PORTUGUESE NATIONAL REPORT

Part 1: Main features of the national enforcement procedures for recovery of monetary claims (general overview)

1.1. Briefly present domestic legal sources on enforcement.

The legal sources for the Portuguese laws on Enforcement are the New Code of Civil Procedure[1] and sundry legislation.

Similarly to what happens in most legal systems and throughout the various branches of law, the Portuguese Enforcement Law is influenced by legal sources of National, European and International nature[2]. There are also other sources, in a broader sense, the tradition (costume), authoritative literature and jurisprudence (Case Law).

The main juridical principles also assume an important role. Regarding enforcement law, we can enumerate the following: the right of access to justice; the right to a fair and expeditious process; the Court's impartiality; the equality of the parties involved; the adversarial guarantee; etc.

As expected, the legislation *"strictu sensu"* is the main legal source of the enforcement law, and the New Code of Civil Procedure (hereinafter NCCP), approved by the Law 41/2013 of the 26th of June, is the most important document to be taken into consideration while discussing such topic. Besides the NCCP, other related laws (sundry legislation) have an important role in regulating and defining the national enforcement legal framework.

Within the concept of law in the broad sense, and assuming an extremely important role in the whole Portuguese juridical system, the Constitution of 1976[3] is considered as the light and basis of the national law. Regarding enforcement, the articles that are considered to be the most important ones are Article 2 (Democratic state based on the rule of law)[4], Article 3 (Principle of equality)[5], Article 20 (Access to law and an effective judicial protection)[6], and Article 202-214 (Courts)[7].

[1] Law No. 41/2013, of June 26, rectified by Declaration of Rectification No. 36/2013, of August 12
[2] Those sources, of legal nature, are considered to be *"strictu sensu."*
[3] Available online at: http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf (English version)
[4] *" The Portuguese Republic is a democratic state based on the rule of law, the sovereignty of the people,plural democratic expression and political organisation, respect for and the guarantee of the effective implementation of the fundamental rights and freedoms, and the separation and interdependence of powers, with a view to achieving economic, social and cultural democracy and deepening participatory democracy."*
[5] *"1. All citizens possess the same social dignity and are equal before the law. 2. No one may be privileged, favoured, prejudiced, deprived of any right or exempted from any duty for reasons of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation."*
[6] *"1. Everyone is guaranteed access to the law and the Courts in order to defend those of his rights and interests that are protected by law, and justice may not be denied to anyone due to lack of sufficient financial means. 2. Subject to the terms of the law, everyone has the right to legal information and advice, to legal counsel and to be accompanied by a lawyer before any authority. 3. The law shall define and ensure adequate protection of the secrecy of legal proceedings. 4. Everyone has the right to secure a decision in any suit in which he is intervening, within a reasonable time limit and by means of fair process. 5. For the purpose of defending the personal rights, freedoms and guarantees*

With an importance close to the Portuguese Constitution, International Law also has great influence on the Portuguese Civil Procedural Law. In this particular source, we highlight the Universal Declaration of Human Rights (Article 10)[8]; the International Covenant on Civil and Political Rights[9] (Article 14 No. 1)[10]; and the European Convention on Human Rights[11] (Article 6 nº1)[12].

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and in such a way as to secure effective and timely judicial protection against threats thereto or breaches thereof, the law shall ensure citizens judicial proceedings that are characterised by their swiftness and by the attachment of priority to them."

[7] "Article 202 (Jurisdictional function) *1. The Courts are the entities that exercise sovereignty with the competence to administer justice in the name of the people. 2. In administering justice the Courts are responsible for ensuring the defence of those citizens' rights and interests that are protected by law, repressing breaches of democratic legality and deciding conflicts between interests, public and private. 3. In the exercise of their functions the Courts have the right to the assistance of the other authorities. 4. The law may institutionalise non-jurisdictional instruments and forms of settling conflicts.*

Article 203 (Independence) *The Courts are independent and subject only to the law.*

Article 204 (Compliance with the Constitution) *In matters that are submitted for Judgement the Courts may not apply norms that contravene the provisions of the Constitution or the principles enshrined therein.*

Article 205 (Court decisions) *1. Court decisions that are not merely administrative in nature shall set out their grounds in the form laid down by law. 2. Court decisions are binding on all public and private entities and prevail over the decisions of any other authorities. 3. The law shall regulate the terms under which Court decisions are executed in relation to any authority, and shall lay down the sanctions to be imposed on those responsible for any failure to execute them.*

Article 206 (Court hearings) *Court hearings are public, save when, in order to safeguard personal dignity or public morals or to ensure its own normal operation, the Court itself decides otherwise in a written order that sets out the grounds for its decision.*

Article 207 *(Juries, public participation and technical advice) 1. In the cases and with the composition laid down by law, and particularly when the prosecution or the defence so requests, a jury shall participate in the trial of serious crimes, save those involving terrorism or highly organised crime. 2. The law may provide for the participation of lay magistrates in Judgements concerning labour-related matters, public health infractions, minor offences, the execution of sentences or other cases that justify special consideration of the social values that have been infringed. 3. The law may also provide for the participation of technically qualified advisors in the trial of certain matters.*

Article 208 (Legal representation) *The law shall ensure that lawyers enjoy the immunities needed to exercise their mandates and shall regulate legal representation as an element that is essential to the administration of justice.*

Article 209 (Categories of Court) *1. In addition to the Constitutional Court, there shall be the following categories of Court: a) The Supreme Court of Justice and the Courts of law of first and second instance; b) The Supreme Administrative Court and the remaining administrative and tax Courts; c) The Court of Auditors. 2. There may be maritime Courts, arbitration tribunals and justices of the peace. 3. The law shall lay down the cases and forms in which the Courts provided for in the previous paragraphs may separately or jointly be constituted as conflict-resolution tribunals. 4. Without prejudice to the provisions concerning Courts martial, the existence of Courts with the exclusive competence to try certain categories of crime is prohibited.*

Article 210 (Supreme Court of Justice and instances*) 1. Without prejudice to the specific competence of the Constitutional Court, the Supreme Court of Justice is the senior organ in the hierarchy of the Courts of law. 2. The President of the Supreme Court of Justice is elected by its Justices. 3. As a rule the Courts of First Instance are the district Courts, and the status of the Courts referred to in paragraph (2) of the following Article is equivalent to that of the latter. 4. As a rule the Courts of second instance are the Courts of Appeal. 5. The Supreme Court of Justice shall function as a Court of instance in the cases laid down by law.*

Article 211 (Competence and specialisation of Courts of law*) 1. The Courts of law are the general Courts in civil and criminal matters and shall exercise jurisdiction in every area that is not allocated to other judicial orders. 2. There may be Courts of First Instance that have specific competences or are specialised in the trial of certain matters. 3. The composition of Courts of any instance that try crimes of a strictly military nature shall include one or more military Judges, as laid down by law.4. The Courts of Appeal and the Supreme Court of Justice may operate in specialised sections.*

Article 212 (Administrative and tax Courts) *1. Without prejudice to the specific competence of the Constitutional Court, the Supreme Administrative Court is the senior organ in the hierarchy of administrative and tax Courts.2. The President of the Supreme Administrative Court is elected by its Justices from among their number. 3. The administrative and tax Courts have the competence to try contested actions and appeals whose object is to settle disputes arising from administrative and fiscal legal relations.*

Article 213(Courts martial) *For as long as a state of war is in effect, there shall be Courts martial with the competence to try crimes of a strictly military nature.*

Article 214 (Court of Auditors) *1. The Court of Auditors is the senior organ for the scrutiny of the legality of public expenditure and for judging the accounts which the law requires to be submitted to it. It particularly has the competence to: a) Give an opinion on the General State Accounts, including the social security accounts; b) Give an opinion on the accounts of the Azores and Madeira Autonomous Regions; c) Enforce liability for financial infractions, as laid down by law; d) Exercise the other competences allocated to it by law. 2. Without prejudice to the provisions of Article 133(m), the term of office of the President of the Court of Auditors is four years. 3. The Court of Auditors may operate in a decentralised manner, in regional sections, as laid down by law. 4. In the Azores and Madeira Autonomous Regions there shall be sections of the Court of Auditors with full competence for the matter in question in the respective region, as laid down by law.*

[8] Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

[9] Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976

[10] *1. All persons shall be equal before the Courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the Court in special circumstances where publicity would prejudice the interests of justice; but any Judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*

[11] Available online at: http://www.echr.coe.int/Documents/Convention_ENG.pdf

Assuming great influence, the European Union law, takes an increasingly and decisive role, regarding the Portuguese enforcement law, as it happens with all European Union Member States. The most important diploma, regarding civil and commercial matters, is the Regulation (EU) nº1215 / 2012 of the European Parliament and of the Council of 12 December 2012[13].

1.2. **Was there a recent reform or is there an ongoing reform in progress? If yes, please comment the changes introduced by the reform or proposed solutions.**

On June 26, 2013, Law number 41/2013 was published in the Official Gazette. This diploma comprised an extensive reform of the former Civil Procedures Code, involving not only a systemic and conceptual change of it but also essentially the implementation of a new civil procedure model, which has led several forensic professionals to classify the so-called reform as an effective "New Code of Civil Procedure."

As results from the relevant Exposition of Motives, regarding Law Proposal 113/XII, the changes implemented by the 2013 reform were the concretization of a "*new judicial culture*" brought to the Portuguese Civil Procedure system to establish more simple, flexible and efficient proceedings[14].

Law number 41/2013, June 26 entered into force on September 1st, 2013, being immediately applicable to the pending declarative actions. The exception being the dispositions regulating the procedural acts within the written expositions phase and the dispositions regarding the declarative procedures form; that applied to the pending executive actions, except for the rules regarding the executive titles, process forms, executive petition, introductory phase proceedings and declarative nature incidents.

After the NCCP entered into force, the regime foreseen in Decree-Law nr 303/2007[15], August 24, with the foreseen amendments, became immediately applicable to all appeals, save the amendments regarding the *double confirmation ("dupla conforme")* regime.

During the period between September 1, 2013, and September 1, 2014, the errors regarding the applicable legal regime - resulting from the incorrect application of the transitory dispositions foreseen in this legal reform - were corrected by the Judge in charge of each proceeding. The Judge was given the possibility to invite the parties to undergo such necessary corrections.

The present Law 41/2013 revoked the 1961 Civil Procedures Code[16], the Simplified Civil Procedures Regime, the Court Hearings Scheduling Regime, the

[12] 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the Court in special circumstances where publicity would prejudice the interests of justice.
[13] Available online at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:351:0001:0032:en:PDF
[14] PINTO, Prof. Doutor Rui, »NOTAS BREVES SOBRE A REFORMA DO CÓDIGO DE PROCESSO CIVIL EM MATÉRIA EXECUTIVA«, at: http://www.oa.pt/upl/%7Ba2f818e3-1ef3-4c39-86b7-2e6cbd6e83ac%7D.pdf
[15] Available online at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=936&tabela=leis
[16] For correspondence between articles: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=936&tabela=leis

Experimental Civil Procedures Regime, articles 11 to 19 of Decree-Law 226/2008[17], of November 20 and the Urgent Measures Regime to reduce the pending executive actions.

The most representative and innovative amendments are:

I. The dispute inversion in provisional remedies;

The new wording of Article 369 foresees a dispute inversion in provisional remedies, i.e., foresees that the petitioner may through a request addressed to the Judge, to be filed up to the end of the final hearing, be excused from filing in the main action regarding which the provisional remedy would be ancillary.

Such dispute inversion is to apply whenever:

1. the facts attained in the proceedings allow concluding, in a safe manner, that the protected right exists

2. the nature of the requested provisional remedy is suitable to settle the relevant dispute in a definitive manner.

This expedient does not apply to seizures and enrolments (which are listed as being provisional remedies) because its nature does not allow the fulfillment of the second condition above referred.

In case the defendant is not heard before the initial decision ordering a provisional remedy, the same may file an opposition to the dispute inversion, as well as to challenge the provisional remedy ordered. It is not possible to appeal from the decision rejecting the dispute inversion. In turn, the decision approving the same may be the object of an appeal but only together with the remedy order appeal. Though in this case, and as prior, it is only possible to appeal to the Court of Appeal, i.e., it is not possible to appeal to the Supreme Court of Justice.

II. The introduction of restrictions regarding third parties intervention incidents;

The active jointly intervention as the main party has been eliminated, now only the co-parties may intervene as main parties. Thus the holders of rights merely parallel or connected with the rights of the plaintiff are now unable to file their claims in a subsequent manner. This measure aims mainly at avoiding that this type of incidents may disturb the normal developing the procedures. It is foreseen the possibility of the third parties, if they so intend, filing in their respective claims through autonomous actions, and without prejudice of them being able to require afterward the consolidation of the actions to assure a joint trial.

The Judge has now the power to reject, through a decision not subject to appeal, the accessory calling caused to protect a reimbursement right, whenever deemed that the

[17] http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1030&tabela=leis

interest subjacent to the calling is irrelevant to the cause or that the same is only a dilatory maneuver.

In the cases where the Defendant accepts, without reservation, the amount claimed but raises, however, grounded doubts regarding the identity of the creditor, the Defendant must proceed immediately with the deposit of the amount or asset due, being released from the procedures, which shall continue only between the different claiming creditors.

III. Setting of new deadlines to file evidence and parties declarations;

It is foreseen that all evidence must be filed and requested by the parties within the Initial Petition and defense, although the possibility of changing evidence in subsequent written expositions exists.

The parties are still allowed to present evidentiary documents up to 20 (twenty) days before the final hearing, without prejudice of being condemned to pay a fine, unless they can demonstrate that it was impossible to present such evidentiary elements before. Another innovative aspect is the fact that it is now allowed to the party to request, up to the beginning of the oral allegations before the Court of the First Instance, permission to make declarations regarding facts in which has had a personal intervention or regarding which has a direct knowledge.

The Judge conducts the hearing of the parties. Lawyers’ intervention is limited to requesting clarifications. In case the party confesses any fact, such shall be duly evaluated, becoming an irrefutable and having a full evidentiary effect. The rule regarding the number of witnesses that each party may present is now limited to 10 (ten) witnesses, Extra 10 (ten) witnesses may be presented in the event of a reconventional claim.

Nevertheless, the Judge may allow that a higher number of witnesses is heard. It is also foreseen that by rule the witnesses are to be present in Court, i.e., the party indicating the witnesses has the duty to assure that the same will appear in the respective session to be heard.

IV. The implementation of a single form within the declarative processes and the limitations to the written expositions;

The present amendment has introduced a major reformulation of the rules regarding the common declarative procedures forms, reducing them to a single form, i.e., the ordinary, summarized and very summarized proceedings forms, previously existent, have been eliminated. Such reduction to a single proceedings form must not be interpreted as a total standardization of the proceedings.

In fact, simplified proceedings are foreseen for actions which value is set within the First Instance Court jurisdiction, i.e. up to € 5.000,00, including regarding the number of admissible witnesses that is reduced to 5 (five), as well as regarding the oral allegations duration that is reduced to 30 (thirty) minutes and in the reply reduced to 15 (fifteen) minutes.

The same is to be said regarding actions with value inferior to half of the Appeal Court jurisdiction, i.e. up to € 15.000,00[18], collegial expertise shall not be admissible, being also foreseen special proceedings after the expositions phase aiming to make such actions more efficient.

The amendments introduced regarding the admissible parties expositions are also substantial.

Regarding the initial petition, the Judge has been granted the power to immediately reject the same in case the petition is clearly ungrounded, or in case there are evident dilatory pleas that may not be remedied and which can be officially recognized.

About the defense, now the Defendant will have an obligation to expose, in a separate manner, the essential facts in which the alleged exceptions are based upon. Otherwise the same shall be considered inadmissible by agreement, even in the cases where the Plaintiff does not refute the same. On the other hand, the Defendant is no longer obliged to refer all facts alleged in the initial petition, but may restrain himself to such facts effectively comprising the cause of the Plaintiff’s claim. On its turn, with the present amendment, it is settled the question regarding the admissibility of a counterclaim in the cases where the Defendant intends to have his credit recognized, either through setoff or payment request of the amount exceeding the credit alleged by the Plaintiff.

The reply is the last admissible written exposition (excepting the subsequent written expositions that are foreseen but in a very restrictive manner). Nevertheless, even the admissibility of the reply is limited to the cases in which the Defendant has filed a counterclaim, i.e., the Reply may no longer be used as a mean to reply to pleas alleged in the defence, being also waived the possibility to amend or increase the claim grounds and/or the request. Though, within the negative mere valuation actions, it is foreseen the possibility of the reply to be still used to contest constitutive facts that have been alleged by the Defendant, as well as to allege impeditive or extinctive facts of the right alleged by the Defendant.

The present amendment makes it mandatory for Lawyers to file the procedural acts through electronic means, this same principle applying to the notifications from the Court clerks to the lawyers and the notifications between lawyers. The filing of procedural acts through other means shall only be admissible in actions that do not require the appointment of a legal procurator and in which the party is not represented.

