

SIMPLIFICATION OF DEBT COLLECTION IN THE EU

(European Order for Payment Procedure and European Small
Claims Procedure)

Portuguese national report

José Caramelo Gomes¹

Diana Araújo Borges²

Noemia Bessa Vilela³

¹ Professor of EU Law. Instituto Jurídico Portucalense Legal Research Institute.

² Research assistant. Instituto Jurídico Portucalense Legal Research Institute.

³ Research assistant. Instituto Jurídico Portucalense Legal Research Institute.

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Introduction

This report deals with the national and European procedure law for the simplified recovery of money claims (except where indicated otherwise) in Portugal. As noted by the project team, there are different options for debt collection in the European Union (EU): supranational simplified and accelerated procedure for recovery of claims (either European order for payment procedure according to Regulation 1896/2006 or European small claims procedure according to Regulation 861/2007) and national civil procedure rules, possibly enforced in other EU Member States either by virtue of the Brussels I Regulation (issue of the declaration of enforceability in exequatur proceeding, Article 38 Regulation 44/2001) or without the need for a declaration of enforceability, if a judgment on an uncontested claim was certified as a European Enforcement Order (Article 6 Regulation 805/2004).

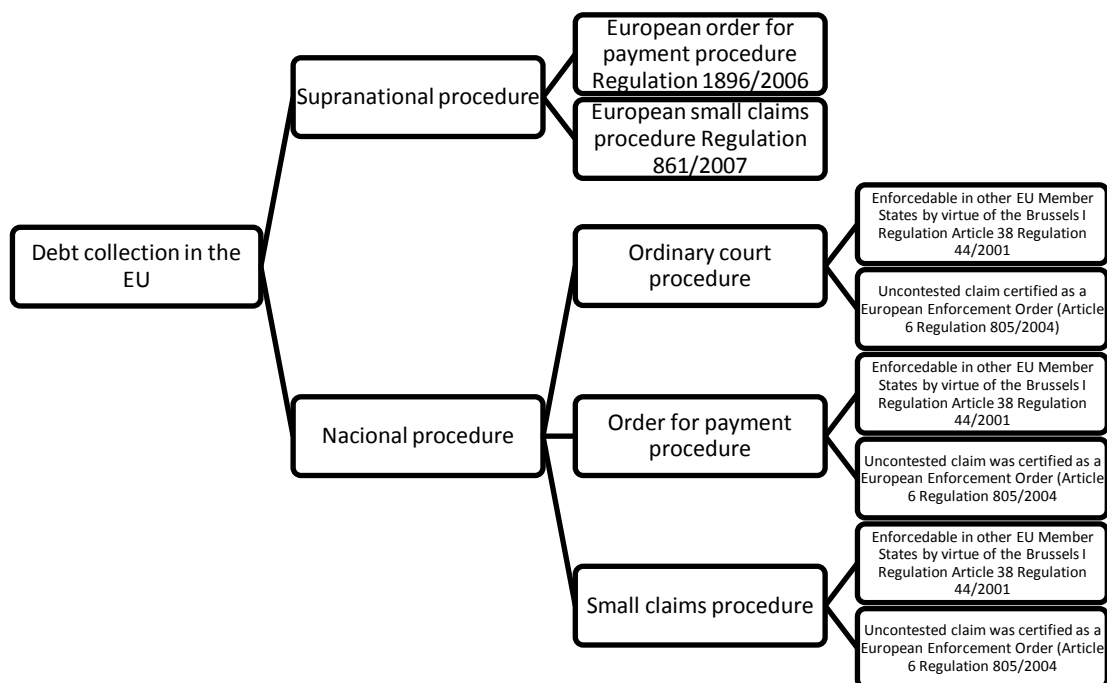


Diagram 1 - Debt collection in the EU

The Authors consider that the primary goal of the Project is to deliver a clear overview over the most expedite, cost-efficient and easy options for cross-border recovery of debts in the EU. To do this, national reports must address quite specific issues, such as the delay of the procedures, the cost and the ease of each path. The complete understanding of the various difficulties that may arise implies a holistic approach requiring the learning of several aspects that are dealt with in this report.

I. General overview

1.1 The Portuguese legal system⁴

Portugal became independent in 1143 and is one of the oldest nations in Europe. Except for a brief period of 80 years, between 1580 and 1640 (when Portugal and Spain were united under the same crown) Portugal has been sovereign over the same European territory for several centuries. Moreover, the Atlantic expansion between the 14th and the 17th century allowed Portugal to develop and maintain a colonial empire reaching as far as Africa (Angola, Mozambique, Cape Verde, Guinea and S. Tome and Prince) South America (Brazil), Asia (possession in India and China) and even to the Pacific Ocean (East Timor). At the same time trade with the local populations was developed and Portugal settled a huge number of commercial outposts throughout the world.

There is a tradition of legal stability in the Portuguese legal system. Although there have been significant political changes over the centuries, the truth is that the core of the legal system seems to be able to outlive the political regime who enacted them. Portuguese legal system is considered to be a classic civil law system, with strong German and Italian influence.

The Portuguese legal system started to develop in the 13th century with the laws enacted by the King *Afonso II* in 1211, and later compiled in the Kingdom’s Ordinations of D. Duarte (1433-1438?). These documents were the base for the codification of the *Ordenações Afonsinas* of 1446 that were in force until 1521, when they were replaced by the *Ordenações Manuelinas*. Altogether, some of the laws included in the first Portuguese code (*Ordenações Afonsinas*) were in force for some 300 years, between 1211 and 1521. The second code of Portuguese legislation (*Ordenações Manuelinas*) was in force between 1521 and 1595⁵, when the *Ordenações Filipinas* entered in force⁶. This code has been in force, although with significant changes, until the 19th century, when the first modern civil codification, the *Código de Seabra* was enacted (1867). This code was in force until 1967, when the present Civil Code entered into force.

⁴ See José Luis CAMELO GOMES and José Carlos de Medeiros NÓBREGA, "Transfer of Ownership in Movables in Portugal," in *National Reports on the Transfer of Movables in Europe*, ed. Brigitta LURGER and Wolfgang FABER (Munich: Sellier European Law Publishers, 2011).

⁵ This relatively short period was due to the unification of Iberia under the same crown.

⁶ José Domingues, *As Ordenações Afonsinas - Três Séculos De Direito Medieval* (Sintra: Zéfiro, 2008).

