

NATIONAL REPORT

- PORTUGAL -



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GENERAL OVERVIEW

National Legal system

Portuguese civil procedural law claims a long tradition. The first rules of judicial organization date back to 13th century by the hand of King Afonso II; the Supreme Tribunal of the Court was established in this period and, after some changes in its name, became the modern Supreme Court of Justice. Some key instruments of Civil Procedural law in Portugal include the Ordinance of 1582, restructuring procedural law, the Law of the 20th of August of 1774, who restructured the judiciary organization and procedural law, and the Laws 22, 23 and 24 of 1832, drafted by Mouzinho da Silveira, that operated a complete reform of the Portuguese judiciary and Civil procedure that last, although with numerous changes and amendments, until the 22nd of September 1926, when all of it was replaced by the Decreto n.º 12353. Previous Portuguese civil procedural law had relied, until then, on a private conception of the procedural affairs; the main principle governing all the proceedings was the Principle of the party initiative: the parties were in charge drive the courts action and carrying all proof for the judge to assess and finally rule. The magistrate was mainly a viewer, not an actor. The 1926 reform changed all this and paved the way for a Portuguese Code of Civil Procedure, enacted in 1939. This Code was replaced in 1961, amended for the first time in 1967, the second time in 1969, then 1970, 1974, 1975, five times in 1976, twice in 1977, once in 1978, twice in 1979, twice in 1980, once in 1982, twice in 1985, twice again in 1986, once in 1988 and 1990, once in 1991, once in 1993, once in 1994, twice in 1995, again in 1996, three times in 1998, once in 1999, once in 2000, twice in 2001, once in 2002, three times in 2003, once in 2004, four times in 2006, twice in 2007, five times in 2008, once in 2009, twice in 2010 and once (until October) in 2011. Fifty seven amendments in fifty years, nearly half of it in the last ten years!

Court jurisdiction and different types of litigation for debt collection	Court's jurisdiction is divided according to the nature of the dispute, hierarchy and territory. Judicial courts have general jurisdiction, being competent for the disputes not attributed to other courts (Administrative courts, Tax courts). The courts of first instance are, as a general rule, district courts. These courts have general jurisdiction - they can solve all disputes except for those which are mentioned by the law as being of competence of other courts.
National summary procedures for recovery of money claims	There are generic summary and simplified summary procedures for recovery money claims. Special proceedings also exist, the first of which is the order for payment procedure. There are also special proceedings regarding the payment of money sums up to 15.000 euro arising from contracts and the special proceeding for the recovery of hospital debts. The first, special procedures regarding the payment of money sums up to 15.000 euro arising from contracts may, exceptionally, apply to claims up to 30.000 euro, in result of the mandatory conversion, in consequence of opposition, of a national order for payment procedure. The special proceeding for collecting hospital debts seems outside the scope of this project and won't be analyzed in this report.

State of IT operational options in judicial procedures for recovery of money claims	<p>Portugal has a high level of IT in both the Courts and its environment. In fact, in January 2009 Portugal achieved the goal of full proceedings dematerialization. There is a web portal, www.citius.mj.pt, serving the complete jurisdictional cluster. Citius is, at the same time, the brand and the set of special applications that allow proceedings to be completely dematerialized from January 2009. As of 2007, 74% of the cases are dematerialized and all the acts of the courts are performed electronically. The dematerialization rule applies also the pending cases insofar as new acts are concerned. There is a reduction in fees for all the cases when electronic means are used by the parties.</p> <p>The service of documents between justice professionals is also dematerialized. The service of documents to the parties not represented by lawyer or solicitor remains with the traditional methods, usually registered mail. Electronic communication between de parties is now mandatory and the same applies to the communication between the parties and the court and within the court itself.</p>
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SCOPE OF THE PROCEDURE

Eligible claims	The payment order procedure is applicable to monetary claims arising from contracts only.
Limit regarding value of claim	Depending on the quality of the parties, there are limits to the value that can be claimed: if both creditor and debtor are undertakings, and thus the claim can be classified as a commercial claim, there are no limits to the value of the claim. If one or both parties don't qualify as undertakings, there is a limit of 15.000 euro.
Rules on using the procedure	The procedure is optional, but the claimant has financial benefits (reduced fees, when compared with the alternatives – declaratory proceedings)
Possibility of using national procedure in cross border cases	It is possible if place of performance is in Portugal. There are two criteria to determine the jurisdiction of the Portuguese courts: the place of domicile of the debtor or the place of performance of the obligation. If the defendant has domicile in another country but the place of performance of the obligation is in Portugal the payment procedure can be filed in Portugal. This track, however, is not the best choice, as the service of documents will have to follow, when applicable, the rules of the Regulation 44/2001.
Number of steps	It's a one-step procedure
Rules on representation by a lawyer	Not mandatory.