It shall also be mandatory to indicate the list of witnesses and other evidentiary means immediately with the initial petition and the defense, notwithstanding the evidentiary requirements may be altered later:

a) by the Plaintiff in the reply whenever the same is admissible or within 10 (ten) days as of the defense notification;

b) by the Defendant within 10 (ten) days as of the reply notification; or

c) by both parties within the prior hearing (whenever applicable), or up to 20 (twenty) days before the final hearing date.

[18] The amount of half of the appeal Courts jurisdiction creates succumbency. If the jusgement is below ½ of the jurisdiction of the Court to where it should appeal, no appeal will be possible.

V. The preliminary hearing new regime;

The occurrence of the preliminary hearing (which shall “substitute” the preliminary hearing), shall be the rule, and the same will not occur only within actions not contested and within actions that shall terminate with the sentence on formalities accepting the dilatory plea that has been discussed within the written expositions.

Thus, the object of the preliminary hearing may be:

a) the contradictory procedures regarding matters to be decided within the sentence on formalities that the parties did not have the chance to discuss in written;

b) the sentence on formalities issuing;

c) the conciliation attempt;

d) the oral debate aiming the elimination of eventual insufficiencies regarding the facts alleged;

e) the issuing, after the debate, of the decision, aimed to identify the object of the dispute and the list of the matters to be proved; as well as,

f) the scheduling of the acts to be performed within the final hearing (dates, the number of sessions, ...).

Notwithstanding the prior reference to the issuing of the sentence on formalities, please note that, with the present amendments, the same envisages only the analysis of the dilatory pleas and procedural nullities, as well as to decide on the merit of the cause. Thus, in this sentence, it is no longer selected the relevant facts for the final decision, which may only occur with a later decision aimed to identify the disputed object and list the matters to be proved.

The preliminary hearing can be waived by the Judge when it aims only at issuing a sentence on formalities, the issuing of the decision regarding the suitability of the process form, the procedural simplification or speed up or the issuing of the decision regarding the dispute object characterization and the listing of the matters to be proved.

The parties shall be notified of the relevant decisions and may file a claim within 10 (ten) days, to require the effective performance of the prior hearing, except about the sentence on formalities, which appeal must be filed through the general terms.

VI. The new rules regarding the final hearing, sentences, and appeals;

a) Final hearing:

The acceptable motives to postpone the final hearing are almost inexistent, being foreseen the cases of Court impediment or absence of a lawyer, when the Judge has not scheduled the hearing through a prior agreement, or there is a reasonable impediment. Furthermore, the acceptable motives to change the Court hearing date by the request of a lawyer are limited to the verification of an already scheduled judicial service. Nevertheless,

the Court impediment may be due to the performance of other diligences or any other circumstance not listed.

One of the most significant consequences of the adoption of an "*undelayable final hearing principle*" is the fact that from the procedures suspension through agreement of the parties may not result in a delay of the already scheduled final hearing.

It is now also foreseen as a rule the recording of all acts performed within the final hearing, independently of the request.

On the other side, the hearings shall be performed by a Single Judge, being eliminated the intervention of a Collective Court within the civil procedures.

Facts and legal allegations, must be concentrated in one single moment, their duration may not exceed, by rule, 1 (one) hour and the replies 30 (thirty) minutes, such being reduced respectively to 30 (thirty) and 15 (fifteen) minutes within the procedures which value does not supersede the jurisdiction of the First Instance Court.

B) Sentence:

After the final hearing, the process shall be sent to the Judge for, within 30 (thirty) days, issuing the relevant sentence.

In the relevant sentence, with the factual grounds, the Judge must refer to the facts considered to be proved and those that remain unproven, by the evidences filed and further elements included in the process.

Regarding the deficiencies and the reform of the sentence, the present amendments eliminate the clarification regime, and limits the powers of the Judge a *quo*, after the sentence is issued, to the correction of material errors, elimination of nullities and sentence reform.

c) Appeals:

Regarding appeals, it is foreseen the implementation of important limits.

Regarding interlocutory decisions in which secondary nullities are present in the decision, the appeal is only admissible on specific grounds. Such as the breach of equality and basic adversarial principles or in case the alleged nullity has a great influence on the merit judgment, affecting the acquisition of facts for the process or the admissibility of evidence.

Another important amendment regarding this matter is the reinforcement of the powers of the 2nd instance. In fact, the Court of Appeal may now change the decision regarding the facts if such is justified to achieve the material truth. Within this measure, it is imposed the duty to collect new evidence, if necessary, re-evaluate the existing evidence, order new means of evidence or annul the decision.

It is important to mention the possibility of revision appeals after five years of the "*res judicata.*". Such appeals may take place whenever the decision relates to personality rights; as well as the fact that, whenever a new decision is issued by the appealed

Court, and a new revision or formal appeal is filed, the later should whenever possible be distributed to the same presiding Judge.

VII. The new features of the executive action;

The executive action also has come to suffer profound changes, one of the great innovations regarding the executive titles. Private documents signed by the debtor containing the constitution or recognition of pecuniary obligations, which amount is fixed or fixable by a simple arithmetic calculation, or of an obligation to deliver something or supply a fact, will no longer be considered as executive titles. Thus, not all documents containing debts confessions as well as invoices or extracts signed by the debtor shall be considered as executive titles. Unless the referred documents are authenticated, the creditors holding on to documents with such characteristics alone, shall be obliged to, before the execution, file for a declaratory action or injunction procedure.

In turn, and notwithstanding the interpretation of the majority of the jurisprudence, the present amendments now expressly grant executive power to the titles of credit, even if merely chirographs (including cheques filed to be paid with a future deadline that differs from the legal deadline), as long as in the relevant executive petition the plaintiff alleges the facts comprising the subjacent relation.

Contrarily to what was in force before the 2013 reform, the executive petition shall be considered filed only after the amount due upfront to the executive agent as fees and expenses is paid.

The executive proceedings regarding the payment of a fixed amount now have two procedural forms – ordinary and summary.

The ordinary form shall be applicable in the cases where

a) the obligation must still be paid within the executive phase;

b) when the obligation is alternative or conditional;

c) when the existing executive title not being a sentence is against only one of the spouses, and the plaintiff alleges within the executive petition that the debt is communicable to the other spouse;

d) in the executions filed only against the subsidiary debtor that has not waived the prior prosecution against the debtor benefit.

In turn, the summary proceeding shall apply when the executive title is a judicial sentence, an arbitral sentence or an enforceable injunction petition, as well as when the initial object of the seizure is predefined (extrajudicial title regarding a matured pecuniary obligation, guaranteed by a mortgage or pledge), or in case of smaller value debts, i.e., in an amount equal or inferior to twice the 1st instance jurisdiction. By rule, within the summary proceedings, it is waived the preliminary decision and the prior warning of the defendant, being immediately started the seizure of the assets.

It is also foreseen the execution of the sentence within the declarative procedures, which shall be executed in the same process, being possible to require the aggre-

gate execution of all the claims accepted in the same sentence, notwithstanding the relevant end.

Within the present amendments, it is also evident the Enforcement Agent's powers limitation, having some of the competences to him attributed in the previous Code ben handed back to both the Judge and the Court, and, the Court office being granted the powers to accept or refuse the executive petitions in a preliminary manner, as well as being granted to the Judge, namely, the powers to determine the existence of conditions for suspending the claim, authorise the division of the seized immovables, authorise the necessary acts to the protection of the seized right to credit and to order the anticipated sale of the seized assets.

Although it is still possible for the Plaintiff and the Defendant to reach an agreement for the payment of the petitioned amount in instalments, to settle the payment plan terms and inform the Enforcement Agent of such agreement – up to the seized asset transfer or, in case of a sale through closed letter proposal, up to the acceptance of the proposal filed -, it is now foreseen that such agreement shall extinguish the execution, after due payment of the Enforcement Agent.

Another important and innovative amendment was the possibility of the Plaintiff, Defendant and Claiming Creditors to accept global payments agree onment, as long as the payment of the executive agent fees and expenses are duly foreseen.

Finally, was foreseen and is now possible that the sale of the seized immovable and movable assets must be effected preferentially throughout an electronic auction.

According to Lurdes Mesquita[19] and Francisco Rocha[20], the New Code focused on the enforcement law and tried to restore normalcy especially in its proceedings. According to these authors, the injunction, which remained as the paradigm procedure, was the one that suffered the most significant changes.

Lebre Freitas[21] (p. 5), considered that the recent reform maintained the option for non-judicialization, started mainly in 2003. For this author, the main changes were related to "*the limitation of the exequatur of the private document and the conducting the enforcement of the judgment, or at least of the executive application, the file of the declarative process, the unfolding of the two previous - summary and ordinary - procedural forms into a single Common form, and the admission of a declaratory incident that allows to investigate the communicability of the execution debt.*"

1.3. **Please indicate whether there exists an underlying philosophical or dogmatic framework for your system of enforcement.**

The reform of the Portuguese Code of Civil Procedure was considered to have been an emergency reform imposed by the Troika of International Creditors; nothing of substance was changed, but there were massive changes insofar as form and numbers are concerned (re-numeration of Art.s and alteration of the order of chapters). This is a

[19] MESQUITA, Lurdes; ROCHA, Francisco - "A ação executiva no novo Código de processo civil : principais alterações e legislação aplicável" 2ª ed. - [Porto] : Vida Económica, [2014]. - 396, [4] p. ISBN 978-972-788-911-2
[20] Idem
[21] FREITAS, Lebre - A Acção Executiva -A Luz do Código de Processo Civil de 2013, Editora: Coimbra Editora, 2014. 6ª Edição ISBN 9789723222241

Portuguese reform that ignores solutions set forth by procedural rules and regulations of the EU on enforcement proceedings of lesser value as well order and anticipatory procedures, as well as procedural simplification and streamlining.

In the Portuguese system of enforcement, there is no philosophical or dogmatic framework identical to that existing in Austria.

Because it is a more mechanical system than that of some of the other Member States, there are few philosophical questions to answer and consider. One of the questions - for most, the only important one - that could be considered is related to the seeking of the truth, which in enforcement law ma be related to the opposition to the enforcement of an attachment order, for example.

1.4. **Are there different types of enforcement procedures in your member state?**

There are three different types of enforcement procedures in Portugal:

a) Procedure for the payment of a pecuniary amount (article 550 nº1; Article 724 and following [22]);

b) Procedure for handing over a particular item (article 550 nº4; Article 859 and following[23]);

c) Procedure for the performance of a particular act (article 550 nº4; Article 868 and following[24]).

Portuguese procedural system envisages a special regime for enforcing money claims on the one hand and non-money claims on the other and does not envisage shortened/simplified/summary proceedings for small claims.

Finally, we have an Administrative Procedure Code, a Fiscal Procedure Code, a Labour Procedure Code and a Criminal Procedure Code, all these being tributary to the NCPC except were differently ruled.

As said above, the Portuguese enforcement law establishes three different types of enforcement action. These types of enforcement are the same as those existent before the 2013 reform. Each one of this type can follow an ordinary or a special/specific procedure when the purpose is to enforce a specific kind of obligation. Regarding injuction, the common procedure can assume an ordinary form or a summary form considering each case. As for the other two types, there is only a unique form of the common procedure.

By principle, those types of executive action shall not be cumulated with each other, though they may be, when the requests are based on the same title[25].

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25 LEBRE DE FREITAS, *op. Cit.*

Before any further explanation about each procedure, we must mention because it refers to of them, that, according to Article 551 nº1[26], it is subsidiarity applicable to enforcement proceedings, the rules governing the declarative process (taking into account the different nature of the processes).

The procedure shall follow the ordinary injunction form, according to article 550 nº1[27], which means that this is the procedure that must be followed in the situations that should not follow the exceptional summary form, according to article 550 nº2 and nº3[28].

The legal framework of this procedure is mainly regulated in Articles 724 to 854[29], and the procedure includes the following main phases: introductory phase; opposition to the enforcement of an attachment order; attachment; citation and creditors’ claims; payment; remission; extinction; annulment of the execution and appeal.

To start an injunction procedure, it is necessary that the enforcement title refers to a pecuniary obligation in compliance with which is intended to force[30].

The summary form of a procedure of injunction, according to article 550 nº1 and 2[31] must be followed:

- In an application for an injunction to which an enforceable formula has been applied;

- Extrajudicial title of expired pecuniary obligation;

- In the extrajudicial title of overdue pecuniary obligation, the value of which does not exceed twice that of the Court of the First Instance (5000 euros).However, the summary form may no longer be applicable when any of the exceptions of Article 550 nº3 is fulfilled.

This procedure is defined mainly between article 855[32] and 858[33], as also, complementarily, the provisions concerning the ordinary form of the procedure in Article 551 nº3[34].

This summary form, not much different from ordinary form, is fundamentally characterized by the wave of the preliminary order, preliminary citation of the debtor, and immediate attachment of goods.

The executive petition, accompanied by the documents presented with it, shall be immediately sent by electronic means to the Enforcement Agent (Article 855 nº1[35]),

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30 LEBRE DE FREITAS, Op. Cit.
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which acts in accordance with the provisions of the other numbers of Article 855[36], The searches and other diligences necessary for the execution of the seizure under the terms of Articles 855 (3)[37] and by the supplementary application of Articles 748 to 750[38].

It is only after the execution of the attachment order that the accused is summoned, which is simultaneously notified of the attachment act, and can deduct, within 20 days, foreclosure and opposition to the attachment (Art. 856º nº1[39]).

1.5. **Is your system of enforcement considered to be centralized or decentralized?**

In Portugal, Civil disputes are addressed in First Instance Courts, also called District Courts. District Courts are organised in chambers, and some of them include specialized chambers for commercial and civil matters. The judgments of the district Courts may be appealed to the Second Instance Courts – The Courts of Appeal - , whose area of competence is defined by reference to the district Courts. Finally, the Supreme Court of Justice, a State Court, may review the decisions of the Courts of Appeal in matters of law.

Further to the constitutional doctrine of the separation of powers, Portuguese Courts are completely independent of the other branches of power (i.e., the political, executive and the legislative powers). In Portugal, the Superior Council of Magistrates, as the senior body of the structure and discipline of the Portuguese Judges, appoints the Judges and assigns them to their respective Courts.

Moreover, Judges are not only independent of the remaining sovereign powers but also between themselves (i.e., a Court is not bound by its decisions or by decisions of other Courts). Nonetheless, in practical terms, the lower Judges tend to follow the reasoning and decisions adopted by the higher Courts and are often influenced by prior established jurisprudence on a particular matter of law.

Except for some criminal matters, juries are not allowed. Therefore, in civil and commercial matters cases are always Judged by professional Judges.

The Portuguese system of enforcement is decentralized, especially considering that all First Instance or district Courts are competent to Judge enforcement cases. Under certain conditions, the Courts of appeal or the Supreme Court can Judge as Courts of the First Instance, representing a non-expressive and non-representative reality, reinforcing the consideration that the Portuguese system of enforcement is decentralized.

In addition, the Courts of appeal and the Supreme Court make decisions on appeal and about conflicts of jurisdiction and competence. Once again, these competencies don't establish a centralized system, but only a guarantee to the citizen of a fair trial, with a review of the decision by a Court that will be, at least in the abstract, more competent.

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1.6. **The authorities/bodies and agents involved. Which authorities/bodies have competence with respect to enforcement?**

Parties must be represented by a lawyer, trainee lawyer or solicitor in enforcements involving a value greater than the limit set for First Instance Courts – 5.000€ -, and must be represented by an attorney in enforcements related to a value higher than the limit set for Second Instance/ Appeal Courts and in enforcements of a value equal to or less than this amount, but greater than the value set for First Instance Courts, when any proceedings are brought that follow the terms of the declaratory process.[40]

Titles are enforced because of a case being heard in a Court. In the enforcement of a decision by the Portuguese Courts, the enforcement request is made as part of the proceedings in which the decision was handed down, and the enforcement is recorded in the same case file and processed independently, unless the case has subsequently gone to appeal, in which case a copy of the file is transferred.

When, in accordance with the law of judicial organization, a specialized enforcement section is responsible for enforcement, a copy of the judgment, the application that gave rise to the enforcement and enclosed documents must be sent to this specialized section as a matter of urgency.

If the decision was handed down by arbitrators in an arbitration that took place in Portugal, the competent Court for enforcement is the district Court of the place where the arbitration was held.

If the case was decided at the Appeal Court or the Supreme Court of Justice or, if it concerns the enforcement of a foreign Judgement, the Court of the debtor's domicile is competent, unless the case involves a Judge, his or her spouse, descendants, ascendants or a person with whom the said Judge shares the same household. In this case, if the action would have been brought in the area where the Judge serves, the next nearest Court district has jurisdiction. In both instances, the file relating to the declaratory action or a copy thereof is sent to the Court that is competent for enforcement.

Save in specific cases provided for by law, the Court of the debtor's domicile has jurisdiction for enforcement. The creditor may opt for the tribunal in the place where the obligation is to be complied with when the debtor is a legal person or when the creditor's domicile is in the metropolitan area of Lisbon or Porto, and the debtor is domiciled in the same metropolitan area.