At present, Portuguese legal order includes: Constitutional laws, which comprise the Portuguese Constitution itself, miscellaneous constitutional laws and laws amending it, the principles of international law, international agreements and the provisions of the treaties that govern the European Union and the acts issued by its institutions; Ordinary laws, which comprise laws enacted by Parliament, decree laws issued by the Government, and regional legislative decrees adopted by the Legislative Assemblies of the Autonomous Regions of the Azores and Madeira; Instruments with effect equivalent to that of laws, such as acts approving international conventions, treaties or agreements, generally binding decisions of the Constitutional Court declaring measures to be unconstitutional or illegal, collective labour agreements and other collective instruments regulating labour relations; Regulations, or legislative instruments of lower status than laws, whose purpose is to supplement laws and fill out the details so that they can be applied or implemented. These comprise regulatory decrees, regulations, decrees, regional regulatory decrees, decisions, rules, ministerial orders, executive rulings, and municipal orders and regulations⁷.

Portuguese judiciary includes several courts and jurisdictions: the Constitutional Court, the Supreme Court of Justice and the judicial courts of first and second instance, the Supreme Administrative Court and the other administrative and fiscal courts and the Court of Auditors. The judicial courts are common courts for civil matters and they exercise jurisdiction in all areas that are not attributed to other judicial jurisdictions.

Along with substantive law, Portuguese civil procedural law claims an equally long tradition. The first rules of judicial organization date back to 13th century by the hand of King Afonso II; the Supreme Tribunal of the Court was established in this period and, after some changes in its name, became the modern Supreme Court of Justice. Some key instruments of Civil Procedural law in Portugal include the Ordinance of 1582, restructuring procedural law, the Law of the 20th of August of 1774, who restructured the judiciary organization and procedural law, and the Laws 22, 23 and 24 of 1832, drafted by *Mouzinho da Silveira*, that operated a complete reform of the Portuguese judiciary and Civil procedure that last, although with numerous changes and amendments, until the 22nd of September 1926, when all of it was replaced by the Decreto n.º 12353⁸. Previous Portuguese civil procedural law had relied, until

⁷ European Union, "Homepage of Portugal in the European Judicial Network in Civil and Commercial Matters," European Commission, http://ec.europa.eu/civiljustice/homepage/homepage_por_en.htm.

⁸ Procuradoria Geral da República, "O Distrito Judicial De Lisboa - História E Curiosidades," (Lisboa2011).

then, on a private conception of the procedural affaire; the main principle governing all the proceedings was the Principle of the party initiative: the parties were in charge drive the courts action and carrying all proof for the judge to assess and finally rule. The magistrate was mainly a viewer, not an actor. The 1926 reform changed all this and paved the way for a Portuguese Code of Civil Procedure, enacted in 1939. This Code was replaced in 1961, amended for the first time in 1967, the second time in 1969, then 1970, 1974, 1975, five times in 1976, twice in 1977, once in 1978, twice in 1979, twice in 1980, once in 1982, twice in 1985, twice again in 1986, once in 1988 and 1990, once in 1991, once in 1993, once in 1994, twice in 1995, again in 1996, three times in 1998, once in 1999, once in 2000, twice in 2001, once in 2002, three times in 2003, once in 2004, four times in 2006, twice in 2007, five times in 2008, once in 2009, twice in 2010 and once (until October) in 2011. Fifty seven amendments in fifty years, nearly half of it in the last ten years!!!⁹

It is not clear the relationship between these amendments and the dramatic situation of the Portuguese Courts. Portuguese judiciary is usually and consistently considered to be quite inefficient, both by public opinion, legal professionals, stakeholders and international organizations. A clear evidence of such inefficiency is the length of the cases in the Portuguese Courts: the average duration of enforcement proceedings was 32 months in 2005 and increased to 43 months in 2010, whereas for declaratory proceedings the average duration of a case was 28 months in 2005 and decreased to 20 months in 2010. Criminal justice is in no better shape: a criminal case is expected to end after 10 months – this statistics are from the first instance only: no appeals are considered.

1.2 Courts jurisdiction and different types of litigation for debt collection in Portugal

Court’s jurisdiction is divided according to the nature of the dispute, hierarchy and the territory. The judicial courts are general jurisdiction, being competent for the disputes not attributed to another courts (Administrative courts, Tax courts). The courts of first instance are, as a general rule, district courts. These courts have general jurisdiction, that is, they can resolve all disputes except for those which are reserved by law for hearing by other courts¹⁰.

⁹ Direcção Geral de Política Legislativa, "Processo Civil," (Lisboa2011).

¹⁰ European Union, "Homepage of Portugal in the European Judicial Network in Civil and Commercial Matters."

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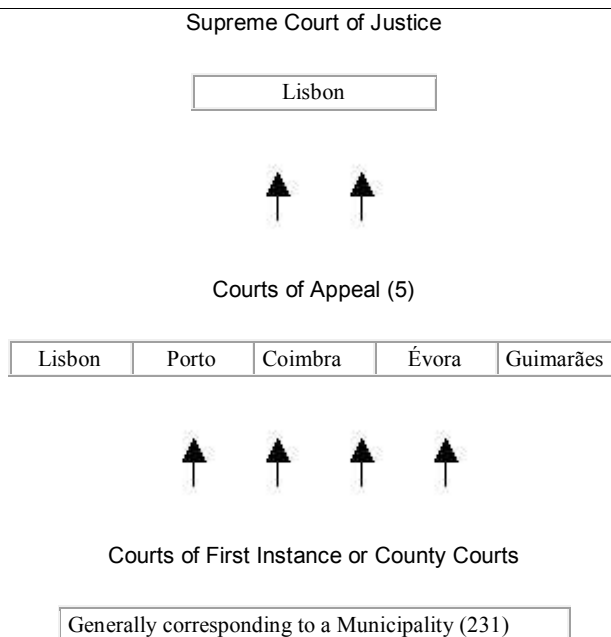


Diagram 2 - Structure of Portuguese civil judiciary¹¹.

