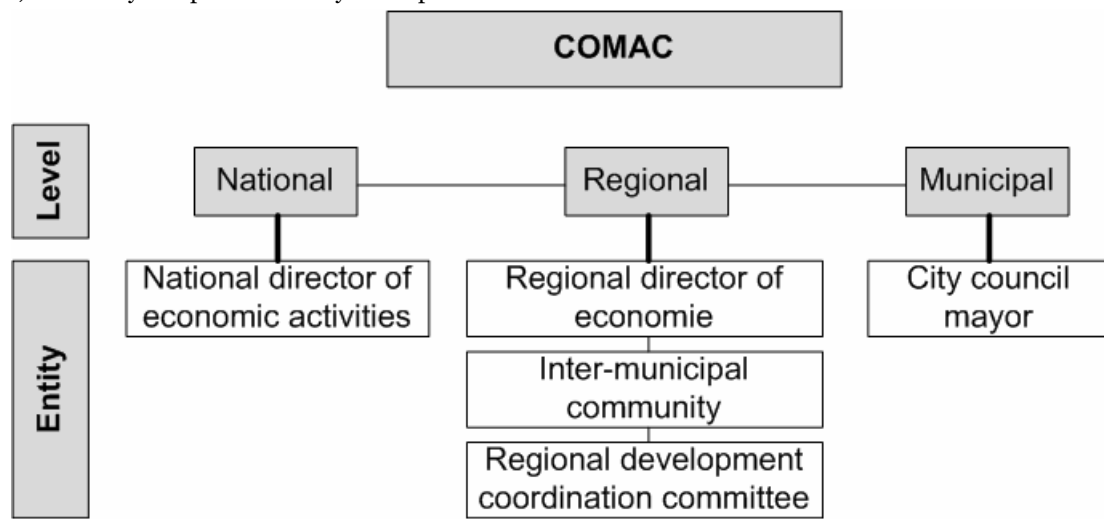


Fig. 3. Elements of COMAC [36].

### 3.2. The defence of town centres and small retail

During these last decades, accompanying the regulation of new establishments and their opening hours, the Portuguese government have been launching a set of measures that positively discriminates town centres and independent retail located in those areas. These constitute compensatory measures for the previous dissemination of shopping centres and large retail stores. Among other measures, pedestrianization was one of the most important measures implemented in Portugal [33].

However, due to its relevance, in terms of investment and stakeholders involved, the public programmes implemented to support retail modernization stands out. The first one (SIMC) was implemented in 1989, followed by Procom (1994), Urbcom (2000), Modcom (2005) and Comércio Investe (2013). Within these, Procom and Urbcom must be enhanced, which became known as Commercial Urbanism Programmes [34], [38].

These programmes were innovative because it was recognized that town centres problems could not be treated independently but in a holistic way.

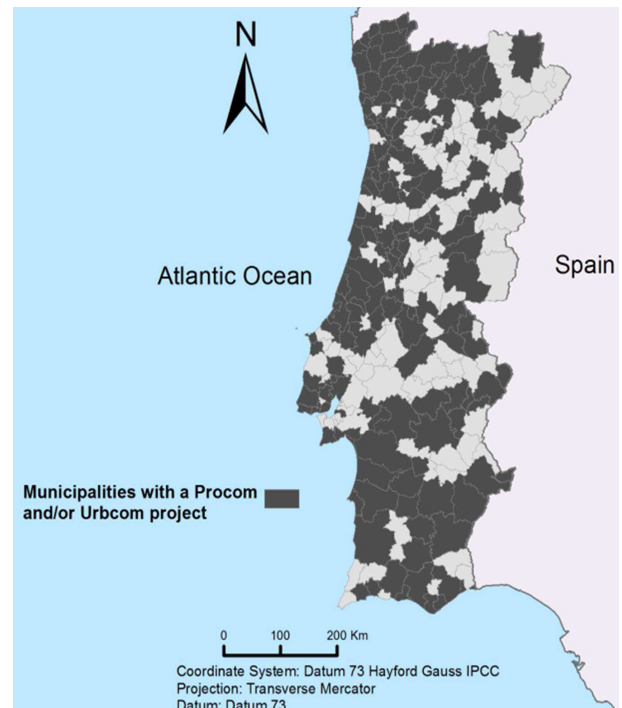


Fig. 4. Municipalities with at least one Procom and/or Urbcom project (source: Data from DGAE [39]. Cartography performed by the author).