However, if the enforcement is for the handing-over of a particular item or for the collection of debt with a real guarantee, the respective competent Courts are the Court of the place where the item is to be found or the Court of the site where the items used as the guarantee are situated.

[40] arts. 719º to 723º

When the action for enforcement should be brought in the Court of the debtor’s domicile, and the said debtor does not have a domicile in Portugal but has assets there, jurisdiction for enforcement rests with the Court for the place where these assets are located.

In cases involving several enforcements, the analysis of which falls within the jurisdiction of different Courts, the Court of the debtor's domicile has jurisdiction.

It is the responsibility of the enforcement agent to carry out all measures involved in the enforcement process which is not attributed to the Court registry or are the responsibility of a Judge. This includes summons, notifications, publications, database checking, seizure and registration thereof, liquidation and payments.

Even after a finding of no need to give judgment, an enforcement agent must ensure that acts arising from the case requiring his intervention are correctly executed.

An enforcement agent is appointed by the creditor seeking enforcement, who may choose from those registered on the official list. Without prejudice to his withdrawal by the body responsible for discipline, an enforcement agent may be replaced by the creditor, who must duly state the reasons for such replacement.

Where the enforcement measures involve travel that proves to be disproportionately expensive, they may be undertaken, at the request of the appointed enforcement agent and under his responsibility, by an enforcement agent in the place where they must be carried out or, in the absence of an enforcement agent, by a judicial officer.

An enforcement agent may, under his responsibility and supervision, have any tangible steps in the enforcement proceeding which do not involve material seizure of assets, sale or payment, undertaken by an employee in his service who is duly certified for the purpose by the competent body, in accordance with the law.

In addition to what is laid down in other legal provisions, it is the responsibility of the judicial officer to carry out measures that are the responsibility of the enforcement agent:

a) In enforcement proceedings in which the State is the creditor seeking enforcement;

b) In enforcement proceedings in which the Public Prosecutor represents the creditor;

c) When the Judge so decides, at the request of the creditor, based on the absence of an enforcement agent registered in the county where the enforcement is to take place and based on the manifest disproportion of the costs which would be incurred if the action were to be taken by an enforcement agent from another county;

d) When the Judge so decides, at the request of the enforcement agent, if the enforcement measures require travel involving disproportionate travel costs and there is no other enforcement agent in the place where the enforcement is to be carried out;

e) In enforcement orders for a value not greater than double the limit which can be dealt with by the Court of First Instance, where the creditors are natural persons and the object of the enforcement are claims not resulting from commercial or industrial activity, provided that they so request in the enforcement application and pay the respective Court fee;

f) In enforcement order for a value not greater than the limit applied to the Appeal Court, if the claim to be enforced is of a labour-related nature and if the creditor so requests in the enforcement application and pays the respective Court fee.

1.7. **How ‘private’ is the system in actuality, if it is private at all?**

Portuguese civil enforcement procedure is currently totally private, the Enforcement Agent being the most prominent actor of the entire play. Even though he is or may be appointed by the creditor, his powers are of public interest and relevance, and in that respect, he equals a public authority. The Judge only appears should there be any questions on legality and to protect the debtor from any abuses, including of the Enforcement Agent. The Bailiff liaises with the Enforcement Agent and the Judge.

It is up to the creditor, beholder of an enforcement title, to start the enforcement proceedings, which he does exclusively via the internet (legal platform Citius): he indicates which assets should be seized and appoints the Enforcement Agent.

1.8. **Briefly enumerate the means of enforcement (methods which serve to procure involuntary collection of the claim)**

Under Portuguese Civil Procedure Code, it is up to the creditor, beholder of an enforcement title, to start the enforcement proceedings, which he does exclusively via the internet (legal platform Citius): he indicates which assets should be seized and appoints the Enforcement Agent.

Follows a brief description of the Portuguese Civil Procedure as far as enforcement procedure is concerned:

An enforcement action is an action in which a creditor requests appropriate steps to be taken for the enforcement of an obligation he is due.

The entire enforcement is based on a title that determines the purpose and limits of the enforcement action.

The purpose of enforcement may be the payment of a specific sum of money, the handing-over of a particular item or the obligation to do something or to refrain from doing something.

Both in the case of enforcement for the handing-over of a particular item and in the case of the performance of, or abstention from, a particular act, if the debtor does not fulfil the obligation, this will be converted into an enforcement for the payment of a sum of money, at the request of the person seeking enforcement.

In this case, if the debtor does not pay voluntarily, his assets or entitlements are seized and, in exceptional cases, so are the assets or rights of third parties. This happens when the assets are linked to a loan guarantee or are the object of an action carried out to the detriment of the creditor. After that, the money is handed over directly to the creditor, or the seized assets are assigned to him, or amounts taken from income are paid, or the assets are sold, and the proceeds are made over to the creditor.

Titles are enforced as a result of a case being heard in a Court.

In the enforcement of a decision by the Portuguese Courts, the enforcement request is made as part of the proceedings in which the decision was handed down, and the enforcement is recorded in the same case file and processed independently, unless the case has subsequently gone to appeal, in which case a copy of the file is transferred.

When, in accordance with the law of judicial organization, a specialized enforcement section is responsible for enforcement, a copy of the judgment, the application which gave rise to the enforcement and accompanying documents must be sent to this specific section as a matter of urgency.

If the decision was handed down by arbitrators in an arbitration which took place in Portugal, the competent Court for enforcement is the district Court of the place where the arbitration was held.

If the case was heard at the Appeal Court or the Supreme Court of Justice or if it concerns the enforcement of a foreign Judgement, the Court of the debtor's domicile is competent, unless the case involves a Judge, his or her spouse, descendants, ascendants or a person with whom the said Judge shares the same household. In this case, if the action would have been brought in the area where the Judge serves, the next nearest Court district has jurisdiction. In both instances, the file relating to the declaratory action or a copy thereof is sent to the Court competent for enforcement.

Save in specific cases provided for by law, the Court of the debtor's domicile has jurisdiction for enforcement. The creditor may opt for the Court of the place where the obligation is to be complied with when a debtor is a legal person or when the creditor's domicile is in the metropolitan area of Lisbon or Porto, and the debtor is domiciled in the same metropolitan area.

However, if the enforcement is for the handing-over of a particular item or for the collection of debt with a real guarantee, the respective 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 the guarantee are situated.

When the action for enforcement should be brought in the Court of the debtor’s domicile, and the said debtor does not have a domicile in Portugal but has assets there, jurisdiction for enforcement rests with the Court for the place where these assets are located.

In cases involving several enforcements, the analysis of which falls within the jurisdiction of different Courts, the Court of the debtor's domicile has jurisdiction.

It is the responsibility of the enforcement agent to carry out all measures involved in the enforcement process which is not attributed to the Court registry or are the responsibility of a Judge. This includes summons, notifications, publications, database checking, seizure and registration thereof, liquidation and payments.

Even after a finding of no need to give judgment, an enforcement agent must ensure that acts arising from the case requiring his intervention are correctly executed.

An enforcement agent is appointed by the creditor seeking enforcement, who may choose from those registered on the official list. Without prejudice to his withdrawal by the body responsible for discipline, an enforcement agent may be replaced by the creditor, who must duly state the reasons for such replacement.

Where the enforcement measures involve travel that proves to be disproportionately expensive, they may be undertaken, at the request of the appointed enforcement agent and under his responsibility, by an enforcement agent in the place where they must be carried out or, in the absence of an enforcement agent, by a judicial officer.

An enforcement agent may, under his responsibility and supervision, have any tangible steps in the enforcement proceeding which do not involve material seizure of assets, sale or payment, undertaken by an employee in his service who is duly certified for the purpose by the competent body, in accordance with the law.

In addition to what is laid down in other legal provisions, it is the responsibility of the judicial officer to carry out measures which are the responsibility of the enforcement agent:

a) in enforcements in which the State is the creditor seeking enforcement;

b) in enforcements in which the Public Prosecutor represents the creditor;

c) when the Judge so decides, at the request of the creditor, based on the absence of an enforcement agent registered in the county where the enforcement is to take place and based on the manifest disproportion of the costs which would be incurred if the action were to be taken by an enforcement agent from another county;

d) when the Judge so decides, at the request of the enforcement agent, if the enforcement measures require travel involving disproportionate travel costs and there is no other enforcement agent in the place where the enforcement is to be carried out;

e) in enforcements for a value not greater than double the limit which can be dealt with by the Court of First Instance, where the creditors are natural persons and the object of the enforcement are claims not resulting from commercial or industrial activity, provided that they so request in the enforcement application and pay the respective Court fee;

f) in enforcements for a value not greater than the limit applied to the Appeal Court, if the claim to be enforced is of a labour-related nature and if the creditor so requests in the enforcement application and pays the respective Court fee.

The following are enforcement titles:

a) Court Judgements

The judgment is only considered as enforceable after becoming res judicata unless the appeal lodged against it has suspensive effect.

From an enforceability point of view, official orders and any other decisions or acts by the judicial authority which require compliance with an obligation are equivalent to judgments. Decisions handed down by the Court of Arbitration are enforceable in the same terms as decisions by common Courts.

Without prejudice to what is laid down in treaties, conventions, Community regulations and special laws, judgments handed down by Courts or arbitrators in a foreign country may only serve as the basis for enforcement after being reviewed and confirmed by the competent Portuguese Court.

However, titles issued in foreign countries do not require consideration in order to be enforceable.

b) Documents were drawn up or certified by a notary or other entities or professionals with competence for the purpose, which serves to establish or recognize any obligation

Documents drawn up or certified by a notary or other entities or professionals with competence for the purpose, in which future performance is agreed, or future obligations are set out, may serve as the basis for enforcement, provided that it is proven, by a document drawn up in compliance with the clauses set out in such documents or, should such clauses be absent, a document having its own enforceability, that an act was performed in the conclusion of a business deal or that an obligation was established as a consequence of an agreement between the parties.

Any document signed on behalf of someone else only enjoys enforceability if the signature has been certified by a notary or other entities or professionals with competence for the purpose.

c) Debt obligations, even though merely handwritten, provided that, in this case, the facts which constitute evidence of the underlying relationship feature in the respective document or are stated in the enforcement application.

Debt obligations include, for example, cheques, bills of exchange and promissory notes.

d) Documents to which enforceability is assigned through special provision.

For example, applications for orders to which an enforcement clause has been appended and minutes of meetings of condominiums.

Enforcement titles are considered to include late payment interest, at the statutory rate, on the obligation therein.

Enforcement applications are submitted to the Court preferably by electronic means but may also be submitted on paper.

Electronic submission is carried out by the legal representative by completing and sending the electronic enforcement application form which can be found at http://citius.tribunaisnet.mj.pt/ in accordance with Art. 132 of the Civil Procedure Code and in line with the procedures and instructions therein. The form must be accompanied by the requisite documents.

When a party is not represented by legal counsel, or when justifiable reasons exist preventing submission in accordance with the previous Art., the enforcement application may be presented on paper to the Court registry or sent by registered post or fax to the competent Court using the model enforcement application form in Annex I to Implementing Order (Portaria) 282/2013 of 29 August 2013. The form must be accompanied by the requisite documents.

The party seeking enforcement is later notified for payment, within 10 days, of the sum initially due to the enforcement agent for fees and expenses.

The enforcement application is only considered as submitted on the date that the sum initially due to the enforcement agent for fees and expenses is paid or on confirmation of the granting of legal aid in the form of the assignment of an enforcement agent.

The procedure **followed for** common enforcement of the payment of a specific sum may be either summary or ordinary.

The summary procedure is employed in enforcements based on a judicial or arbitration decision where such a decision must not be enforced in the main proceedings, on

applications for an order to which an enforcement clause has been appended, on an extrajudicial title for a payable monetary obligation, guaranteed through a mortgage or lien, and on an extrajudicial title for a payable monetary obligation, the value of which does not exceed twice the limit set by the Court of the First Instance.

The summary procedure cannot be applied when the obligation is an alternative, and the choice of fulfilment falls to the debtor or third parties, when the obligation is dependent on a suspensive condition or fulfilment by the creditor or third party, when the obligation to be enforced requires liquidation in the enforcement stage and the liquidation is not dependent on a simple mathematical calculation, when an enforcement title other than a Judgement exists against only one of the spouses and the creditor claims in the enforcement application that the debt is common to both, and in enforcements brought only against the subsidiary debtor who has not waived the defence of prior recourse.

In the ordinary procedure, the preliminary intervention of the Judge is secured and the debtor is served a summons before the seizure, except if the magistrate, at the request of the creditor, dispenses with prior summons on the debtor as there is a justified fear of losing the asset guarantee on the claim to be enforced and the case is then given due urgency.

The common procedure for handing over a particular item and for the performance of a particular act take the same form.

The enforcement process is dealt with electronically through IT systems supporting the activity of enforcement agents and the Courts.

1.9. **In short, present the underlying principles which govern the enforcement procedure in short.**

In short, the underlying principles which govern the enforcement procedure under Portuguese NCPC, are dejuditialization (the Enforcement Agent being the lead player), agility, publicity. Judge intervention is minimal.

Please do note that Court speed is viewed as beneficial to the Economy and that it was perceived by the Troika that no foreign investor would invest in a country where executions take more than 01 years to complete.

The debtor does not remain unprotected: not all of his wages can be seized (only up to 2/3), not all of his assets can be attached, and if he files for bankruptcy the enforcement proceedings will be halted. The debtor can also oppose the enforcement proceedings (even when deriving from a judgment) by declaring (for instance) that said judgment is not yet enforceable or that the interest rate is illegal.

1.10. **Does the stage of ‘permitting the enforcement’ exist in your legal system? Please comment, e.g. German ‘*Titel mit Klausel*’.**

Under Art. 726/6 of the Portuguese NCPC, the stage of “permitting the enforcement” is mandatory when an ordinary execution occurs[41].

1.11. **Subject-matter jurisdiction in enforcement proceedings. Please provide a short presentation of the judicial system - Courts system.**

Under Articles 209[42] et seq. of its Constitution, Portugal has two separate sets of Courts – the civil Courts and the administrative Courts. Provision is also made for other Courts – the Constitutional Court (Tribunal Constitucional), the Court of Auditors (Tribunal de Contas), Courts of arbitration (tribunais arbitrais) and justices of the peace (julgados de paz).

In the civil sphere, the ordinary Courts with civil and criminal jurisdiction are the judicial Courts, which are organized in three instances. In descending order of hierarchical rank and territorial scope, these are:

- The Supreme Court (Supremo Tribunal de Justiça, with jurisdiction over the whole country),
- Courts of appeal (tribunais da relação, one per judicial district and two in the Porto judicial district) and the
- District Courts (tribunais de comarca, at First Instance).

The First Instance judicial Courts fall into three categories, depending on the subject-matter of the action and the amount at stake:

- Courts with general jurisdiction,
- Courts with specialised jurisdiction (criminal cases, family matters, minors, labour law, trade, maritime affairs and the enforcement of sentences) or
- Courts with specific jurisdiction (civil, criminal or mixed divisions; civil or criminal benches; civil or criminal benches dealing with minor matters).

[41]Art. 726/6 NCPC (Preliminary order and summons): When the proceeding is to proceed, the judge issues an order to summon the executor to pay or oppose execution within 20 days.

[42] Article 209 (Categories of court) 1. In addition to the Constitutional Court, there shall be the following categories of court: a) The Supreme Court of Justice and the courts of law of first and second instance; b) The Supreme Administrative Court and the remaining administrative and tax courts; c) The Audit Court. 2. There may be maritime courts, arbitration tribunals and justices of the peace. 3. The law shall lay down the cases and forms in which the courts provided for in the previous paragraphs can separately or jointly be constituted as conflict-resolution tribunals. 4. Without prejudice to the provisions concerning courts martial, courts with the exclusive power to try certain categories of crime shall be prohibited.

The administrative Courts include the First Instance administrative and tax Courts, the central administrative Courts (North and South) and the Supreme Administrative Court (Supremo Tribunal Administrativo, covering the whole country).

Conflicts of jurisdiction between Courts are resolved by a “Tribunal de Conflitos”, regulated by law.

In the Portuguese judicial system, the following categories of Courts exist:

a) The Constitutional Court, whose main task is to assess the constitutionality or legality of law and rules, as well as the constitutionality of a failure to legislate;

b) The Court of Auditors, which is the highest body with the authority to scrutinise the legality of public expenditure, and to review the accounts that the law stipulates must be submitted to it;

c) The judicial Courts, which have general jurisdiction in civil and criminal matters and also exercise jurisdiction in all matters not assigned to other Courts. They include the Supreme Court of Justice, the second instance judicial Courts (as a rule, the Courts of appeal) and the First Instance judicial Courts (as a rule, the district Courts).

d) The administrative and tax Courts, whose role is to settle disputes arising out of administrative and tax relations. They include the Supreme Administrative Court, the central administrative Courts, the circuit administrative Courts and the tax Courts.

e) The justices of the peace, which are Courts with special characteristics and with competence in civil proceedings where the value of the claim does not exceed €5 000.

f) During states of war, Courts martial (tribunais militares) may also be created.