There are different possibilities to gain a judgement in judicial proceedings in Portugal. This report shall deal exclusively with the “Civil” litigation, setting aside any consideration about the “Administrative” and “Tax” jurisdiction, as well as criminal justice. The following diagram summarizes the different possibilities to gain a judgement in judicial proceedings in civil litigation in Portugal:

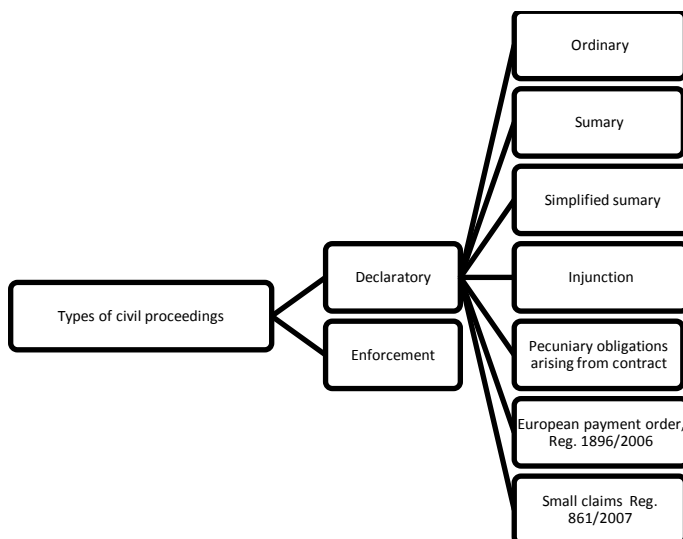


Diagram 3 - Types of civil proceedings

¹¹ Adapted from European Union, "Organisation of Justice - Portugal," European Commission, http://ec.europa.eu/civiljustice/org_justice/org_justice_por_en.htm.

The choice between the two main types of proceedings depends on the existence of a title of execution. Only when such title exists the claimant may start enforcement proceedings. In all other circumstances the claimant must start a declaratory proceeding to gain a title of execution: the right of the claimant (creditor) does not require recognition – the title suffices for this legal requirement.

Article 46 of the PCCP contains the list of instruments constituting title of execution: Enforceable titles or decisions are judgements, any kind of decision made by the judicial authorities which require the fulfilment of an obligation, decisions made by arbitration courts or tribunals, documents written or authenticated by a notary originating in the constitution or recognition of an obligation, private documents, signed by the debtor, establishing or recognising pecuniary obligations, the amounts of which are determined or can be determined by simple arithmetical calculation, or which lead to the recognition of the obligation to hand over an item or the need to fulfil an obligation, and those documents which, by special provision, are attributed enforceable status - such as, for example, cheques, promissory notes, payment orders, injunction requests which have been granted enforceable status and the minutes of joint property owners’ meetings.

The enforcement based on a decision made by Portuguese courts is performed by the court of first instance in which the case was heard. If a declaratory action has been brought in the Court of Appeal or the Supreme Court, the competent court for enforcement is that of the debtor’s domicile; if the title is an arbitration award from a Portuguese chamber, the competent court for enforcement is the district court of the place where the arbitration took place. As for the other enforceable titles, the general rule to be followed is that the competent court for enforcement is the court for the place where the obligation is to be fulfilled, unless the enforcement is for the handing over of a particular item or for the collection of a debt with a security, where the competent courts are the court of the place where the item is to be found or the court of the place where the items used as security are located. When the action for enforcement should be brought in the court of the debtor’s domicile outside Portugal and the debtor has assets in Portugal, the jurisdiction pertains to the court of the place where these assets are located.

If the creditor has no title of execution, it is necessary to obtain one through declaratory proceedings. There are several ways to do so: declaratory proceedings in one of the possible typical forms, ordinary, summary, simplified summary or pecuniary obligations arising from contract (national small claims track), injunction, European payment order or European Small

claims, whenever applicable. In this section we will deal only with the traditional forms of declaratory proceedings, e. g., the ordinary, summary and simplified summary proceedings.

The declaratory proceedings may have different aims: to declare the existence of a right or a fact (named “simple analysis proceedings”), to obtain a judgement condemning someone to deliver a thing or to perform a fact in consequence of the violation of a right (named “condemnation proceedings”) and to authorize a change in the existing legal order (named “constitutive proceedings”). Debt collection in Portugal will usually fall within the second category.