Therefore, these programmes incorporated projects that simultaneously supported the physical rehabilitation of the main traditional centres of commerce, the modernization of retail stores located on those areas and the creation of promotional events. Between 1997 and 2008, under Procom and Urbcom financial package 192 projects were implemented, covering 176 municipalities.

Generally, these programmes involved the financial support for the modernization of 8408 retail stores, for the physical rehabilitation of the 192 intervened areas and for the creation of animation events. In total €635,925,656 was invested, of which 328,285,044 was from non-refundable public funds (51.6% of total).

Despite the implementation of regulation to control the opening of new large-retail stores or shopping centres, between the first law, in 1989, until

2010, there was a continuous process of approvals for new large retail stores or shopping centres [40]. As we can see in table 3, there are some variations between 1989 and 2010, in terms of the opening of establishments (measured in sq m) and in terms of the retail category (divided into food and non-food retail).

The first period marks the beginning of retail modernization, although still quite incipient.

The second is clearly characterized by the wide dissemination of new retail formats like hypermarkets, with food retail accounting 90% of all authorization grants. In the following two periods there was a reduction of the relevance of food retail, although this category still accounted for almost half of all authorization grants. Even if not comparable to these periods, in the year of 2010 the percentage of new non-food retail was significantly higher than in previous years.

Table 3. Granted authorization for the opening of new large retail stores or shopping centres, in sq m (source: After CCP and DGAE (2011, in Cortez [41]).

Years	Food (or predominantly) retail		Non food retail		Total (retail)	
	(sq m)	(%)	(sq m)	(%)	(sq m)	(%)
1989 - 1992	177,950	90	19,114	10	197,064	100
1993 - 1997	897,230	90	98,911	10	996,141	100
1997 - 2004	358,694	42	489,889	58	848,583	100
2004 - 2009	1,045,518	51	1,003,041	49	2,048,559	100
2010	51,140	29	127,855	71	178,995	100
Total	2,530,532	59	1,738,810	41	4,269,342	100

#### 4. CONCLUSION

The public intervention concerning retail regulation became more active during the process of retail modernization. The implemented regulation did not intend to hinder that process but somehow just to delay it and minimize its impact on existing town centres and independent retail. In fact, drawing from the analysis made on other European countries

previously analysed, it became evident that Portuguese retail planning shares some of their ambiguity.

Further deepening this argument, as we can see in table 3, although the regulation demanding for a previous approval was implemented in the same year as the first public programme (Simc), it did not prevent the large scale approval of large-retail stores and shopping centres.

Table 4. Synthesis of major trends in retail planning policies in Portugal.

Retail planning instrument	Period		
	1980s	1990s	2000s
Licensing	Non-existent (until 1989)	Active	Active
Opening hours	Non-restrictive	Restrictive	Decentralization (non-restrictive)
Retail modernization programmes	Non-existent (until 1989)	Active	Active

In fact, answering the research question what we have found is the trend to the decentralization of major decisions on planning permissions, in a process somehow similar to what can be found in Sweden and

the Netherlands. To illustrate this argument is the power given to municipal stakeholders in the regional and municipal created in the 2004 revised law (although revoked in 2009). The 2010 amendment of

shopping hours regulation decentralized the decision-making to municipalities, which eventually led to the liberalization of the opening and closing hours. It is in this variety of different regulations and revisions that, as a concluding remark, one may find hard to say that there is a public policy towards retail in Portugal. What we found is a set of detached laws, with no common purpose, sometimes even contradictory, i.e. approving at the same time the implementation of new retail stores and, in parallel, recognizing the negative impacts they will produce, new compensation instruments start to be available through retail modernization programmes. This way, the Portuguese government was able to answer different sectors of the society, both to large private promoters who aimed to provide new shopping facilities to a society which has become more consumerist and to independent retail seen as an important part of the society, in part due to its location in traditional town centres but also to the pressures established by their representatives.

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