1.12. **Territorial jurisdiction in enforcement proceedings. Please provide a short description in this regard.**

It is not possible to provide a “short description” on “territorial jurisdiction in enforcement proceedings” as the major and massive reform in 2013 dramatically changed former rules.

Shortly, it can be said the Courts competent for enforcement proceedings are those of the debtor’s residence (Art. 89/1[43]); should the enforcement proceedings be based

[43] **Art. 89/1 NCPC** (General rule of enforcement): Except for the special cases provided for in other provisions, the court for the domicile of the accused is competent to execute the case, and the appointee may choose the court of the place where the obligation should be fulfilled

on a prior judgment, the Court that passed said judgment would also handle the enforcement proceedings (Art. 85/1[44]). In the case of certain assets, competent Court shall be the one where said assets are situated.

1.13. **How are conditional claims enforced in your member state?**

Portuguese enforcement proceedings rely on the enforcement title (it being a judgment or other) embodying a certain, existent and liquid (or liquidable) obligation.

Future obligations are admissible provided the enforcement title is accompanied by a document proving the existence of said future obligation or commencement of execution thereof.

In view of the above, conditional claims cannot be enforced in Portugal.

1.14. **Legal succession after the enforcement title was obtained: What has to be done to proceed with the enforcement against the successors? How about the creditor’s successors, are any changes required in the enforcement title?**

Under Portuguese law succession of parties may occur upon the death of one of the parties, *mortis causa* (Art. 351 of the NCPC[45]), or upon the acquisition of the thing or right that is the object of the proceedings, *inter vivos* (Art. 356 of the NCPC[46]). In case someone success on the right, this meaning, actively[47], or obligation, passively[48], the overall procedure shall follow on between the successors of ether party. The applicable procedure differs depending on the stage of the procedure it takes place in, either before or during the course of the proceedings.

In case the succession takes place before the proposition of the claim, the claimant shall, in the begging of the procedures prove that he has the right to succeed.[49] If t s de debtor who passed away, the claim needs to mention that, it aims at the successors regardless of the stage of the *“habilitaton”* proceedings. If, on the other hand t takes place during the proceedings, *“habilitation”* must take place that will delay the proceedings, as the debtor may oppose to the execution.

1.15. **Enforcement titles: Decisions (judgments and other Court decisions), settlements, public documents. Please elaborate – how does your system define**

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when the debtor is a legal person or when, standing at the domicile of the creditor in the metropolitan area of Lisbon or Porto, the run is domiciled in the same metropolitan area

[44] **Art. 85 NCPC** (Execution authority based on judgment): In the execution of a decision handed down by Portuguese courts, the executive application is filed in the case in which it was rendered, being executed in the records and being processed autonomously, except when the proceeding has However raised in appeal, cases in which it runs in the transfer.

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[47] Arts 577 to 594 Civil Code

[48] Arts. 595 to 600 Civil Code

[49] Art. 54, 2. NCPC

enforcement titles, e.g. via enumeration, general clause, etc.? Also, provide a short commentary.

As mentioned above, the following are enforcement titles:

a) Court judgments - The judgment is only considered as enforceable after becoming res judicata unless the appeal lodged against it has suspensive effect.

From an enforceability point of view, official orders and any other decisions or acts by the judicial authority which require compliance with an obligation are equivalent to judgments. Decisions handed down by the Court of Arbitration are enforceable in the same terms as decisions by common Courts.

Without prejudice to what is laid down in treaties, conventions, Community regulations and special laws, judgments handed down by Courts or arbitrators in a foreign country may only serve as the basis for enforcement after being reviewed and confirmed by the competent Portuguese Court.

However, titles issued in foreign countries do not require review in order to be enforceable.

b) Documents were drawn up or certified by a notary or other entities or professionals with competence for the purpose, which serves to establish or recognize any obligation

Documents drawn up or certified by a notary or other entities or professionals with competence for the purpose, in which future performance is agreed, or future obligations are set out, may serve as the basis for enforcement, provided that it is proven, by a document drawn up in compliance with the clauses set out in such documents or, should such clauses be absent, a document having its own enforceability, that an act was performed for the conclusion of a business deal or that an obligation was established as a consequence of an agreement between the parties.

Any document signed on behalf of someone else only enjoys enforceability if the signature has been certified by a notary or other entities or professionals with competence for the purpose.

c) Debt obligations, even though merely handwritten, provided that, in this case, the facts which constitute evidence of the underlying relationship feature in the respective document or are stated in the enforcement application.

Debt obligations include, for example, cheques, bills of exchange and promissory notes.

d) Documents to which enforceability is assigned through a special provision.

For example, applications for orders to which an enforcement clause has been appended and minutes of meetings of condominiums.

Enforcement titles are considered to include late payment interest, at the statutory rate, on the obligation therein.

1.16. **Requirements for issuing the certificate, certifying that the judgment is enforceable (confirmation of enforceability) - procedural steps. Which procedural steps must be undertaken, to obtain the certificate?**

Portuguese law does not require confirmation of enforceability except in the case of an order for payment procedure where an *exequator* is required. The *exequator* will be issued should the debtor not oppose the creditor’s claim or should he oppose and lose the case.

Upon a judgment both parties must wait for the appeal which must be presented within 30 days of said judgment; should the decaying party decide not to appeal, the judgment will become res judicata and will be enforceable.

1.17. **Service/notifications of documents and decisions (provide a wholesome picture of service and notification in the enforcement proceedings). Please present an overview of said activity, e.g. which documents are served and the method of service, how notifications are made.**

As far as enforcement proceedings are concerned service / notifications are the responsibility of the Enforcement Agent (very rarely being handled by the Bailiff or a Court official / clerk).

Lawyers and the parties notify each other via the internet platform (Citius); They can also notify the Judge and the Enforcement Agent (and be notified by either of them) by means of Citius.

The Enforcement Agent will serve the debtor all the required papers, basically a copy of the enforcement form and the enforcement title. Depending on the case, this will happen before or after seizure or attachment of the debtor’s assets.

1.18. **Division between enforcement and protective measures.**

1.18.1. **What and/or which provisional measures are possible (are provided for) in your member state? Enumerate and briefly describe.**

Protective measures and provisional measures are two different things, protective measures existing in certain areas of the law such as criminal law or child law. Under Portuguese Civil Procedural Law, other protective measures are established, such as

in interdiction or inabilitation proceedings, designation of curator ad litem, protection of the estate of the deceased, protection of the estate of an absentee.

PEPEX (Procedimento Extra-Judicial Pré-executivo) does not qualify as a protective measure because it only allows for access to the Enforcement Agent to the list of assets owned by the debtor, thus allowing the creditor to decide whether he wants to start enforcement proceedings.

Interim relief proceedings or provisional measures may be anticipatory or conservatory of judgment on the merits and in that respect may be considered protective of the creditor.

1.18.2. **Difficult requirements for protective measures. Which provisional measures are possible (are provided for) in your member state and what are the requirements for issuing them? Please accompany the answer with a comment on the ‘difficulty’ of actually meeting those requirements.**

Provisional measures are established under arts. 362 et sequitur of the NCPC. Common requirements are:

(i) fumus bonis juris,

(ii) laesio imminentis and

(iii) periculum in mora.

We can find “provisional common measures” (arts. 362 et seq.) and “provisional nominated measures” (arts. 377 et seq.). As far as difficulties of actually meeting abovesaid requirements, proof of laesio imminentis or of the periculum in mora has proven very hard.

1.19. **Comments and critical approach to your legislation. Please identify deficiencies of your national system, e.g. length of enforcement proceedings; success rate of enforcement; interconnectivity and over-lapping to other areas of law (insolvency proceedings).**

Portuguese enforcement system was implemented as an imposition of the Troika of creditors without prior study or assessment of the Portuguese reality. The procedural law does not stand by itself as its framework is set upon the civil (substantive) law. This being said, the “new” enforcement procedure is basically formal, and it should be said that thousands of enforcement proceedings are pending, and have been, some of them for far too long, in the Portuguese Courts of law. Therefore, enforcement proceedings were taken from the hands of the Judges and passed into the hands of the Enforcement Agents, who, according to the New Code of Civil Procedure, are to conduct the proceedings. The necessity for a quick solution imposes that:

(i) Should the creditor decide to apply for PEPEX[50], the Enforcement Agent has 20 days to check on the assets of the debtor; if nothing is found, the creditor may decide not to enforce;

(ii) 3 months for actions aiming to seizure and attachment; if nothing is found, creditor and debtor are both informed, and the enforcement proceedings is over;

(iii) In the case of seizure or attachment, payment to the creditor must be effected within 3 months;

(iv) If, after seizure or attachment, the assets are not sold, the enforcement proceedings may be Judged concluded per lack of impulse by the creditor.

[50] Available online at: http://www.pepex.pt/lei-322014.html

Part 2: National procedure for recognition and enforcement of foreign Judgements

2.1. Which of the three systems is enacted in your system, disregarding EU or other international acts: (1) *Révision au fond*; (2) *Contrôle limité*; (3) *Ex lege*.

Every state usually has its own rules for recognition and enforcement of foreign judgments. It stems from the principle of territoriality and sovereignty. Since the area of recognition and enforcement of foreign judgments is nowadays regulated by international conventions (bilateral or multilateral) and EU regulations, the national rules have to cede wherever international convention or EU regulation claims precedence.

Portuguese procedure for recognition and enforcement of foreign judgments is strictly formal (deliberation[51]): the Portuguese Court of law will check if the foreign judgment meets with some formal requirements without ever revising the merits of said judgment.

2.2. What is the concept of ‘recognition’ and ‘enforcement’ of foreign judgments in your member state?

Recognition and enforcement of foreign judgments. Why are these two legal institutes so important, both for the theory of private international law and legal practice? The answer layss back in the theory of private international law. The decision of a Court represents an ac of official authority endowed by a state power, which provides protection to rights and duties of subjects of law. It demonstrates the sovereignty of an issuing state and also represents the combination[52] of both substantive and procedural rules.[53] As such, it can hold its effects only on the territory of an issuing state[54] which means that its effects are territorially limited. In layman's terms - to obtain a favorable judgment is one thing. To be able to enforce it in place (country) where debtor´s assets are is an entirely different issue.[55]

Instruments of recognition and enforcement are often mixed together. At least, when the desired result of the whole process of dealing with the foreign judgment is taken into account, this simplification can be understood. Nevertheless, merging these two legal instruments, or legal procedures behind them represents an error and misunderstanding. On

[51] **TRG (proc. nr. 94/11.3YRGMR – 04-12-2012):** I - I - The Portuguese system for reviewing foreign judgments is the purely formal system or deliberation in which the court merely verifies whether the judgment complies with the requirements of form, that is, the review is limited to the extrinsic regularity of the sentence, and verify Certain conditions of regularity, such as a final decision or if the defendant was summoned to the action, the only deviation to that system being the situation provided for in Article 87 2 of art. 1100º., Of C.P.Civil.. (http://www.dgsi.pt/jtrg.nsf/86c25a698e4e7cb7802579ec004d3832/fd59d7e74322f60f80257ae800515c3f?OpenDocument).

[52] For the decision to be issued many conditions has to be fulfilled which may differ in many ways from state to state.

[53] Vilém Steiner, Některé teoretické koncepce řešení otázky uznání a výkonu cizího rozhodnutí, Časopis pro mezinárodní právo, 244 (1970).

[54] Jürgen Basedow, Klaus J. Hopt, Reinhard Zimmermann, and Andreas Stier, *Max Planck Encyclopedia of European Private Law*, p. 1424 (Oxford: Oxfor University Press, 2012); Cheshire, North & Fawcett, *Private International Law*, p. 611 (14th edition, Oxford: Oxford University Press, 2008); Vilém Steiner, *Některé teoretické koncepce řešení otázky uznání a výkonu cizího rozhodnutí*, Časopis pro mezinárodní právo, 241 (1970) and Jiří Heyer, *Výkon cizozemských rozsudků*, Zprávy advokacie, 112 (1963).

[55] See also Adrian Briggs, *Civil jurisdisdiction and judgments*, p. 1008 (4th edition, London: Norton Rose, 2005).

the background of these two legal instruments, we will also address the law applicable and area of this law in particular briefly.

The term "*recognition"* may be perceived in two different senses. It can represent the process of recognition.[56] The second meaning represents the result of the whole process.[57] When considering the first possible understanding, i.e. the legal procedure, it is, without a doubt, covered by *lex fori* of the state of recognition[58], in particular by its Private International Law. In order to avoid any doubts as to what can be considered *lex fori* – not only the in the scope of the national legislation but also regarding international treaties both bilateral and multilateral and, from the perspective of EU countries, also EU law has to be taken into account. In general, legal rules effective on the territory of the state of recognition. It urges to mention that, there is a big divergence in the level of favorability in national law in comparison with international treaties and EU law. Internal laws are most strict (restrictive) while they display territorial concepts deeply related to the law, and use, of the land. International treaties represent typical means of cooperation between states and are used to establish a more favorable regime of dealing with judgments issued by a Court of a different Member State. European Union, as a whole, represents a closely co-operating entity with coercive powers towards the Member States and that holds the possibility to adopt its own legal regulations to which all Member States are bond by the Treaty. It is easily perceived that the Regulation might have shaped in a friendlier and more flexible manner, in a way that would not withdraw so much of the sovereignty of the Member State of enforcement, but it does not.

Enforcement refers to the mechanism of execution in the state of recognition. By the mechanism of execution, the authorities providing for the execution, means of execution or objections against the execution are intended. Recognition is "*sine non-qua*" for enforcement. In different words – one cannot enforce something that does not exist. This statement cannot be revoked by the fact that in certain legal regulations, the recognition is automatic in the first stage, the judgment is pronounced enforceable, and then the debtor may appeal against the enforceability of the judgment claiming the reasons against recognition.[59]

As in the case of recognition, the only possible law applicable to the enforcement is *lex fori* and its specific and national rules on Civil Procedure. Enforcement is, for this reason, not covered by Private International Law, and it is not a subject to the unification in any international treaty neither bilateral nor multilateral or EU regulations. Enforcement is regulated ***exclusively*** by national rules.

The recognition of a foreign judgment upon review consists of the attribution of all the effects it has in the State of origin, under the law of such State, but in a different State, the State of enforcement. i.e.: the force of *res judicata* and the (now abolished) *exequatur*.

[56] i.e. legal procedure when usually Court examines the conditions established by the *lex fori* which are necessary to grant foreign judgment legal effects in the state of recognition.
[57] i.e. the situation when foreign judgment is given by legal effects in the state of recognition and can be subject to enforcement
[58] The use of *lex fori* for procedural proposes represents one of the main doctrines of private international law. In case of procedural rules no question of the law applicable arises – see Zdeněk Kučera, Monika Pauknerová, Květoslav Růžička et. al., *Mezinárodní právo soukromé*, p. 352 (8th edition, Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2015).
[59] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and in partially modified form also Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

The executive power of the foreign judgment is subject to that judgment's prior review and confirmation (*exequatur*) which is merely formal.

Depending on the foreign judgment, the Portuguese decision may have either effect, constitutive or extension of the effects from the State of origin. An example would be in the case of a foreign judgment on divorce, where the effects will be constitutive – this falls out of the scope of the B IA.

2.3. Main features of 'delibation' (*procedure di delibazione*) or '*incidenter*' procedure – type of procedure. Which type of procedure is provided for in your system? Accompany the answer with commentary.

According to Art. 978/2 of the NCPC[60], review and recognition of a foreign judgment are not required when said foreign judgment is invoked in a pending process as evidence or proof to be tried by the Portuguese Judge (but it will have to be translated, and said translation would have to be legalized).

Proceedings for the recognition of a foreign judgment are filed with the Court of Appeals of the residence of the counterpart. The foreign Judgement must be authentic (there can be no doubts as to its authenticity), must have been passed by the competent Court of law, must be res judicata and there must not be any exceptions of litispendence or res judicata pending in a Portuguese Court of law (Art. 980 of the NCPC[61]). The counterpart must have been duly summoned and recognition must not be incompatible with the principles of the international public order of the Portuguese State.

2.4. Jurisdiction in matters of recognition and enforcement (substantive and territorial). Provide a short description.

Proceedings for the recognition of a foreign judgment are filed in with the Court of Appeals of the residence of the counterpart (Art. 979 of the NCPC[62]). Arts. 80 to 82 may also apply[63].

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[60] **Art. 978/2 NCPC** (Necessidade da revisão) : Não é necessária a revisão quando a decisão seja invocada em processo pendente nos tribunais portugueses, como simples meio de prova sujeito à apreciação de quem haja de julgar a causa.