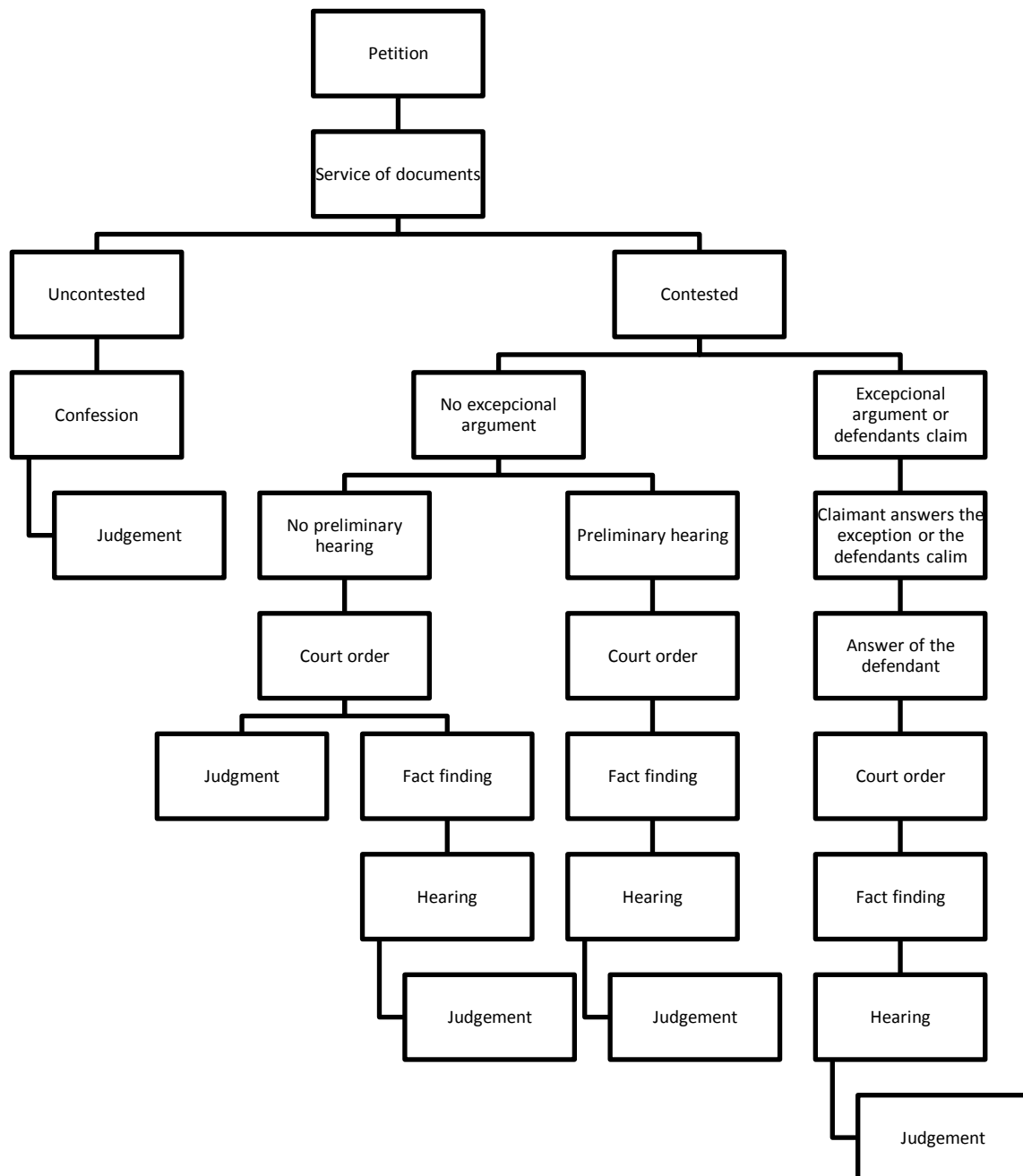


Diagram 4 - Stages of the declaratory proceedings

All three types of declaratory proceedings may follow the ordinary, summary or simplified summary track, depending on the value of the dispute and its relationship with the value limits of jurisdiction: County courts have exclusive jurisdiction (no appeal possible) for disputes under 5.001 euro and the Court of appeal has exclusive jurisdiction (no appeal possible) for disputes under 30.001 euro. Thus, ordinary proceedings apply to those disputes whose value is above 30.000 euro and the summary proceedings shall apply to those disputes up to 30.000 euro and above 5.000 euro. Disputes about money obligations that do not exceed 5.000 euro shall follow the simplified summary form of proceedings (small claims track).

The summary proceedings form of procedure follows its own special rules; whenever such rules don't exist, the similar rules of the ordinary proceedings shall apply. The simplified summary proceedings follow its' own rules and such rules don't exist then the rules for the summary proceedings, if any, shall apply; if no rules are to be found in the summary proceedings, then ordinary proceedings rules will apply – articles 462, 463 and 464 PCCP. This means that the model for all forms of proceedings in Portugal is the ordinary one. The main differences between the three different forms lay on uncontested claims, delays for the several stages and number of witnesses admitted to be presented by the parties for each fact.

Stage	Delay ordinary	Delay summary	Delay simplified summary
Defendant reply counting from service of documents	30 days	20 days	15 days
Answer to the reply	15/30 days	10/20 das	N/A
Answer to the answer	15 days	N/A	N/A
Preliminary hearing	30 days	30 days if applicable	N/A
Court order	20 days	20 days	N/A
Evidence taking	15 days	15 days	N/A
Hearing		30 days	30 days
Minimum theoretical grand total from service of documents	125 days	125 days	45 days

Table 1 - Declaratory proceedings delays

1.3 National summary procedures for recovery of monetary claims

Has seen above there are generic summary and simplified summary procedures for recovery money claims. Special proceedings also exist, the first of which is the order for payment procedure. There are also special procedures regarding the payment of money sums up to 15.000 euro arising from contracts and the special proceeding for the recovery of hospital debts. The first, special procedures regarding the payment of money sums up to 15.000 euro arising from contracts may, exceptionally, apply to claims up to 30.000 euro, in result of the mandatory conversion, in consequence of opposition, of a national order for payment procedure. The special proceeding for collecting hospital debts seems outside the scope of this project and won't be analysed in this report.

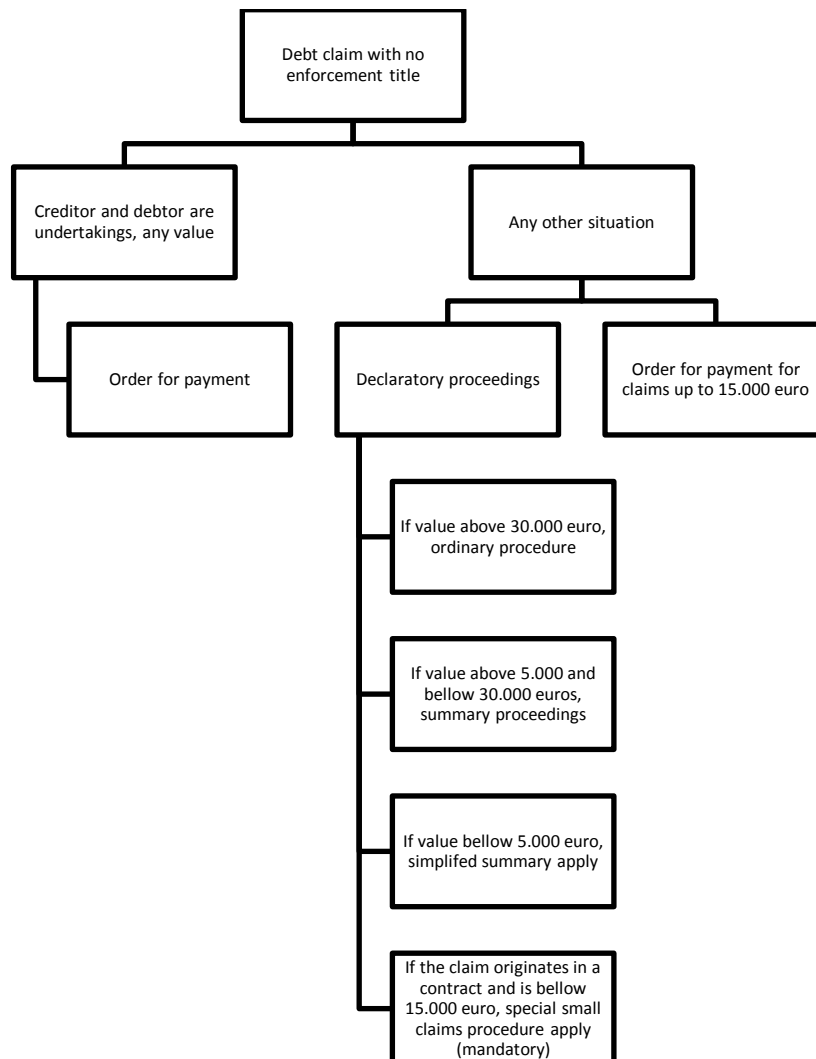


Diagram 5 - The way to the money, Portuguese national tracks

1.2 Explain the current state of IT operational options in judicial procedures for recovery of monetary debts.

Portugal has a high level of IT in both the Courts and its environment¹². In fact, in January 2009 Portugal achieved the goal of full proceedings dematerialisation. There is a web portal, www.citius.mj.pt, serving the complete jurisdictional cluster. Citius is, at the same time, the brand and the set of special applications that allow proceedings to be completely dematerialised from January 2009. As of 2007, 74% of the cases are dematerialised and all the acts of the courts are performed electronically. The dematerialisation rule applies also the pending cases insofar as new acts are concerned. There is a reduction in fees for all the cases when electronic means are used by the parties.

The service of documents between justice professionals is also dematerialised. The service of documents to the parties not represented by lawyer or solicitor remains with the traditional methods, usually registered mail. Electronic communication between de parties is now mandatory and the same applies to the communication between the parties and the court and within the court itself.

II. National order for payment procedure

The order for payment procedure was introduced in Portugal in 1993. For several years it remained almost “invisible”, although there were good reasons for its creation. It wasn’t until 1998, when an extensive amendment was introduced, that the order for payment procedure started to develop and to be widely used. The main reasons for the success were the accessibility of the track, the reduced cost, the needless of professional representation and a fastest solution. The payment order procedure is applicable to monetary claims arising from contracts only.

The order for payment procedure starts with a requirement delivered in a standard form (see annex 1 for template) either by electronic means – directly to the National office for injunctions – or in paper support, in which case it will be delivered directly to the competent

¹² European Commission for the Efficiency of Justice, "European Judicial Systems - Edition 2008 (Data 2006): Efficiency and Quality of Justice," ed Council of Europe. (Strasbourg: Council of Europe, 2008).

court. Filing the procedure online has the advantage of a fees reduction to 50% off the regular fees.

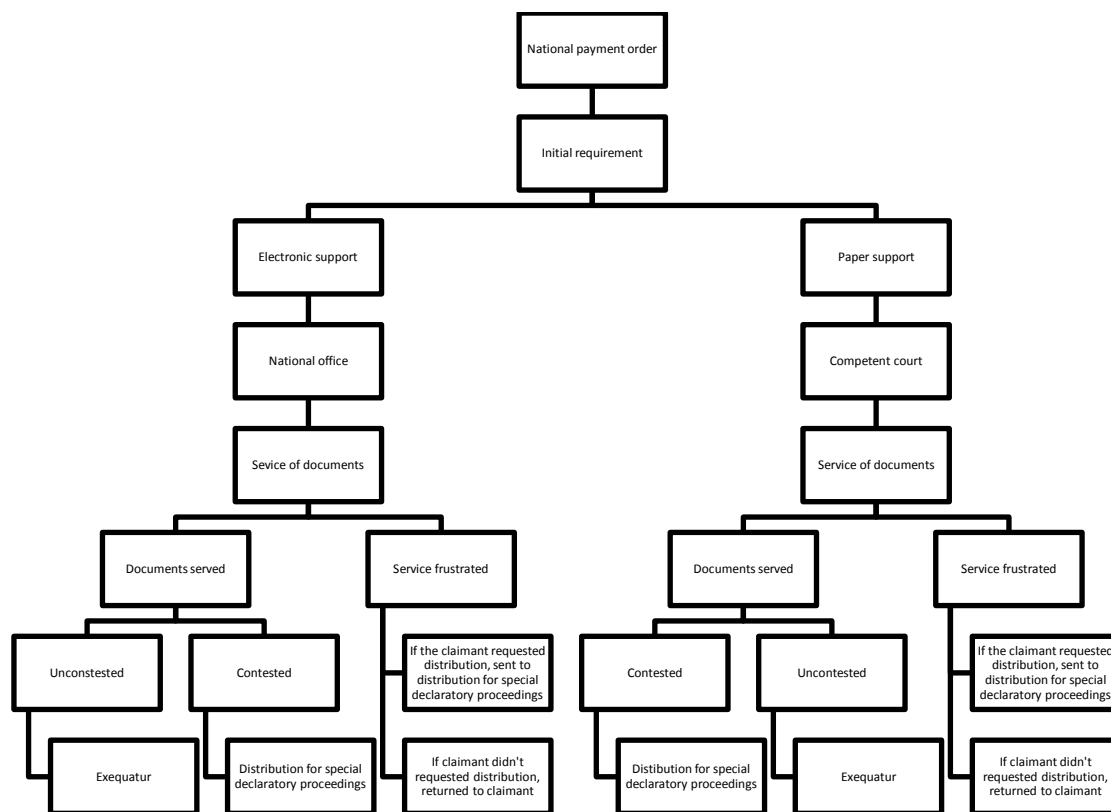


Diagram 6 - National order for payment procedure

2.1. Scope of the procedure

2.1.1 What types of claims are eligible (e.g. only monetary claims, only contractual claims etc.)?

The payment order procedure is applicable to monetary claims arising from contracts only. Depending on the quality of the parties, there are limits to the value that can be claimed: if both creditor and debtor are undertakings, and thus the claim can be classified as a commercial claim, there are no limits to the value of the claim. If one or both parties don't qualify as undertakings, there is a limit of 15.000 euro.

2.1.2 Is there an upper limit regarding the value of the claim (e.g. in Austria up to 75.000 EUR)?

Yes, depending on the qualification of the parties. See the previous answer.

2.1.3 Is the use of order for payment procedure optional or obligatory?

The procedure is optional, but the claimant has financial benefits (reduced fees, when compared with the alternatives – declaratory proceedings)

2.1.4 Is the procedure available if the defendant lives in another Member State or in a third country - is the national order for payment procedure possible in cross-border cases?

Yes, if the place of performance is in Portugal. There are two criteria to determine the jurisdiction of the Portuguese courts: the place of domicile of the debtor or the place of performance of the obligation. If the defendant has domicile in another country but the place of performance of the obligation is in Portugal the payment procedure can be filed in Portugal. This track, however, is not the best choice, as the service of documents will have to follow, when applicable, the rules of the Regulation 44/2001.

2.1.5 Is it one-step procedure (like according to Regulation 1896/2006) or two-step procedure (like in Germany having *Zahlungsbefehl und Vollstreckungsbescheid*)?

It's a one step procedure: after the delay has passed, the secretary of the National Office will issue the exequatur.

f) Rules on representation by a lawyer.

There is no need for lawyer representation.

2.2. Competent court. Are there applicable general rules on subject matter and local jurisdiction or is there only one court or body authorized to issue national order for payment? Discuss the advantages and disadvantages of your national rules on jurisdiction.

The Portuguese system is mixed. The competent court for the payment order procedure is the county court of: *i)* the domicile of the debtor, *ii)* the place of performance, or *iii)* the conventional jurisdiction; according to Portuguese law, the first two criteria lead to the same court: the place of performance is, if not agreed otherwise, the place of domicile of the debtor – article 773 of the Portuguese Civil Code (PCC). Nonetheless, the application (requirement) will only be delivered in that court if delivered in paper support. If delivered electronically, although addressed to the competent court, it will be electronically delivered to the National Payment order office that will proceed with the procedure.