[61] **Art. 980 NCPC** (Requisitos necessários para a confirmação) : Para que a sentença seja confirmada é necessário: a) Que não haja dúvidas sobre a autenticidade do documento de que conste a sentença nem sobre a inteligência da decisão; b) Que tenha transitado em julgado segundo a lei do país em que foi proferida; c) Que provenha de tribunal estrangeiro cuja competência não tenha sido provocada em fraude à lei e não verse sobre matéria da exclusiva competência dos tribunais portugueses; d) Que não possa invocar-se a excepção de litispendência ou de caso julgado com fundamento em causa afecta a tribunal português, excepto se foi o tribunal estrangeiro que preveniu a jurisdição; e) Que o réu tenha sido regularmente citado para a acção, nos termos da lei do país do tribunal de origem, e que no processo hajam sido observados os princípios do contraditório e da igualdade das partes; f) Que não contenha decisão cujo reconhecimento conduza a um resultado manifestamente incompatível com os princípios da ordem pública internacional do Estado Português.

[62] **Art. 979 NCPC** (Tribunal competente) : Para a revisão e confirmação é competente o tribunal da Relação da área em que esteja domiciliada a pessoa contra quem se pretende fazer valer a sentença, observando-se, com as necessárias adaptações, o disposto nos artigos 80º a 82º.

[63] **Art. 80 NCPC** (Regra geral) : 1 - Em todos os casos não previstos nos artigos anteriores ou em disposições especiais é competente para a acção o tribunal do domicílio do réu. 2 - Se, porém, o réu não tiver residência habitual ou for incerto ou ausente, é demandado no tribunal do

2.5. Type of decision. Explain types of procedure and types of decision in your member state? Highlight any possible atypical procedures/decisions and their effects.

Under Portuguese Procedural Law, all cases end with a decision (judgment), as there can be no non liquet; said judgment may be passed on the grounds or merits or strictly on the formal requisites of the case (for instance, statute of limitations applies to the case). A a judgment must always take place. This goes for all types of procedures, including enforcement procedures, as the Judge must render a judgment declaring that the enforcement proceedings are over.

domicílio do autor; mas a curadoria, provisória ou definitiva, dos bens do ausente é requerida no tribunal do último domicílio que ele teve em Portugal. 3 - Se o réu tiver o domicílio e a residência em país estrangeiro, é demandado no tribunal do lugar em que se encontrar; não se encontrando em território português, é demandado no do domicílio do autor, e, quando este domicílio for em país estrangeiro, é competente para a causa o tribunal de Lisboa.

Art. 81 NCPC (Regra geral para as pessoas colectivas e sociedades) 1 – Se o réu for o Estado, ao tribunal do domicílio do réu substitui-se o do domicílio do autor. 2 - Se o réu for outra pessoa colectiva ou uma sociedade, é demandado no tribunal da sede da administração principal ou no da sede da sucursal, agência, filial, delegação ou representação, conforme a acção seja dirigida contra aquela ou contra estas; mas a acção contra pessoas colectivas ou sociedades estrangeiras que tenham sucursal, agência, filial, delegação ou representação em Portugal pode ser proposta no tribunal da sede destas, ainda que seja pedida a citação da administração principal.

Art. 82 NCPC (Pluralidade de réus e cumulação de pedidos) : 1 - Havendo mais de um réu na mesma causa, devem ser todos demandados no tribunal do domicílio do maior número; se for igual o número nos diferentes domicílios, pode o autor escolher o de qualquer deles. 2 - Se o autor cumular pedidos para cuja apreciação sejam territorialmente competentes diversos tribunais, pode escolher qualquer deles para a propositura da acção, salvo se a competência para apreciar algum dos pedidos depender de algum dos elementos de conexão que permitem o conhecimento oficioso da incompetência relativa; neste caso, a acção é proposta nesse tribunal. 3 - Quando se cumulem, porém, pedidos entre os quais haja uma Relação de dependência ou subsidiariedade, deve a acção ser proposta no tribunal competente para a apreciação do pedido principal.

Part 3: Recognition and Enforcement in B IA

3.1. Certification or declaration of enforceability in Member States of origin (Art. 53. B IA).

3.1.1. Requirements. Provide a critical assessment of the requirements regarding the certification.

Notwithstanding what is set forth in Treaties, Conventions, EU rules and special legislation, no decision on private rights passed by a foreign Court of law or foreign arbitral Court, is applicable in Portugal, regardless of the nationality of the parties involved, without prior revision and homologation thereof. This does not apply, as stated in the beginning of the paragraph, those decisions origination from other Member States, and under the scope of this, or other, regulations.

As far as a sentence passed by a foreign Court of law is concerned, arts. 90 and 86 of the NCPC are applicable.[64]

3.1.2. Does a specific legal remedy exist to challenge the certificate of enforceability in the Member State of origin? If yes, how does it influence the course of civil enforcement?

Certificate of enforceability is not a judicial decision. Such certificate does not have any legal effect in Portugal, and doesn't constitute an obstacle *res rei iudicata*. The reason lays on the fact that it is not a judgment[65]. It only declares one particular attribute of the judgment – its enforceability.

Still, the certificate alone is not a decision that can change the legal status of the judgment[66] but only declares whether the ruling has this attribute.

To force the other party (defendant or your debtor) to comply with the judgment against him/her, for example, to pay up), you will have to go to the enforcement authorities. They alone have the power to force the debtor to pay, calling on the forces of law and order if need be.

Under the Brussels I Regulation (Recast) which governs the recognition and enforcement of judgments in cross-border cases, if you have an enforceable judgment issued in the Union Member State, you can go to the enforcement authorities in other Member State where e.g. the debtor has assets without any intermediary procedure being required

[64] **Art. 90 NCPC** (Execução fundada em sentença estrangeira) : A competência para a execução fundada em sentença estrangeira determina-se nos termos do artigo 86º.

Art. 86 NCPC (Execução de sentença proferida por tribunais superiores) Se a acção tiver sido proposta na Relação ou no Supremo Tribunal de Justiça, é competente para a execução o tribunal do domicílio do executado, salvo o caso especial do artigo 84º; em qualquer caso, baixa o traslado ou o processo declarativo ao tribunal competente para a execução.

[65] So to say, a decision on merits of the case (decision regarding the rights and liabilities of parties)
[66] Not altering the status of the attribute of enforceability

(the Regulation abolishes the 'exequatur' procedure). The debtor against whom you seek the enforcement may apply to the Court requesting refusal of enforcement.

The purpose of enforcement is generally to recover sums of money, but it may also be to have some other kind of duty performed (duty to do something or refrain from doing something, such as to deliver goods or finish work or refrain from trespassing).

Different European procedures (such as the European Payment Order, the European Small Claims Procedure and the European Enforcement Order) can be used in cross-border civil cases, but for all of them, a judgment must be enforced in accordance with the national rules and procedures of the State of enforcement (usually where the debtor or his/her assets are).

In practice, you need to have an enforceable document (a Court decision or a deed) if you wish to apply for enforcement. The enforcement procedures and the authorities who handle them (Courts, debt-collection agencies, and bailiffs) are decided by the national law of the Member State where enforcement is sought.

3.1.3. **What happens if the Court of the Member State of origin certifies the enforceability of a judgment which has not yet acquired this effect (e.g. in Slovenia the time limit for the voluntary fulfillment of the claim in the legally binding judgment (a prerequisite for enforceability) has not yet expired)? Can the Court thereafter repeal the certificate? In connection: What happens if the judgment was served to the wrong address or to the wrong person? Does this constitute a ground for withdrawal of the certificate of enforceability in the Member State of origin?**

If the judgment is not yet enforceable, the execution cannot proceed, as Art. 713 of the NCPC clearly states that the obligation must be enforceable[67].

If the judgment was served to the wrong person or to the wrong address then the judgment was not served at all and is considered null and void (Art. 188 of the NCPC[68]). That means that the judgment is also null and void and cannot be used as an enforcement title. The nullity of the judgment due to the wrong service must be opposed by the debtor and will be subject to a trial.

As previously answered, when the judgment was served to the wrong person or to the wrong address then the judgment was not served at all and is considered null and void (Art. 188 of the NCPC)[69]. That means that the judgment is also null and void and cannot be used as an enforcement title. The nullity of the judgment due to the wrong service must be opposed to by the debtor and will be subject to a trial.

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[67] **Art. 713 NCPC** (Requisitos da obrigação exequenda) : A execução principia pelas diligências, a requerer pelo exequente, destinadas a tornar a obrigação certa, exigível e líquida, se o não for em face do título executivo.

[68] **Art. 188 NCPC** (Quando se verifica a falta de citação) : 1 - Há falta de citação: … b) Quando tenha havido erro de identidade do citado; … d) Quando se demonstre que o destinatário da citação pessoal não chegou a ter conhecimento do acto, por facto que não lhe seja imputável.

[69] Idem

3.1.4. **B IA does not provide, neither for withdrawal of certificate nor for a certificate of non-enforceability. How would the domestic Court thereafter deal with unlawfully issued certificates due to deficiencies of requisites (e.g. certificates issued where the claim has not yet actually acquired the attribute of enforceability; where the judgment was served on the wrong person etc.)?**

See 3.1.6, bellow.

3.1.5. **What are the effects of the certificate in your legal order in the Member State of origin (e.g. Germany – ‘*Klausel*’)? Comment on the type of procedure/decision and the effects it produces.**

The certificate of enforceability has no legal implications in the state of origin. It is a document certifying (declaring) the enforceability of judgment in the state of origin as information necessary for the enforcement of the judgment in the other Member States. It’s legal effects exist under the regime of Brussels Ibis Regulation only. Judgment becomes enforceable under the conditions of the state of origin.

The judgment, Court settlement or authentic instrument to be certified as a European Enforcement Order must concern an uncontested pecuniary claim in a civil or commercial matter. This can include maintenance obligations.

If a European order for payment is obtained, this order is automatically enforceable without the need for a declaration of enforceability nor a European Enforcement Order certificate.

In addition, if the claim is for less than 2,000 €, a judgment rendered in the European Small Claims Procedure (see Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199, 31.7.2007) is also automatically enforceable without the need for a declaration of enforceability nor a European Enforcement Order certificate.

Portugal being a member of the EU, European legislation is binding in Portugal. As such, this certificate constitutes a “European judicial passport” for decisions, settlements, and authentic instruments.

3.1.6. **Control and Correction. What options are available for challenging errors?**

A claimant may challenge errors and refusal of a European Enforcement Order if:

- The European Enforcement Order is refused due to noncompliance with minimum standards of service (Art. 18(1))

If the European Enforcement Order certificate was rejected by the Court due to a lack of due service of the document instituting the proceedings or any summons to a Court

hearing under Art. 13 or 14 or due to an inadequate provision of information under Art. 16 or 17, such non-compliance with the minimum standards may be healed, and the claimant may make a new application for a European Enforcement Order to the Court having delivered the judgment if the following happens:

• The judgment is served on the debtor in compliance with the requirements pursuant to Art. 13 or 14; and

• It is possible for the debtor to challenge the judgment by means of a full review and he has been duly informed in or together with the judgment about the procedural requirements for such a challenge, including the name and address of the institution with which it must be lodged and, where applicable, the time limit for so doing; and

• The debtor has failed to challenge the judgment in compliance with the relevant procedural requirements.

If these requirements are fulfilled, the Court may deliver the European Enforcement Order certificate.

If the European Enforcement Order certificate is refused due to other reasons, the claimant has two options:

• Either appeal the refusal to grant a European Enforcement Order if such possibility exists under national law;

• Or pursue the enforcement of the judgment in another Member State following the exequatur procedure laid down in Regulation 44/2001.

If there is a discrepancy between the judgment and the European Enforcement Order certificate which is due to a material error, the claimant may apply to the Court having delivered the certificate requesting a rectification of the certificate (see Art. 10(1)(a)). The claimant may use the standard form laid down in Annex VI, the procedure for such a rectification being governed by national law (Art. 614 of the NCPC[70]).

3.1.7. **Plurality of certificated documents (number of copies of certificate). Provide a comment on said subject and possible problems which may stem from it.**

The number of authenticated copies of the European Enforcement Order certificate which shall be supplied to the creditor shall correspond to the number of authenticated copies of the Judgement to be provided to the creditor in accordance with the

[70] **Art. 614 NCPC** (Rectificação de erros materiais) : 1 - Se a sentença omitir o nome das partes, for omissa quanto a custas ou a algum dos elementos previstos no nº 6 do artigo 607º, ou contiver erros de escrita ou de cálculo ou quaisquer inexactidões devidas a outra omissão ou lapso manifesto, pode ser corrigida por simples despacho, a requerimento de qualquer das partes ou por iniciativa do juiz. 2 - Em caso de recurso, a rectificação só pode ter lugar antes de ele subir, podendo as partes alegar perante o tribunal superior o que entendam de seu direito no tocante à rectificação. 3 - Se nenhuma das partes recorrer, a rectificação pode ter lugar a todo o tempo.

law of the Member State of origin. The idea underneath is that the debtor is protected against multiple simultaneous enforcement measures throughout the Member States in the same way as in the Member State of origin.

Under the Portuguese law, and depending on its contents, the European Enforcement Order certificate may be used in several executions and in several Courts.

3.1.8. **Legal nature of the certificate of enforcement. The relation between B IA and national rules. Please comment on possible discrepancies and similarities.**

Portugal being a member of the EU, European legislation is binding in Portugal (Art. 8/4 of the Portuguese Constitution[71]. As such, this certificate constitutes a "European judicial passport" for decisions, settlements, and authentic instruments.

3.1.9. ***Post festum*** **cancellation or withdrawal of the certificate of enforceability in Member State of origin. How should such an event be treated and what effects, if any, are to be ascribed to it?**

Enforcement proceedings are very intrusive and affect not only the assets of the debtor: as these proceedings are publicly listed in an official national list (Lista Pública de Execuções)[72]. Given the publicity of these situations, each one of them should be handled wisely and carefully analyzed.

Be it a national enforcement title or a European Enforcement Order; the creditor may decide to end the execution, under Art. 848 of the NCPC[73].

Should, for instance, the European Enforcement Order be declared invalid or canceled after the commencement of the execution proceedings civil liability must be considered, either against the creditor or the body responsible for said invalidity or cancellation, the State of enforcement or the State of origin of the EEO.

3.1.10. **Does the certificate need to be served to the defendant at all? Does it have to be served within a specific timeframe? Note that these questions refer to the Member State of origin.**

Under Portuguese law, the first step is to go before the Courts and get a judgment against the debtor. Even though the case is uncontested, the debtor must be properly served with a document telling him/her the reason for the claim, the amount

[71] **Art. 8 Portuguese Constitution** (Direito internacional) : …4. As disposições dos tratados que regem a União Europeia e as normas emanadas das suas instituições, no exercício das respectivas competências, são aplicáveis na ordem interna, nos termos definidos pelo direito da União, com respeito pelos princípios fundamentais do Estado de direito democrático.

[72] Available online at: https://www.citius.mj.pt/portal/execucoes/listapublicaexecucoes.aspx

[73] **Art. 848 NCPC** (Desistência do exequente) : 1 - A desistência do exequente extingue a execução; mas, se já tiverem sido vendidos ou adjudicados bens sobre cujo produto hajam sido graduados outros credores, a estes é paga a parte que lhes couber nesse produto. 2 - Se estiverem pendentes embargos de executado, a desistência da instância depende da aceitação do embargante.

(including interest, if requested) and the names and addresses of the parties. The judgment will order the debtor to the right the wrong you have suffered, by paying a sum of money.

Following that step, the creditor must apply to have the judgment certified as a European Enforcement Order (EEO): The Judge does this using a standard form attached to the Regulation.

Once the EEO has been issued by the Court, it must be sent to the enforcement authority of the EU country where the debtor lives or where his/her assets are. The only reason that enforcement in one EU country can be refused is if it is irreconcilable with another judgment in another EU member state havin been held between the same parties.

As well as the EEO, the creditor will have to provide a copy of the original judgment - given in his favor -, and will be asked for a translation of the EEO certificate, into Portuguese, the Country’s official language.

No other formalities are required, so the judgment is enforceable in another EU country, it shall be enforced in accordance with the standard rules of the Portuguese law.

Please note that the debtor must be served with the enforcement title and the EEO (should that be the case), in order to oppose or object the execution.

Service of the certificate -to the defendant – is not nvessary. There is no rational reason for doing so. The defendant must be served with the judgment that usually indicates the moment of its enforceability or the enforceability results from *lex fori* of the Member state of origin. The defendant is entirely aware of these facts. Therefore, there is no need for the defendant to be served with the certificate. It would be contrary to the objectives of efficiency and rapidity.

3.1.11. **Service of the declaration of enforceability, if it is foreseen in the national law. How is the service conducted? Describe the conditions for and methods of service.**

Under Portuguese law, a document is issued by the Court’s secretary once an established time has elapsed (depending on the decisions, 10, 15 or 30 days).