2.3. Application for an order for payment - formal requirements:

a) Are there provided any standardised forms for application for an order for payment? If so, is the use of a standardised form obligatory and where can that form be obtained? Please describe the content of the standard form.

Yes, there is a standard form – see annex 1. The form can be downloaded from the Internet in the Citius portal – available at <http://www.citius.mj.pt/portal/>

b) Is it necessary to be represented by a lawyer?

Representation by lawyer is not mandatory.

c) Must the reasons for the claim be described in detail?

Although the standard form only allows for 8.000 characters, it is the court of Appeal understanding that there must be circumstantiated groundings for the requirement – see judgements of 30 of October 2007, 19 of May 2005, 17 of March 2005 all of the Court of Appeal of Oporto, and the judgement of 2 of February 2010 of the Court of Appeal of Lisbon.

d) Must written evidence be presented in respect of the claims asserted? If so, which documents are admissible as proof (e.g. invoice, bill of exchange etc.) and in what kind of form (written, online, other)?

No written evidence is required.

e) Can the application be filed electronically? If so, please describe the procedure.

Yes, with fees reduction.

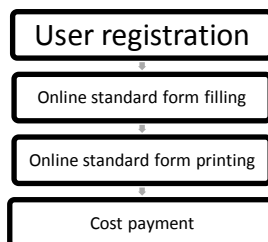


Diagram 7 – Electronic filing procedure – order for payment

2.4. Issue of the order for payment

a) Specific rules for dealing with submitted application for order for payment and issuing the court decision. The extent of the examination of the claim by the court.

The court proceeds to a formal exam of the requirement. If all the formal requirements are fulfilled, the court shall service the requirement by recorded mail.

The formal demands of the requirement are¹³:

- Use of the standard form – **Check**;
- Written in Portuguese – **Check**;
- Identification of the competent court – **Check**;
- Identification of the parties – **Check**;
- Indication of the place where the service of documents should be performed, referring if such place is a result of an agreement between the parties – **Check**;
- Summary of the facts supporting the claim;
- Express reference to the value of the debt, interest and other expenses claimed;
- When applicable, the mentions that the debt arises from a commercial contract and that both parties in the supporting contract are undertakings acting as such;
- Mention of the claimants domicile – **Check**;
- Mention of the claimants email address (if the claimant wishes to receive electronic information);
- The choice of distribution or not if the service of the requirement is frustrated and the information of the competent court, when applicable – **Check**;
- The option of service by an agent of execution or lawyer, with the representatives’ address when applicable.

Additionally, the court shall verify if the expenses are paid, if the value of the claim does not exceed the maximum value for the procedure and if the procedure is adequate to the claim.

b) The decision of the court on the payment order.

If the requirement is accepted, the court shall serve the requirement to the defendant, by recorded mail, in five days from the acceptance, to pay the claim and expenses or contest in

¹³ The ones checked by the court are marked **Check** in bold type.

15 days from the reception. There are rules to remedy the frustrated service of the requirement.

c) Information of the defendant on his procedural rights and obligations along with the decision: are there any legal instructions or guidelines to submit the application? If so please explain the content of the legal instructions (*Rechtsbelehrung*) on the order for payment.

There are no instructions on the order for payment requirement. These instructions are included in the courts order for service (notification). This order shall contain:

- Identification of the competent court;
- Identification of the parties;
- Indication of the place where the service of documents should be performed, referring if such place is a result of an agreement between the parties;
- Summary of the facts supporting the claim;
- Express reference to the value of the debt, interest and other expenses claimed;
- When applicable, the mentions that the debt arises from a commercial contract and that both parties in the supporting contract are undertakings acting as such;
- Mention of the claimants domicile;
- Mention of the claimants email address (if the claimant wishes to receive electronic information);
- The delay for payment or opposition and the way such delay is calculated;
- The information that if the requirement is not opposed it will be given *exequatur*;
- The mention about future interest;
- The mention that the unsubstantiated or wrongly substantiated opposition, when the defendant has the obligation to know about such situation, shall determine a fine and the amount of the fine.

d) Service of the order for payment on the defendant.

As referred to in 2.4 b) above, if the requirement is accepted the court will serve the order for payment to the defendant with the mentions referred to in 2.4 c) above. The rules applicable to the service are as follow:

- If the defendant refuses to accept the service by recorded mail, the messenger shall write notice of the incident and the service is considered performed.

- If the defendant is not found, the court will try to find, *ex officio*, information about the whereabouts of the defendant. It will use the National register databases as well as the Tax Authority database. If the same address is in all the databases, the notification will be sent by regular mail.

- The claimant may request that the service be made by an agent of execution.

2.5. Rejection of the application:

a) On which grounds? Is there a prima facie examination of a claim?

The application may only be rejected on the grounds explained above 2.4 a).

b) Does the creditor have an appeal against it?

Yes.

2.6. Opposition by the defendant (objection against order for payment) – prerequisites and procedure, especially:

a) Procedural rules: e.g. form (paper or electronic form), representation by a lawyer, deadline, court fees etc.? As to the deadline for the objection against the order for payment, please discuss arguments for shorter or longer term.

The opposition may be presented both in paper or electronic form. The consequence of the opposition is as follows: *i*) if the value is above 30.000 euro (debt arising from a commercial contract between undertakings) the order for payment procedure is converted in an ordinary declaratory proceeding; *ii*) if the value is up to 30.000 euro (again arising from a commercial contract between undertakings) the procedure is converted into a declaratory summary procedure; *iii*) if the value is up to 15.000 euro the procedure is converted into the special declaratory procedure (small claims track). Representation by a lawyer is only necessary in the situation described in *i*) above. In all other cases representation by a lawyer is not mandatory.

The delays for opposition are the established on the order for payment procedure. The main argument against the 15 days delay is related to cross-border order for payment: the 15 days delay is generally considered too narrow for a foreigner debtor to oppose, especially considering that the documents (application and service) will be delivered in Portuguese.

b) Does the objection against order for payment have to be substantiated or not (e.g. Article 16 (3) Regulation No. 1896/2006). If so, which are the most frequent reasons for successful objection.

Yes.

c) Effect of notice of opposition. If the objection is allowed, does the court revoke (annuls) order for payment, does the order for payment lose its effect *ex lege* or does the court uphold the order for payment and decides about its destiny with judgment in the subsequent litigation?

The procedure is converted into a declaratory procedure and send to the competent court.

d) The nature and structure of the procedure following the successful objection filed against order for payment.

See above, declaratory procedure.

2.7. Effects of the absence of timely opposition.

a) What is the consequence, if the objection is not filed? Does that mean that defendant only admits facts or recognizes the justification of the claim?

If there is no objection the court, on its own motion, issues the certification of enforceability.

b) What needs to be done in order to obtain an enforceable judgment? Does the court issue a certificate or declaration of enforceability (*Vollstreckbarkeitsbestätigung*), similar to one that is foreseen in Article 18 Regulation 1896/2006? If so, does it do it on application or on its own motion? Do there exist any legal remedies against the certificate or declaration of enforceability?

The court issues on its own motion a declaration of enforceability.

c) Effects of order for payment - is it only enforceable or also final (*rechtskräftig*)? Is it still possible to appeal against this decision?

It is final. The only possible way to oppose the enforcement is by arguing the extinction of the obligation by fact occurred after the issuing of the declaration of enforceability.

2.8. Court fees

Value of the claim	Regular fees	Reduced fees
Up to 5.000 euro	51 euro	25,50 euro
Between 5.001 and 15.000 euro	102 euro	51 euro
Above 15.001 euro	153 euro	76,5 euro

Table 2 - Payment order procedure fees

2.9. Enforcement of the national order for payment domestically and abroad. Describe main difficulties of cross-border enforcement on the ground of your national payment order.

The enforcement of the national order domestically follows the general rules for enforcement. For the difficulties of cross-border enforcement, please refer to Jesus Bores, XXXXX.

2.10. Comparison between national and EU order for payment procedure (differences and similarities) and final critical evaluation of the national order for payment procedure.

Both Portuguese and EU procedure are no-evidence procedures and, in consequence, show notable similarities.

III. Implementation of Order for Payment Procedure Regulation (1896/2006) in Member States

3.1 Competent court?

Portugal has chosen a centralized system. The competent court is the County Court of Oporto. For reasons better explained bellow, we feel that Portugal has not complied with the demands of the Regulation’s Recital 12: “When deciding which courts are to have jurisdiction to issue a European order for payment, Member States should take due account of the need to ensure access to justice”.

3.2 Application for a European order for payment:

a) The means of communication accepted for the purposes of the European order for payment procedure and available to the courts (Article 7(5)). Can the application be

submitted electronically? Does there exist alternative electronic communications system in the courts of the Member State of origin pursuant to Article 7(8)?

In Portugal, the means of communication accepted for the European order for payment procedures are: *i)* personal submission to the registry in accordance with Article 150(2)(a) of the Code of Civil Procedure; *ii)* submission by recorded mail in accordance with Article 150(2)(b) of the Code of Civil Procedure; and *iii)* submission by fax in accordance with Article 150(2)(c) of the Code of Civil Procedure.

b) Admissible language of the application?

The only admissible language is Portuguese.

c) How many copies of the application are required?

At least three: one for the defendant, one for the Court and one redundancy copy for the Court. If there are more than one defendant one extra copy of the application is required for each.

d) The amount of the penalties under the law of the Member State of origin in case of creditor deliberate false statement (Article 7(3))?

There are no limits to the amount of penalties, except for the generic rule of reason. The penalties include fines and compensation. The latter will include expenses reimbursement and damages.

3.3. Issue of the European order for payment:

a) Recital 16 states: “The court should examine the application, including the issue of jurisdiction and the description of evidence, on the basis of the information provided in the application form. This would allow the court to examine prima facie the merits of the claim and inter alia to exclude clearly unfounded claims or inadmissible applications. The examination should not need to be carried out by a judge.”

The preliminary examination is a secretary act.

b) Service of the European order for payment on the defendant pursuant to Article 13 and 14.

The general rules of service shall apply.

3.4. Opposition to the European order for payment:

a) Form of the statement of opposition - paper form or by any other means of communication, including electronic (Article 16(4))?

In Portugal, the means of communication accepted for the European order for payment procedures are: *i*) personal submission to the registry in accordance with Article 150(2)(a) of the Code of Civil Procedure; *ii*) submission by recorded mail in accordance with Article 150(2)(b) of the Code of Civil Procedure; and *iii*) submission by fax in accordance with Article 150(2)(c) of the Code of Civil Procedure

b) Pursuant to Article 17 (1) where a statement of opposition is lodged, the proceedings shall continue before the competent courts of the Member State of origin. Does the court revoke (annul) the European order for payment (e.g. by decree) or it ceases to be in force by law?

The procedure is automatically (*op lege*) converted in declaratory proceedings, unless the claimant has required the procedure to terminate.

c) Legal remedies against the court decision on statement of opposition?

The general rules for remedies apply.

3.5. Absence of timely opposition:

a) Describe the certificate procedure (declaration of the European order for payment for enforceable pursuant to Article 18).

There are no special rules about this matter.

b) Explain the formal requirements for enforceability according to Article 18 (2).

c) Effects of the absence of timely opposition: does the European order for payment become final (rechtskräftig) or it is only enforceable.

The order becomes final.

3.6. Safeguarding the debtor's rights.

a) Problems with certificate. On one hand it may happen that certificate shall be rectified where, due to a material error, there is a discrepancy between the European order for payment and the certificate. On the other hand can the certificate wrongly granted (e.g. to early certification without due waiting on statement of opposition to arrive). Describe the procedures for rectification and withdrawal of the declaration of enforceability referred to in Article 18?

There are no special rules on this matter. If there are material errors with the certificate the Court may rectify them at any time. After issuing the order the powers of the court are exhausted.

b) Explain the review procedure and the competent courts for the purposes of the application of Article 20.

The review procedure is that provided for by Article 20 of the Regulation and in Portugal the court with jurisdiction for such a review is the district court which issues the European order for payment

3.7. Procedural court fees

See 2.8 above.

3.8. Enforcement in the Member State of enforcement:

a) Which authorities have competence with respect to enforcement?

The general rules apply.

b) What should be done for the European enforcement order to be executed in the Member State of enforcement? Are there required any court proceedings, administrative proceedings or activities of an execution body (agency)? How long will it take from issue of the order to the beginning of the execution? Which languages are accepted pursuant to Article 21(2)(b)?

There are no special rules in this matter. The only accepted language is Portuguese.

c) Legal remedies in the Member State of enforcement: Which authorities have competence for the purposes of the application of Article 22 (1) and (2) and Article 23? Describe the procedure for those legal remedies.

The county court competent for enforcement. General rules of opposition apply.

IV. National small claims procedure

4.1. Scope of the procedure, threshold. Is it applicable only for monetary claims or reserved to certain types of disputes (e.g. consumer disputes)? Is a national small claims procedure as an option or an obligation for the plaintiff?

The national small claims procedure is applicable (mandatory) to monetary claims arising from contract up to 15.000 euro. Exceptionally, it applies to claims up to 30.000 euro in result of the transformation, by opposition, of national orders for payment.