The certificate is served by regular delivery (no need of personal service attested by an acknowledgment of receipt), if the addressee is not reached, the certificate is fired into the addressee mailbox. The date of the delivery is indicated on the delivery note and on the envelope with the certificate. If above-mentioned ways of service can not be realized, the certificate is delivered back to the Court, and the note of this fact is left on the place of delivery. Court serves the certificate to the creditor by posting of the official board of the Court.

3.1.12. **Although Art. 40 of the B IA enables the creditor to apply for any protective measures which exist under the law of the Member State addressed prior to**

the first enforcement measure, this interim step requires additional costs and can cause delays. Please provide a critical assessment.

Court fees in Portugal are a major problem and one that will be not speedily solved as they are to be increased by 7% as per January 2018 and truly damage access to Courts and justice.

In some cases, Court fees are much higher that the amount at stake, which leads the defendant to pay and not to oppose a case against him because it is much cheaper.

In addition, legal aid has been severely restricted and only people earning less than minimum national wage and with not assets (such a car or a house) can benefit from it.

As to delays, please note that, under Portuguese law, provisional or interim measures are deemed urgent (Art. 363 of the NCPC[74])

3.1.13. **Certificating a number of interests. Provide a comment on possible problems and solutions.**

The amount of interests must be mentioned in the application for enforcement. This amount should be calculated by the creditor, his legal representative (and the costs of this calculation represent the legitimate expense of the enforcement) or it may by calculated by the execution officer when processing the application for enforcement (costs of this calculation represent the legitimate expense of the enforcement).

Problems may arise in the case of statutory interests, when only the relevant statute, not the relevant provisions of the law of the state of origin should be specified. On the other hand, it is in the interest of the creditor to submit a proposal with all necessary requisites. It up to the creditor to provide the Court of enforcement or the execution officer all necessary information. In case the enforcement authority considers the application for enforcement as indefinite, it calls the creditor for completion.

Portuguese law does not contemplate the certification of interest: there is a statutory interest rate for civil and commercial credits, and the parties may agree on any different rate provided it is not usury.

However, the certificate of enforceability must refer to interest: since when they are due, and at which rate, which will enable the creditor to be mathematical calculate them.

It must also be said that upon commencement of the execution proceedings by the creditor, express reference to the amount of interest due must be made and how such interest was calculated (for instance, interest on interest is forbidden).

If interest cannot be calculated mathematically, it will have to be the object of separate liquidation, a procedural incident aiming at this situation.

[74] **Art. 363 NCPC** (Urgência do procedimento cautelar): 1 - Os procedimentos cautelares revestem sempre carácter urgente, precedendo os respectivos actos qualquer outro serviço judicial não urgente. 2 - Os procedimentos instaurados perante o tribunal competente devem ser decididos, em 1ª instância, no prazo máximo de dois meses ou, se o requerido não tiver sido citado, de 15 dias.

3.1.14. **How does party succession affect the content of the certificate and the overall procedure?**

Party succession does not affect the content of the certificate and the overall procedure in any way. Given that the judgment is issued on a matter, not on a subject, the succession on the side of one of the parties to the proceedings doesn't have any impact on obligations arising from the judgment.

Under Portuguese law succession of parties may occur upon the death of one of the parties, *mortis causa* (Art. 351 of the NCPC[75]), or upon the acquisition of the thing or right that is the object of the proceedings, *inter vivos* (Art. 356 of the NCPC[76]). In case someone success on the right, this meaning, actively[77], or obligation, passively[78], the overall procedure shall follow on between the successors of ether party. The applicable procedure differs depending on the stage of the procedure it takes place in, either before or during the course of the proceedings.

IF the succession takes place before the proposition of the claim, the claimant shall, in the begging of the procedures prove that he has the right to succeed.[79] If t s de debtor who passed away, the claim needs to mention that, it aims at the successors regardless of the stage of the *“habilitaton”* proceedings. If, on the other hand t takes place during the proceedings, *“habilitation”* must take place that will delay the proceedings, as the debtor may oppose to the execution.

3.2. Recognition and Enforcement in Member State of enforcement.

With regard to the recognition and enforceability of decisions originating in foreign countries, there are different schemes.

1. The titles do not need to be revised in order to be executed in our legal system.

2. Judicial decisions may or may not require review as or not provided for in treaties, conventions, regulations or special laws.

The judgments rendered by the Courts of another EU member state are enforceable in Portugal in accordance with article 36 of the Brussels Regulation (i.e., are automatically enforceable without any other further formalities being required). Exceptions are foreseen.

1. The knowledge is manifestly contrary to the public order of the requested state;
2. The decree was issued in absentia and the document that initiated the petition was not served on the defendant and was not allowed to file a defense[80];
3. The decision is irreconcilable with another, in the member state of recognition between the same parties;

[75]
[76]
[77] Arts 577 to 594 Civil Code
[78] Arts. 595 to 600 Civil Code
[79] Art. 54, 2. NCPC
[80] Judgment STJ 09.07.2015, proc. 134/14.4TBCBBC.G.SI

4. The decision is irreconcilable with another previously decided in a different MS, between the same parties;
5. The decision was rendered in breach of specific competence rules.

Under Art 39 of the Regulation, a decision originating from a Member State may be enforced in any other Member State without any need for a declaration of enforceability[81]. By abolishing the *exequator*, the European legislator sought to make it easier to enforce sentences within the EU[82].

Other than those, EU, decisions, Judgments from foreign Courts, unless otherwise provided in international conventions or treaties, may only be enforced in our legal order after they have been properly reviewed and reconciled by the Court of Appeal[83], going through the special process for review of foreign judgment foreseen in the NCPC[84]. The decision shall only be confirmed in Portugal if:

- There is no doubt about the authenticity of the document or the decision;
- Has passed the law of the sticks of origin;
- It comes from a competent Court and does not appear on matters relating to the jurisdiction of the national Courts;
- Cannot be invoked *lis pendens* or *res judicata*;
- The person has been duly summoned for the action under the law of the country of origin;
- Its recognition is not manifestly incompatible with the principles of public order of the Portuguese State.

Only after confirmation can enforcement be brought before State Courts. Enforcement will be refused on the following grounds:

i. Inexistence or lack of exequatur of the judgment;
ii. False (inexistent) judgment procedure; false or inexact translation of the rendered
iii. judgment into the Portuguese language, which affects the enforcement procedure;
iv. Lack of any procedural prerequisite related to the enforcement procedure;
v. Inexistent or void summon of the defendant in the judgment procedure in which the defendant did not partake;
vi. Uncertainty, ineligibility or illiquidity of the obligations to be enforced;
vii. Res judicata prior to the rendered judgment;
viii. Any dully documented modifying or annulling reasons for opposition to the enforcement of the obligation that are subsequent to the formal hearings before the Court that rendered the judgment;
ix. The limitation period of the applicant’s right has expired.

3.2.1. The concept of ‘recognition’ (Art. 36/1). Provide your understanding.

[81] This procedure, the exequator was, several times, pointed out as being a limitaton on the recognition of Court decisions within the EU.
[82] SOUSA, M. A reforma da Acçao Executva, ob. Ct. P. 10, 11
[83] Art. 56, 1, f) LOFTJ
[84] Art.s 978 to 985 NCPC

According to Art. 8 nr. 4[85] of the Portuguese Constitution, this is the case insofar as judgments, Court settlements or authentic instruments to be certified as a European Enforcement Order concern an uncontested pecuniary claim in a civil or commercial matter, including maintenance obligations, are concerned. Other decisions must undergo a special procedure, as reported above.

Recognition of foreign judgment is done automatically without any special procedure being required. But it doesn´t mean that foreign judgments are (without recognition) treated by domestic judgments while the recognition could be refused on the grounds stated in Art. 45 Brussels Ibis Regulation.

3.2.2. The scope of a Judgement's authority and effectiveness. Do you see any national (problematic) issues considering the doctrine of spreading the effects of a judgment from the Member State of origin to the Member State of enforcement?

Article 8 nr. 4[86] of the Portuguese Constitution allows the foresaid situation to happen, which is understandable as people cross borders very quickly and creditors must not be at a loss due to the migration movements. Please note that people do cross borders not to run away from creditors but to run away from debt and make a better living for themselves, so it is only natural that creditors may look for assets, including bank accounts and wages, where they can be found.

We do not see any relevant problems regarding the concept of spreading the effects of a judgment from the Member State of Origin to the Member State of Enforcement connected with the process of recognition. The subject of recognition is the foreign judgment deciding the merits of the case, not the decision on enforcement containing the method of enforcement in the state of origin. Therefore, while the enforcement itself is governed by the law of the state of enforcement, in case the methods of enforcement in the state of origin differs from the possible methods of the state of enforcement, the effects of the state of origin has to be adapted to the methods of enforcement in the state of enforcement during the enforcement procedure

3.2.3. Having in mind Art 43/1, is it possible to begin with the first enforcement measure and limit the enforcement proceedings to protective measures, when the certificate issued pursuant to Article 53 has not been served on the defendant (debtor) yet? Should this matter be clarified by the CJEU?

If the creditor already has a certificate of enforceability he may choose to apply for interim measures without audition of the debtor, in order to secure assets.

However, it should be noted that if such certificate of enforceability pertains to a Court Judgement, the Enforcement Officer will seize the debtor’s assets prior to his audition, and will serve him with the necessary papers (judgment, certificate of enforceability) after said seizure, so use of said interim measures may be unnecessary.

[85] The provisions of the treaties that govern the European Union and the rules issued by its institutions in the exercise of their respective responsibilities shall apply in Portuguese internal law in accordance with Union law and with respect for the fundamental principles of a democratic state based on the rule of law.
[86] Idem Ibiden

Article 234 EC[87] provides for an obligation to ask an interpretative preliminary ruling where a question of Community law arises before a Court whose decisions are not open to judicial review under domestic law. The referral is mandatory except for the few exceptions provided by the ECJ's case-law. The first exception is that the question referred for a preliminary ruling is irrelevant because the Community law relied on is manifestly not capable of settling the proceedings before the national Court . This exception, moreover, occurs on an equal footing whether we are dealing with an interpretative reference or an assessment of validity. The problem raised by this exception, as set out by the ECJ, is that the decision on the relevance of Community law lays with the national Court, with all the dangers arising therefrom. It will always be possible for the Court hearing the case to consider that there is no place for the application of Community law in its view and therefore there is no question of Community law which may be referred for a preliminary ruling. In the light of the case-law of CILFIT[88], this is undoubtedly a power of the national Court. However, what to do when the Judge's decision in this matter is incorrect?

In other words, what is to be done when national jurisdiction unlawfully refuses to apply Community law, whether in substantive terms or because of failure to comply with the obligation to refer, for incorrect assessment of the factual and legal situation? The solution is simple from our point of view. That conduct by the national Court constitutes a breach of Community law by a State body and fulfils the concept of State non-compliance relevant to the infringement procedure laid down in Article 226 EC. This solution, however, is only partial. In fact, through it only the community censorship is obtained to the behaviour of the domestic jurisdiction. About the situation of individuals affected by the failure to fulfil obligations, their finding by the ECJ will be of little use since it does not resolve the way in which the obligation of implementation laid down in Article 228 EC is reconciled with the principle of *res judicata*[89]. It seems to me, moreover, that the only way in which the judgment may be enforced on the ground of failure to fulfil obligations in this specific case is, without breach of the principle of res judicata, State's liability for breach of its Community obligations[90].

The second exception concerns the existence of a previous preliminary ruling on the same subject[91] acknowledged in the CILFIT case.

Finally, what is the meaning of the term 'question' in the wording of Article 234 EC? The ECJ seems to have adhered to the interpretation of the term as difficulty or doubt, which necessarily determines its adherence to the theory of the clear act. The assumption on the basis of the theory of the clear act is that the application of Community law can, when perfectly clear, not raise any doubts of interpretation in the spirit of the Judge. In that case, it is not mandatory to make a reference for a preliminary ruling. The problem is delicate, inasmuch as it is through the theory of the clear act that the national Court, which is normally the holder of a higher jurisdiction, is given the power to assess its capacity to

[87] The Court of Justice shall have jurisdiction to give preliminary rulings concerning: (a) the interpretation of this Treaty; (b) the validity and interpretation of acts of the institutions of the Community and of the ECB; (c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide. Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon. Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.
[88] *CILFIT*, acórdão de 6 de Outubro de 1982, Processo 283/81, cit
[89] Although Lucchini, 18 de Julho de 2007, Processo 119/05, 207, contains itself a possible solution.
[90] Kobler, processo C-224/01, Colectânea da Jurisprudência 2003 página I-10239
[91] *Da Costa*, acórdão de 27 de Março de 1963, Processos apensos 28 a 30/62. *Supra*, efeitos do acórdão prejudicial. CARAMELO GOMES, José – **Textos de Apoio às Lições de Direito da União Europeia: Vol. IV – Jurisprudência**. Policopiado. Porto: ULP, 2008

disregard the Community rule, with all the inherent dangers. The ECJ adhered to this theory in its CILFIT judgment, albeit surrounded by some caution.

Thus, where the correct application of Community law is imposed with such evidence as to leave no doubt, the national Court will be exempted from the obligation to refer. The cautions taken by the ECJ then comply with the criteria used to test the clarity and precision of the Community standard. Those criteria are apparent from recitals 18 et seq. And, in our view, impose almost impossible assessments by a national Court. It could not be otherwise. The risks inherent in unreserved acceptance of the theory of the clear act as regards, on the one hand, the uniformity of interpretation and application of Community law and the judicial protection of the rights of individuals on the other, would be unacceptable.

3.2.4. A key question is whether the certificate on standard form B IA was served before commencing enforcement. Comment.

Insofar as this particular question is concerned, it should be noted that under no circumstance might the debtor’s right to oppose and object the execution be hindered or harmed. This means that if the abusive use of service before enforcement occurred, the debtor would have a say afterward, presenting his defense. Under Portuguese law, the creditor and / or the Enforcement Officer may be held accountable.

3.2.5. Although the *ex-ante* exequatur has been abolished, the challenge stage is retained as a result of negotiations. How is the residual stage regulated in your member state? How does your system enable the debtor to invoke a challenge? What kind of procedural instruments are at his disposal?

Under Portuguese law, the execution may be refused regardless of opposition by the debtor under Art. 725 (ex officio)[92] and 726 n. 2 of the NCPC (by the Judge)[93]. All these grounds for refusal are strictly formal as a refusal on the merits depends on the opposition being presented by the debtor.

[92] **Art. 725 NCPC** (Recusa do requerimento) : 1 - A secretaria recusa receber o requerimento, no prazo de 10 dias a contar da distribuição, indicando por escrito o respectivo fundamento, quando: a) Não obedeça ao modelo aprovado; b) Não indique o fim da execução; c) Se verifique a omissão dos requisitos previstos nas alíneas a), b), d) a h) e k) do nº 1 do artigo anterior; d) Não seja apresentada a cópia ou o original do título executivo, de acordo com o previsto na alínea a) do nº 4 do artigo anterior; e) Não seja acompanhada do documento previsto na alínea c) do nº 4 do artigo anterior. 2 - Do acto de recusa cabe reclamação para o juiz, cuja decisão é irrecorrível, salvo quando se funde na falta de exposição dos factos. 3 - O exequente pode apresentar outro requerimento executivo, bem como o documento ou elementos em falta nos 10 dias subsequentes à recusa de recebimento ou à notificação da decisão judicial que a confirme, considerando-se o novo requerimento apresentado na data da primeira apresentação. 4 - Findo o prazo referido no número anterior sem que tenha sido apresentado outro requerimento ou o documento ou elementos em falta, extingue-se a execução, sendo disso notificado o exequente.

[93] **Art. 726 NCPC** (Despacho liminar e citação do executado): 2 - O juiz indefere liminarmente o requerimento executivo quando: a) Seja manifesta a falta ou insuficiência do título; b) Ocorram excepções dilatórias, não supríveis, de conhecimento oficioso; c) Fundando-se a execução em título negocial, seja manifesta, face aos elementos constantes dos autos, a inexistência de factos constitutivos ou a existência de factos impeditivos ou extintivos da obrigação exequenda de conhecimento oficioso; d) Tratando-se de execução baseada em decisão arbitral, o litígio não pudesse ser cometido à decisão por árbitros, quer por estar submetido, por lei especial, exclusivamente, a tribunal judicial ou a arbitragem necessária, quer por o direito controvertido não ter caráter patrimonial e não poder ser objecto de transacção.

Part 4: Remedies

4.1. General observations on the systemization and availability of national remedies. Provide a short explanation of legal remedies in the national civil procedure of your member state. How is your domestic system of legal remedies structured (e.g. a division between ordinary and extraordinary remedies)?

According to Art. 627/2 of the NCPC [94], remedies can be ordinary or extraordinary.

Provisional remedies specifically provided for in Portuguese civil law include, inter alia:

a) Provisional restoration of possession;

b) Suspension of resolutions of corporate bodies of companies;

c) Attachment of property;

d) Suspension of new works;

e) Listing of assets or documents.