4.2. Competent court (subject matter and local competence).

The competent court is the County Court of the place of performance, by default the place of the debtor’s domicile.

4.3. Introduction of the procedure.

a) Forms (orally, paper form, electronically)? Are there available any standard forms?

There are no standard forms. The application must be submitted in writing, either in paper support or electronically through the Citius portal.

b) Mandatory representation by the lawyer?

Representation by lawyer is mandatory for claims above 5.000 euro.

c) Assistance: is there any support by a court clerk or help desk for the introduction of a procedure?

There is no assistance.

4.4. Peculiarities of the small claims procedure compared to regular procedure, e.g.:

a) Relaxation of certain rules concerning the taking of evidence.

No, except for limitation in the number of witnesses.

b) Oral or written procedure. Is there a possibility of a purely written procedure?

No. The procedure, unless uncontested, has always written and oral phases.

c) Limitations concerning ius novorum.

No.

d) Shorter deadlines (e.g. for answer to an action).

Yes. See Table 1 - Declaratory proceedings delays, above.

e) Relaxation of rules concerning the content of the judgment, time limit for the delivery of the judgment. Is there any time frame for resolving the case?

There is no timeframe for resolving the case; the judgement must, if there is a hearing, be delivered immediately (ex tempore).

f) Other specific rules

There are simplified rules of service.

If the claim is uncontested, the court will decide immediately on the exequatur.

4.5. Is there any exclusion or restriction of the possibility to appeal against the judgment? If so, on which grounds can the appeal be based and within which time should it be lodged?

There are no restrictions.

4.6. Reimbursement of fees.

The claimant must ask for reimbursement. The judgement will rule on this matter, if asked.

4.7. Enforcement of the judgment domestically and abroad.

The general rules apply.

4.8. Comparison between national and EU small claims procedure. Differences and similarities.

V. Implementation of Small Claims Regulation (861/2007) in Member States

5.1. Competent court: Which courts or tribunals have subject matter and local jurisdiction to render a judgment in the European Small Claims Procedure?

The County Courts.

5.2. Formal prerequisites for the introduction of the procedure:

a) Which means of communication are accepted for the purposes of the European Small Claims Procedure and available to the courts or tribunals in accordance with Article 4(1)?

Electronic delivery, recorded mail, fax.

b) Which languages are accepted pursuant to Article 6 (1)?

Portuguese.

5.3. Conclusion of the procedure:

a) Issue of a judgment.

No special rules in this matter. The procedure may finish with a judgment or a default judgment.

b) Certificate procedure – certificate concerning a judgment referred to in Article 20 (2).

The certificate will be issued on the terms of article 20 (2).

5.4. Appeal against judgment:

a) Is there available an appeal under the national procedural law against a judgment in accordance with Article 17 and with which court or tribunal this may be lodged?

There is no ordinary appeal against the judgement. County courts have sole jurisdiction on claims bellow 5.001 euro. Special judicial review is available only on the terms of article 771 of PCCP.

b) If so, within what time limit such appeal shall be lodged and on which grounds?

The delay for the special judicial review is 60 days from the judgment or the learning of the grounds for appeal. The admissible grounds are:

“a) other final decisions have proved that the decision was the result of an offence committed by the judge in the performance of his duties;

- b) it is shown that documentary evidence or official court testimony or a statement given by an expert or arbiter is false and, in any of these cases, may have been a determining factor in the decision to be reviewed, and the matter was not discussed during the proceedings in which the decision was given;*
- c) a document is presented which the party was unaware of or which he could not have made use of in the proceedings in which the decision to be reviewed was given and that in itself is sufficient to alter the decision in favour of the defeated party;*
- d) a confession, withdrawal or agreement on which the decision was based is invalid or may be declared invalid;*
- e) the action and execution have taken place in default, with no participation whatsoever by the defendant, and it is shown that no summons was issued or that the summons issued is null and void;*
- f) it is incompatible with the final decision of an international appeal body which is binding on the Portuguese State;*
- g) the dispute was based on an act simulated by the parties, and the court, having failed to realise that a fraud had been perpetrated, did not use the powers conferred on it under Article 665”*

5.5. Safeguarding the debtor's rights.

a) Problems with certificate referred to in Article 20 (2). On one hand it may happen that certificate shall be rectified where, due to a material error, there is a discrepancy between the judgment and the certificate. On the other hand the certificate can be wrongly granted (e.g. the judgment does not fall within the scope of Small Claims Regulation).

There are no special rules for this situation. The court may ratify the certificate if there are material errors, but can not withdraw the judgment.

b) Explain the procedures for review referred to in Article 18.

The procedure for judicial review under article 18 is the same as referred to above in 5.4 b).

5.6. Procedural court fees

Court fees depend on the value of the claim: below 500 euro, court fee of 51 euro; between 501 and 1875 euro, court fee of 76,5 euro; between 1875 euro and 2000 euro, court fee of 102 euro.

5.7. Enforcement of the judgment in the Member State of enforcement – procedure and requirements:

a) Which authorities have competence with respect to enforcement?

The county court at the domicile of the defendant.

b) Provide basic information on the methods and procedures of enforcement in the Member State.

The general rules of enforcement apply.

c) Which languages are accepted pursuant to Article 21(2)(b)?

Portuguese.

d) Legal remedies in the Member State of enforcement. Which authorities have competence for the purposes of the application of Articles 22 and 23? Describe the procedure.

The county court competent to the enforcement procedure.

VI. Final critical evaluation of EU Regulations on Simplifying Cross-Border Debt Collection

6.1. Do Regulations 1896/2006 and 861/2007 in your opinion really simplify, speed up and reduce the costs of litigation in cross-border cases concerning pecuniary claims and ease cross-border enforcement of judgments?

6.2. Are the national procedures truly frequently impracticable in cross-border cases (recital 7 Regulation 1896/2006), especially having in mind that some of the classical features of cross border litigation constitute direct or indirect discrimination on grounds of nationality and are thus prohibited, for instance the security for the costs of judicial proceedings (*cautio iudicatum solvi*) as an example of direct discrimination (see ECJ case of 26 September 1996, *Data Delecta v MSL Dynamics*, C-43/95, ECR 1996, p. I-04661). Do the advantages of Regulations 1896/2006 and 861/2007 truly outweigh potential obstacles in

national procedures involving a party from other Member State (e.g. address for service within local jurisdiction (Wahldomizil) or representative ad litem (Zustellungsbevollmächtigter etc.)?

6.3. Which is, from the creditor's point of view, the most convenient alternative in your country in case of cross-border collection of debts in EU?

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