With regard to administrative jurisdiction, provisional remedies, which are specifically provided for include, inter alia:

a) Suspension of administrative decisions;

b) Suspension of administrative regulation;

c) Provisional admittance to take part in a public tender;

d) Provisional assignment of property;

e) Provisional authorization to perform an activity or to adopt a conduct;

f) Provisional regulation of the status quo;

g) Order to adopt or not to adopt a conduct;

h) Suspension of public procurement procedures.

Generally, it is not mandatory to issue a warning prior to the request for any interim measures. However, when the defendant is an attorney-at-law, a Judge or a public attorney, the plaintiff’s attorney must provide a reasoned warning in writing prior to the institution of any judicial proceedings.

4.2. Remedies in enforcement procedure.

The right to an appeal is not, and can never be, an absolute right of anyone who does not recognize the rights that he invokes in Court.

[94] **Art. 627/2 NCPC** (Espécies de recursos) : Os recursos são ordinários ou extraordinários, sendo ordinários os recursos de apelação e de revista e extraordinários o recurso para uniformização de jurisprudência e a revisão.

Reasons linked to judicial practice and to the very workings of justice require that decisions which have little legal or social relevance, even when they affect individual rights, involve only one degree of decision and are therefore not open to appeal instance.

According to this basic principle, in cases where an appeal is admissible, whether it is an appeal or a review, the affirmation of the "Right to Appeal", if it can be understood as a manifestation of access to the constitutionally consecrated right, must coincide with the existence of clear, simple and, as far as possible, universal rules defining the conditions under which an action can be brought, the effects of that act and the procedure to be followed.

Ordinary appeals proceed with the challenge of judicial decisions that have not yet passed judgment (because they are open to challenge and the period for filing the appeal has not been exhausted).

Extraordinary appeals are aimed at challenging judgments that have already been Judged. Ordinary appeals, review and aggravation are in the first and second instance. These are extraordinary resources: the review and opposition of a third party. Appeals must be lodged with the Court to which the appeal is hierarchically subordinated.

The ordinary appeals against decisions of the lower Court are appeal and review (revision) in First Instance. The appeal is based on the final sentence and the sanitation order - an order made after the presentation of all the pleadings that appreciates the procedural presuppositions and selects the facts relevant to the decision, breaking it up between proven facts and facts subject to further investigation - that The merits of the case. The grievance is the responsibility of the decisions that can be appealed against which no appeal can be filed. The ordinary appeals of decisions of the 2nd instance are: the review and the aggravation in the lower Court. The review is the decision of the Appeal Court that Judges the merits of the case and which is based on the breach of substantive law. The aggravation in the second instance is a decision on appeal that can not be reviewed.

The extraordinary ones are aimed at challenging judgments that have already become final.

These are ordinary appeals, the review and the grievance in the first and second instance. These are extraordinary resources: the review and opposition of a third party. Appeals must be lodged with the Court to which the appeal is hierarchically subordinated.

The appeal is based on the final sentence and the curative order - an order made after the presentation of all the pleadings that appreciates the procedural presuppositions and selects the facts relevant to the decision, breaking it up between proven facts and facts subject to further investigation - that The merits of the case.

The grievance is the responsibility of the decisions that can be appealed against which no appeal can be filed.

The review is the decision of the Relation that decides on the merits of the case and which is based on a breach of the substantive law.

In civil matters, the jurisdiction of the Courts of Appeal is € 14 963.94 and that of the Courts of 1st instance is € 3 740.98.

Extraordinary appeals are the review and opposition of a third party.

The final decision may be subject to review in the following cases: The aggravation in the second instance is a decision on appeal that cannot be subject to revision.

The Court's jurisdiction is the pecuniary value that expresses the limit up to which a particular Court Judges without its decisions being subject to appeal.

A) When it is established, by a final criminal judgment, that it was pronounced for prevarication, concussion, bribe, bribery or corruption of the Judge or of any of the Judges who intervened in the decision;

B) When it is verified the falsity of a document or judicial act, testimony or statements of experts, which may in any case have determined the decision to review. The falsity of a document or judicial act is not, however, a ground for review if the matter was discussed in the case in which the decision was reviewed;

(C) Where there is a document, which the party was not aware of or could not have used in the proceedings; in which the decision to be reviewed was given and which in itself is sufficient to modify the decision in the most favourable sense the losing party;

D) When it has been declared void or annulled by a sentence, the confession, withdrawal or transaction on which the decision was based in;

E) When confession, withdrawal or transaction is void;

F) If, after the action and the execution in default, due to the absolute lack of intervention of the defendant, it is shown that the citation was missing or the citation is null and void;

G) When it is contrary to another that constitutes a res judicata for the parties, formed previously.

Opposition by a third party is a means of contesting the judicial decision whose use by the third party which has been prejudiced by it is justified where the dispute is based on a mock act of the parties and the Court has not become aware of the fraud.

An ordinary appeal is admissible only in cases of value superior to the jurisdiction of the Court of First Instance, provided that the contested decisions are unfavourable to the appellant in an amount which is also more than half that of the jurisdiction of the Court (succumbency). In case, however, of serious doubt as to the value of the succumbency, it will be taken into account the value of the cause.

If it is based on a breach of the rules of international jurisdiction, because of the matter or the hierarchy or the offense of res judicata, the appeal is always admissible, regardless of the value of the case.

Decisions relating to the value of the case, the incidents or the precautionary procedures are also always subject to appeal on the ground that their value exceeds the limits of the Court in question.

It is always admissible the appeal against the judgment of the Appeal Court (2nd Instance Court) that is in contradiction with another, of the same or from different Appeal Court, on the same fundamental issue of law and which does not have an ordinary appeal for reasons other than the jurisdiction of the Court, unless the decision is now in accordance with the case law already established by the Supreme Court of Justice.

Regardless of the value of the cause and the loss, an appeal is always admissible for the Relation in the actions in which the validity or the subsistence of rental agreements for housing are valued.

An appeal against decisions given against the Case law of the Supreme Court of Justice is always admissible.

Provide a concise description of all the remedies (and other recourse, i.e. separate enforcement claims) available throughout the enforcement procedure (and separate/adjacent procedures), for all involved persons. Therein, specify the requirements for each remedy.

Answer given in the previous question.

The change in the system and the system of remedies is not among the general objectives of the reform of the Code of Civil Procedure.

However, in the Explanatory Memorandum[95], it was pointed out that one of the *"essential measures"* of the reform was *to "make the second instance more effective for the examination of the facts"*. This resulted in the strengthening and broadening of the powers of the Court of Appeal, and for another purpose: the adjustment of the requirements of the confirming double (*Dupla conforme,* already mentioned above), in the Review appeal[96].

4.2.1. Characteristics of legal remedies in enforcement procedure. Remedies differ in effect and the way in which they exert that effect. Herein focus on the nature and attributes of different remedies in your system, e.g. does invoking a certain remedy suspend the proceedings for the time being; which body/authority is equipped with the competence on rendering a decision in remedial procedures (hierarchy of competence); is a given remedy unilateral or bilateral (does the opposing party have the option of supplying an answer); what powers does the appellate body/authority have, e.g. cassation.

[95] Available on line at: http://www.cej.mj.pt/cej/recursos/ebooks/ProcessoCivil/parecer_CSMP.pdf
[96] Was the main instrument of limitation of access to the Supreme Court of Justice in the 2007 reform.

Insofar as hierarchy is concerned, superior Courts are competent to render a decision in remedial procedures.

Effects of remedies depend on who is using the said remedy; should it be the debtor, remedies do not slay the execution unless guarantee is provided; should it be the creditor no such guarantee is required.

4.2.2. Should objections be brought up in enforcement or in separate procedure?

Objections are brought up in the enforcement claim as an annex. However, it must be stressed that objections are deemed as a counter-action brought against the creditor, with witnesses, documents and a trial of its own. As far as value of said objection is concerned, it is granted the nature of an incident[97]

4.3. Opposition in enforcement.

4.3.1. If a separate judicial procedure to enforce claims from Judgements is not foreseen in your member state, what options does the debtor have in order to challenge inadmissibility of particular enforcement on the grounds that appeared (came into being) after the enforcement title was acquired (*nova producta*) or due to the inadmissible way of performing enforcement?

Objection in enforcement proceedings is admissible, both under Art. 728[98] and Art. 784[99] of the NCPC.

4.3.2. On which grounds does opposition against an enforcement decision have to be substantiated? In case no substantiation is queried, does an ‘assertion’ of opposition suffice?

As previously mentioned, opposition in enforcement proceedings is admissible, with the grounds stated under arts. 728 and 784[100] of the NCPC.

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[97] Contrary to the contestation of the declaratory action, opposition to enforcement, which is structural in nature, is extrinsic to executive action, takes the form of a counter-action tending to impede the production of the effects of the enforcement order and (Which is based on it, hence the request for opposition is equivalent to the initial petition of the declaratory action, to which the art. 467 of the Code of Civil Procedure, duly adapted, and must contain a statement of the value of the case. (TRC RP200702220730569, 22-02-2007, http://www.dgsi.pt/jtrp.nsf/0/d8e2f8ce487582ff80257297003b4e3b?OpenDocument.

[98] **Art. 728º NCPC** (Oposição mediante embargos) : 1 - O executado pode opor-se à execução por embargos no prazo de 20 dias a contar da citação. 2 - Quando a matéria da oposição seja superveniente, o prazo conta-se a partir do dia em que ocorra o respectivo facto ou dele tenha conhecimento o executado. 3 - Não é aplicável à oposição o disposto no nº 2 do artigo 569º. 4 - A citação do executado é substituída por notificação quando, citado o executado para a execução de determinado título, se cumule depois, no mesmo processo, a execução de outro título, aplicando-se, neste caso, o disposto no artigo 227º, devidamente adaptado, sem prejuízo de a notificação se fazer na pessoa do mandatário, quando constituído.

[99] **Art. 784 NCPC** (Fundamentos da oposição) : 1 - Sendo penhorados bens pertencentes ao executado, pode este opor-se à penhora com algum dos seguintes fundamentos: Inadmissibilidade da penhora dos bens concretamente apreendidos ou da extensão com que ela foi realizada; Imediata penhora de bens que só subsidiariamente respondam pela dívida exequenda; Incidência da penhora sobre bens que, não respondendo, nos termos do direito substantivo, pela dívida exequenda, não deviam ter sido atingidos pela diligência. 2 - Quando a oposição se funde na existência de patrimónios separados, deve o executado indicar logo os bens, integrados no património autónomo que responde pela dívida exequenda, que tenha em seu poder e estejam sujeitos à penhora.

Grounds for opposition vary depending on the enforcement title, as stated under arts. 729º, 730 and 731[101] of the NCPC.

Grounds for opposition when the title is a judicial decision are strict (Art. 729[102]), but the debtor's right to oppose cannot be hindered, as ruled by the Constitutional Court in case 388/2013[103].

Grounds for opposition when title is an arbitral decision are ampler and are set forth under Art. 730 of the NCPC.[104]

Grounds for opposition in the case of any other title are very wide and set forth under Art. 731 of the NCPC and include all grounds that could be used as a defence in a declaration procedure[105].

Opposition must always be substantiated, either by means of documents or by means of witnesses, as it is a counter-action brought upon the creditor in order "neutralize" his claim.

4.3.3. Are the grounds for enforcement exhaustively listed or encompassed by a general clause or described in exemplary fashion?

As said prior, execution requires that an obligation be certain, enforceable and liquid (Art. 713 of the NCPC[106]): this is an exhaustive and mandatory formulation that cannot be surpassed by the creditor.

Even if the creditor and the debtor come to terms of agreement, the said agreement must embody an obligation that is certain, enforceable and liquid.

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[100] View notes 68 and 69

[101] **Art. 731 NCPC** (Fundamentos de oposição à execução baseada noutro título) : Não se baseando a execução em sentença ou em requerimento de injunção ao qual tenha sido aposta fórmula executória, além dos fundamentos de oposição especificados no artigo 729º, na parte em que sejam aplicáveis, podem ser alegados quaisquer outros que possam ser invocados como defesa no processo de declaração.

[102] **Art. 729 NCPC** (Fundamentos de oposição à execução baseada em sentença): Fundando-se a execução em sentença, a oposição só pode ter algum dos fundamentos seguintes: a) Inexistência ou inexequibilidade do título; b) Falsidade do processo ou do traslado ou infidelidade deste, quando uma ou outra influa nos termos da execução; c) Falta de qualquer pressuposto processual de que dependa a regularidade da instância executiva, sem prejuízo do seu suprimento; d) Falta ou nulidade da citação para a acção declarativa quando o réu não tenha intervindo no processo; e) Incerteza, inexigibilidade ou iliquidez da obrigação exequenda, não supridas na fase introdutória da execução; f) Caso julgado anterior à sentença que se executa; g) Qualquer facto extintivo ou modificativo da obrigação, desde que seja posterior ao encerramento da discussão no processo de declaração e se prove por documento; a prescrição do direito ou da obrigação pode ser provada por qualquer meio; h) Contracrédito sobre o exequente, com vista a obter a compensacção de créditos; i) Tratando-se de sentença homologatória de confissão ou transacção, qualquer causa de nulidade ou anulabilidade desses actos.

[103] Available online at: http://www.tribunalconstitucional.pt/tc/acordaos/20130388.html

[104] **Art. 730 NCPC (**Fundamentos de oposição à execução baseada em decisão arbitral) : São fundamentos de oposição à execução baseada em sentença arbitral não apenas os previstos no artigo anterior mas também aqueles em que pode basear-se a anulação judicial da mesma decisão, sem prejuízo do disposto nos nºs 1 e 2 do artigo 48º da Lei da Arbitragem Voluntária.

[105] See point 88, above**.**

[106] **Art, 713 NCPC** (Requisitos da obrigação exequenda) A execução principia pelas diligências, a requerer pelo exequente, destinadas a tornar a obrigação certa, exigível e líquida, se o não for em face do título executivo.

4.4. Remedies in international private procedure, i.e. remedies foreseen in national law, relating to recognition and enforcement of foreign judgments under private international law (cross-border situations), excluding B IA .

4.4.1. Types and main features of legal remedies.

As far as remedies are concerned, the same are available for cases concerning BIA and other.

4.4.2. Grounds for challenging foreign Judgement.

Enforcement will be refused on the following grounds:

1. Inexistence or lack of exequatur of the judgment;
2. False (inexistent) judgment procedure; false or inexact translation of the rendered judgment into the Portuguese language, which affects the enforcement procedure;
3. Lack of any procedural prerequisite related to the enforcement procedure;
4. Inexistent or void summon of the defendant in the judgment procedure in which the defendant did not partake;
5. Uncertainty, ineligibility or illiquidity of the obligations to be enforced;
6. Res judicata prior to the rendered judgment;
7. Any dully documented modifying or annulling reasons for opposition to the enforcement of the obligation that are subsequent to the formal hearings before the Court that rendered the judgment;
8. The limitation period of the applicant’s right has expired.

4.4.3. Please indicate what are the differences compared to the grounds in B IA.

The judgments rendered by the Courts of another EU member state are enforceable in Portugal in accordance with article 36 of the Brussels Regulation (i.e., are automatically enforceable without any other further formalities being required). Exceptions are foreseen.

1. The knowledge is manifestly contrary to the public order of the requested state;
2. The decree was issued in absentia and the document that initiated the petition was not served on the defendant and was not allowed to file a defense[107];
3. The decision is irreconcilable with another, in the member state of recognition between the same parties;
4. The decision is irreconcilable with another previously decided in a different MS, between the same parties;
5. The decision was rendered in breach of specific competence rules.

4.5. Remedies concerning Enforcement of Foreign Judgements according to B IA following the abolishment of exequatur.

[107] Judgment STJ 09.07.2015, proc. 134/14.4TBCBBC.G.SI

All remedies available in Portugal can be used in both cases, if meeting the requirements above mentioned in point 4.4.3..

4.5.1. **Remedies in the Member State of origin regarding the enforcement title itself. Do these remedies influence the enforcement procedure in the Member State of enforcement?**

As far as remedies are concerned, the debtor may use those of the Member State of Enforcement, this means, all those available in the Portuguese Legal System. The remedies available on the Member State of origin cannot be used in the Member State of enforcement.

4.5.2. **Refusal of enforcement. What and/or which are the proceedings in your Member State (of enforcement)? Present the procedural aspects of the application for refusal and the role of national procedural law (Art. 47).**

Under Portuguese law the debtor under Art. 725[108] (ex officio) and 726 n. 2[109] of the NCPC (by the Judge) may refuse the execution regardless of the existence of opposition. All these grounds for refusal are strictly formal as refusal on the merits depends on opposition presented by the debtor.

4.5.3. **What are your own specifics regarding required documents?**

Under Art. 703/1 b)[110] private documents must be duly legalized by a notary public or a Lawyer and embody the admission or constitution of an obligation, or they cannot be enforceable.

4.5.4. **Service of documents and representation in your member state. How will service of documents pursuant to B IA be conducted in your member state? Please elaborate.**

In Portugal, a number of entities may serve documents: lawyers, solicitors, Enforcement Agents and even the Court clerk; plus documents may also be served by registered personal e-mail. The choice is up to the creditor and the Enforcement Agent.

4.5.5. **Opposition by the defendant (objection against recognition and enforcement of foreign Judgement) – prerequisites and procedure. Does the law envisage '*incidenter*' or separate procedure. Separate procedure at the First Instance/at the second instance. Elaborate on the particularities of the herein provided issues.**

[108] See note 92
[109] See note 93

[110] **Art. 703/1b) NCPC** (Espécies de títulos executivos): Os documentos exarados ou autenticados, por notário ou por outras entidades ou profissionais com competência para tal, que importem constituição ou reconhecimento de qualquer obrigação.

Objections are brought up in enforcement as an annex to the claim. However, it must be stressed out that objections are deemed to be a counter-action brought against the creditor, with its own witnesses, documents and a separate trial. As far as the value of the objection is concerned, it is granted the nature of an incident.

In Portugal “second instance” refers to Court of Appeals. Appeals are tried “together”, not separately or as an incident.

4.5.6. **Second appeal, (third instance appeal) as a remedy – is it to be utilized only in cases of violation (of procedural or substantive law) or can it be used for control of facts as well?**

An ordinary appeal is admissible only if the case is of a higher value than the jurisdiction of the Court in question and the contested decision is unfavorable to the appellant in an amount greater than half that of the Court, taking into account, in case of doubt Of the value of the succumbency, only to the value of the cause.

Regardless of the value of the claim and of the succumbency, an appeal is always admissible:

(A) on the grounds of infringement of the rules of international jurisdiction, of rules of jurisdiction on the basis of subject matter or hierarchy, or on the offense of res judicata;

(B) decisions relating to the value of the cause or of the incidents, on the ground that their value exceeds the jurisdiction of the Court on which it is based;

(C) decisions given, in the field of the same legislation and on the same fundamental question of law, against the uniform case-law of the Supreme Court of Justice;

D) The judgment of the Court of Appeal that is in contradiction with another, of that or different Court of appeal, in the same law area and on the same fundamental issue of law, and which does not have an ordinary appeal for reasons beyond the jurisdiction of the Court, unless judgment has been handed down to standardize case law by the SCJ.

Regardless of the value of the cause and the succumbency, it is always admissible appeal to the Appeal Court:

A) In actions that assess the validity, subsistence or termination of leases, with the exception of leases for non-permanent housing or special transitory purposes;

B) Decisions relating to the value of the case in precautionary proceedings, on the ground that their value exceeds the jurisdiction of the Court in which it is sought;

C) Decisions denying the preliminary injunction of the action petition or the initial request for precautionary procedure.

4.5.7. **Who is eligible to apply for a refusal of recognition or enforcement? How do you understand the euro-autonomous interpretation?**

The only party who may apply for a refusal of recognition or enforcement by means of opposition or objection is the defendant; however, the Court (the Judge or the clerk) may refuse the enforcement “ex officio”: under Portuguese law the execution may be refused regardless of opposition by the debtor under Art. 725[111] (ex officio) and 726[112] n. 2 of the NCPC (by the Judge). All these grounds for refusal are strictly formal as refusal on the merits depends on opposition being presented by the debtor.

4.5.8. **Suspension and limitation of enforcement proceedings (Art. 44). How is it regulated in your legislation?**

Under Portuguese law, there is no such provision similar to Art. 44, it thus being fully applicable.

4.6. Protective measures.

4.6.1. Which protective measures are available, in National perspective, according to Art. 40?

Measures applicable shall be the ones established under arts. 362[113] et sequitur of the NCPC. Common requirements are:

(i) fumus bonis juris,

(ii) laesio imminentis and

(iii) periculum in mora.

We can find “common measures” (arts. 362 et seq.) and “nominated measures” (arts. 377 et seq.). These being:

Provisional repossession of the seized assets, suspension of social decisions, attachment order, seizure of goods.

[111] Note 92
[112] Note 93
[113] 1 - Sempre que alguém mostre fundado receio de que outrem cause lesão grave e dificilmente reparável ao seu direito, pode requerer a providência conservatória ou antecipatória concretamente adequada a assegurar a efetividade do direito ameaçado. 2 - O interesse do requerente pode fundar-se num direito já existente ou em direito emergente de decisão a proferir em ação constitutiva, já proposta ou a propor. 3 - Não são aplicáveis as providências referidas no n.º 1 quando se pretenda acautelar o risco de lesão especialmente prevenido por alguma das providências tipificadas no capítulo seguinte. 4 - Não é admissível, na dependência da mesma causa, a repetição de providência que haja sido julgada injustificada ou tenha caducado.

These general and special measures are both subject to be applicable concerning Art. 40.

4.6.2. What are the prerequisites for these protective measures?

Common prerequisites for these protective measures are:

(i) fumus bonis juris,

(ii) laesio imminentis and

(iii) periculum in mora.

4.6.3. How long do protective measures last (duration period)?

These measures will last until Court decides otherwise.

4.6.4. Effects of protective measures - *Auszahlungsverbot (Verfügungsverbot)* or pledge (mortgage).

Under Portuguese law, pledge or mortgage do not qualify as “protective measures” they are liens or burdens set on movable or immovable property of the debtor, either by law, by joint will of the creditor and the debtor or by a Court decision.

Pledge and mortgage limit the right of the debtor to dispose of his property.

4.6.5. Can an enforcement motion be refused entirely due to the objection regarding foreign enforcement title or is this just limited to the security measures?

As said prior, the Court (the Judge or the clerk) may refuse the enforcement “ex officio”: under Portuguese law the execution may be refused regardless of opposition by the debtor under Art. 725[114] (ex officio) and Art. 726 n. 2[115] of the NCPC (by the Judge). All these grounds for refusal are strictly formal as refusal on the merits depends on opposition being presented by the debtor.

Thus, an enforcement motion be refused - entirely - due to the objection regarding foreign enforcement title.

4.7. Grounds for refusal.

[114] Note 92, above.
[115] Note 93, above.

4.7.1. What are the past characteristics in your member state regarding grounds for refusal of recognition? Do you see any new problems regarding grounds for refusal?

The foreign Judgement must be authentic (there can be no doubts as to its authenticity), must have been passed by the competent Court of law, must be res judicata and there must not be any exceptions of litispendence or res judicata pending in a Portuguese Court of law (Art. 980 of the NCPC[116]). The counterpart must have been duly summoned and recognition must not be incompatible with the principles of international public order of the Portuguese State. Problems may arise from judicial interpretation and extension of this prerequisite.

4.7.2. What is your opinion on the fact that the grounds for refusal in the B I (44/2001) apply in B IA as well?

B IA is an extension of B I, so I do not find it strange or controversial that grounds for refusal are common.

4.7.3. Please comment on the most problematic grounds in your member state in more detailed manner.

Under Portuguese law, recognition must not be incompatible with the principles of international public order. This is a matter of judicial interpretation and potential controversy.

The exception of international public order or protection of public order established under Art. 980, f)[117]) of the NCPC can only apply when the foreign law grossly violates and conflicts Portuguese law or Portuguese fundamental principles of Portuguese legal order, thus harming the conception of a justice based on the merits as perceived by the State.

4.7.4. Grounds regarding related actions and irreconcilable Judgements. Do you find any open issues in your member state in this regard?

Related actions and irreconcilable Judgements are defined in Art. 580/1[118] of the Civil Code of Procedure and are long known to Portuguese law.

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[116] Artigo 980.º (Requisitos necessários para a confirmação) Para que a sentença seja confirmada é necessário: a) Que não haja dúvidas sobre a autenticidade do documento de que conste a sentença nem sobre a inteligência da decisão; b) Que tenha transitado em julgado segundo a lei do país em que foi proferida; c) Que provenha de tribunal estrangeiro cuja competência não tenha sido provocada em fraude à lei e não verse sobre matéria da exclusiva competência dos tribunais portugueses; d) Que não possa invocar-se a exceção de litispendência ou de caso julgado com fundamento em causa afeta a tribunal português, exceto se foi o tribunal estrangeiro que preveniu a jurisdição; e) Que o réu tenha sido regularmente citado para a ação, nos termos da lei do país do tribunal de origem, e que no processo hajam sido observados os princípios do contraditório e da igualdade das partes; f) Que não contenha decisão cujo reconhecimento conduza a um resultado manifestamente incompatível com os princípios da ordem pública internacional do Estado Português.

[117] **f) Que não contenha decisão cujo reconhecimento conduza a um resultado manifestamente incompatível com os princípios da ordem pública internacional do Estado Português.**

[118] **Art. 580/1 NCPC** (Conceitos de litispendência e caso julgado): As excepções da litispendência e do caso julgado pressupõem a repetição de uma causa; se a causa se repete estando a anterior ainda em curso, há lugar à litispendência; se a repetição se verifica depois de a primeira causa ter sido decidida por sentença que já não admite recurso ordinário, há lugar à excepção do caso julgado.

There remain no open issues in Portugal in this regard.

Part 5: Final critical evaluation of B IA – what necessary adaptations to national legislations need to be done?

5.1. Does B IA in your opinion actually simplify, speed up and reduce the costs of litigation in cross-border cases concerning monetary claims and eases cross-border enforcement of judgments?

It is the authors' opinion that it is correct to say that B IA simplifies and speeds up litigation in cross-border cases concerning monetary claims and eases cross-border enforcement of judgments, taking into consideration the Portuguese Legal and Judicial Systems. The authors cannot, however, declared that B IA reduces costs of litigation, as Court fees and costs vary highly from one State to the other, and even within the Member State of enforcement some changes may occur (see COSTS)

At the moment, there is still no official statistic on the effectiveness of Brussels Ibis Regulation. It really does, however, seem that the amended regulation is more efficient that the previous, due to the abolishment of the exequatur.

According to Brussels I only one Court proceedings may take place, in the First Instance, in the form of *"uncontested proceedings"* without the presence of the debtor. The debtor is delivered by the exequatur and has right to appeal against the exequatur within the period determined by the Regulation[119] of one or two months depending on his permanent residence. The appeal is filled in a minimum of cases only. Also, the second appeal may applicable.

According to Brussels I bis the creditor applies for the enforcement of the judgment and the debtor may apply for a refusal of the enforcement on the grounds of Art. 45 (refusal of recognition). Proceedings for refusal of enforcement suspend the proceedings for enforcement. The decision on the application for refusal of enforcement may be appealed against by either party.

Even though there are no statistic date Portugal, we do not consider the amended regulation in Brussels Ibis Regulation simpler and faster. It is also important to take into account that if two contradictory proceedings take place, costs on the side of the state are higher.

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

From the creditor's point of view, the most convenient alternative in Portugal in case of cross-border collection of debts in the EU should be for the creditor to start the execution in the country where he resides or in the Member State that issued the European Enforcement Order, present rule being that execution must commence in the Court of the debtor's domicile.

Looking at it from an EU perspective It 's hard to answer. There are 3 (three(alternative Regulations (the European Enforcement Order for Uncontested Claims, the European Payment order, and the European Small Claims Procedure) but each of them has a

[119] Time limits are regulated by Brussels I Regulation, national law doesn´t apply

different material scope. Also, these Regulations were intended as alternatives to Brussels I Regulation (44/2001) with the significant difference of abolishing the exequatur. Now when Brussels Ibis Regulation is applicable, the importance of these three Regulations is probably lower, as it came to abolish the exequator.

Two important differences remain:

- These - other - Regulations contain fewer reasons for challenging the enforceable decision in the state of enforcement, but it is balanced by the need to comply with minimum standards;
- The European Payment Order and the European Small Claims make use of forms alone. This simplifies its usage by non-lawyers.

5.3. Language issues: Is it possible or advisable to choose the form in the language of the debtor?

If no such possibility exists the form must be previously translated, and said translation needs to be certified before the commencement of the execution proceedings.

In Portugal, the only accepted language is Portuguese.

5.4. Do you anticipate that the principle of national procedural autonomy shall be adversely affected by the provisions of B IA?

As above mentioned, (Point 1.2) The Portuguese NCPC underwent a major and non-consensual reform in 2013. The said reform aimed not only at solving national issues but also at protecting international creditors and allowing them to start – and conclude - execution proceedings in Portugal in an expedite way.

Costs. Since the recognition and enforcement of foreign Judgements no longer require *exequatur,* what is your take on the costs which will incur with respect to enforcing judgments under B IA in comparison to enforcing them under BI? Will it be more cost – effective?

In Portugal, the costs of enforcement, including fees and expenses payable to the enforcement agent, of appended proceedings and of the respective action for declaratory relief are deducted from the proceeds of the seized assets.

The costs accounting is kept on a continuous basis throughout the process by the Court registry dealing with the enforcement, in accordance with the Litigation Costs Regulation.

Fees due to an enforcement agent and the reimbursement of his expenses, as well as debts to third parties as a result of the enforcement sale, are borne by the creditor. The said creditor may require reimbursement of these costs from the debtor in cases where it is impossible to apply the provisions of the first paragraph (costs, fees, and expenses deducted from the proceeds of the seized assets).

The enforcement will not proceed until the creditor pays the enforcement agent

all sums due for fees and expenses.

The creditor, debtor, the Chamber of Solicitors, the Court and any third party which has a legitimate interest is entitled to be informed, preferably by electronic means, about the details of the current account for the case. This account must be kept permanently up to date by the enforcement agent.

The detailed current account for the case includes foreseeable expenses for the completion of the proceedings, more specifically expenses incurred in the cancellation of registrations.

Enforcement agents are entitled to remuneration for dealing with cases, acts carried out or procedures are undertaken, in accordance with the amounts stipulated in the table in Annex VII to Implementing Order (Portaria) 282/2013 of 29 August 2013[120], which include the carrying out of acts required within limits provided for therein.

Enforcement agents are entitled to be paid fees for services rendered and to be reimbursed for duly proven expenses.

An enforcement agent is due an additional remuneration at the end of enforcement proceedings for the payment of a specific sum, which varies depending on the sum recovered or guaranteed, the point in the proceedings at which the sum was recovered or guaranteed, and on the existence or otherwise of a real guarantee on the assets seized or to be seized.

Parties are ensured access to the current account for cases in which they are involved through IT systems supporting the activity of enforcement agents.

The enforcement agent must inform the creditor, at the start of the proceedings, and the debtor, at the point of summons, of the probable amount of his fees and expenses. This information must be recorded in the IT systems supporting the activity of enforcement agents and included in the case file.

External actions, i.e. those not carried out through the IT systems supporting the activity of enforcement agents, must be recorded in that system up to the end of the second working day after the day the action was carried out. Failure to do so will result in the enforcement agent not being reimbursed for the respective expenses.

The Chamber of Solicitors provides access on its official website to a simulator for the fees and expenses of enforcement agents. The values indicated by the simulator are merely indicative.

The amounts set in this Implementing Order (Portaria) are expressed in units of account (UC).

A UC is the monetary amount equivalent to a quarter of the value of the Social Support Index, rounded up to the nearest whole euro, set out in the provisions of Article 5 of the Litigation Costs Regulation and calculated on the basis of the provisions of Article 22 of Decree-Law No 34/2008.[121]

The value of a UC is, at the moment, 102€.

There is no regulation concerning the costs with attorneys other than the Statues of the BAR[122] regarding attorney’s fees. The only tariffs that are legally foreseen are those of legal Aid.

[120] Available online at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1968&tabela=leis
[121] Available online at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=936&tabela=leis
[122] http://portal.oa.pt/ordem/regras-profissionais/estatuto-da-ordem-dos-advogados/

The lawyer is free to charge as much as he wants, in accordance with the amount of work and with economic adequacy[123].

Success fee, known in Portugal as *quota litis* is entirely forbidden[124] [125].

According to the Brussels Ibis Regulation, itself, no fee concerning the application for exequatur is paid. Further cost reduction is represented by the requirement to translate the certificate of enforceability, and only the certificate and not the whole judgment, as it contains information both on the judgment and on the proceedings, that took place in the state of origin. The competent enforcement authority is not entitled to require the creditor to provide the translation of the whole judgment unless it is unable to proceed with the claim without such a translation.

[123] Article 105 Fees
1 - The attorney's fees must correspond to adequate economic compensation for the services actually rendered, which must be paid in cash and may take the form of fixed retribution.
2 - In the absence of a prior written agreement, the lawyer shall submit to the client the respective account of fees with a breakdown of the services rendered.
3 - In fixing the fees, the lawyer must take into account the importance of the services provided, the difficulty and urgency of the subject, the degree of intellectual creativity of his performance, the result obtained, the time spent, responsibilities assumed and other professional uses .

[124] Court decision no. 6458/04.1TVLSB.S1
http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/856ff4335bccd5c580257640003cd84c?OpenDocument

[125] Article 106.º Proibição da quota litis – prohibition of lits quota
1. It is forbidden for the lawyer to conclude pacts of quota litis.
2. Quota litis is an agreement between the lawyer and his client, before the final decision on the matter is concluded, whereby the fees are exclusively dependent on the result obtained in the matter (…)

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