COMPETENT COURTS

**According
to matter
and
according
to territory**

The Portuguese system is mixed. The competent court for the payment order procedure is the county court of:

- i) the domicile of the debtor,
- ii) the place of performance, or
- iii) the conventional jurisdiction.

According to Portuguese law, the first two criteria lead to the same court: the place of performance is, if not agreed otherwise, the place of domicile of the debtor – article 773 of the Portuguese Civil Code (PCC). Nonetheless, the application (requirement) will only be delivered in that court if delivered in paper support. If delivered electronically, although addressed to the competent court, it will be electronically delivered to the National Payment order office that will proceed with the procedure.

APPLICATION FOR AN ORDER FOR PAYMENT - FORMAL REQUIREMENTS

Availability of standardized form and form description	Yes, there is a standard form. The form can be downloaded from the Internet in the Citius portal – available at http://www.citius.mj.pt/portal/
Rules on representation by a lawyer	Not mandatory.
Description of the reasons for the claim	Although the standard form only allows for 8.000 characters, it is the court of Appeal understanding that there must be circumstantiated groundings for the requirement – see judgements of 30 of October 2007, 19 of May 2005, 17 of March 2005 all of the Court of Appeal of Oporto, and the judgement of 2 of February 2010 of the Court of Appeal of Lisbon.
Need for written evidence and documents admissible as proof	No written evidence is required.
Option of electronically filing the form	Possible - reduces court fees.

ISSUE OF THE ORDER OF PAYMENT

Specific rules for dealing with submitted apps for order of payment and court decision

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

The formal demands of the requirement are :

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

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

Decision of the court on the payment order	<p>If the requirement is accepted, the court shall serve the requirement to the defendant, by recorded mail, in five days from the acceptance, to pay the claim and expenses or contest in 15 days from the reception. There are rules to remedy the frustrated service of the requirement.</p>
Existence of guidelines for submitting application	<p>There are no instructions on the order for payment requirement. These instructions are included in the courts order for service (notification). This order shall contain:</p> <ul style="list-style-type: none"> - Identification of the competent court; - Identification of the parties; - Indication of the place where the service of documents should be performed, referring if such place is a result of an agreement between the parties; - Summary of the facts supporting the claim; - Express reference to the value of the debt, interest and other expenses claimed; - When applicable, the mentions that the debt arises from a commercial contract and that both parties in the supporting contract are undertakings acting as such; - Mention of the claimants domicile; - Mention of the claimants email address (if the claimant wishes to receive electronic information); - The delay for payment or opposition and the way such delay is calculated; - The information that if the requirement is not opposed it will be given exequatur; - The mention about future interest; - The mention that the unsubstantiated or wrongly substantiated opposition, when the defendant has the obligation to know about such situation, shall determine a fine and the amount of the fine.

Defendant's service of the order of payment	<p>If the requirement is accepted the court will serve the order for payment to the defendant with the mentions referred to in 2.4 c) above. The rules applicable to the service are as follow:</p> <ul style="list-style-type: none">- If the defendant refuses to accept the service by recorded mail, the messenger shall write notice of the incident and the service is considered performed.- If the defendant is not found, the court will try to find, ex officio, information about the whereabouts of the defendant. It will use the National register databases as well as the Tax Authority database. If the same address is in all the databases, the notification will be sent by regular mail.- The claimant may request that the service be made by an agent of execution.
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REJECTION OF THE APPLICATION

Grounds for rejecting application	Application can only be rejected if does not follow the specific rules for dealing with submitted application for order for payment mentioned above.
Appeal availability (creditor)	The creditor can appeal

OPPOSITION BY THE DEFENDANT

Procedural rules	<p>The opposition may be presented both in paper or electronic form. The consequence of the opposition is as follow: i) if the value is above 30.000 euro (debt arising from a commercial contract between undertakings) the order for payment procedure is converted in an ordinary declaratory proceeding; ii) if the value is up to 30.000 euro (again arising from a commercial contract between undertakings) the procedure is converted into a declaratory summary procedure; iii) if the value is up to 15.000 euro the procedure is converted into the special declaratory procedure (small claims track). Representation by a lawyer is only necessary in the situation described in i) above. In all other cases representation by a lawyer is not mandatory.</p> <p>The delays for opposition are the established on the order for payment procedure. The main argument against the 15 days delay is related to cross-border order for payment: the 15 days delay is generally considered too narrow for a foreigner debtor to oppose, especially considering that the documents (application and service) will be delivered in Portuguese.</p>
Substantiated order of payment requirement	It is required.
Effects of notice of opposition	The procedure is converted into a declaratory procedure and send to the competent court.
Nature of the structure of the procedure	Shall follow "Declaratory procedure".

EFFECTS OF ABSENSE OF TIMELY OPPOSITION

Consequences on not filing opposition	If there is no objection the court, on its own motion, issues the certification of enforceability.
How to obtain an enforcement judgement	The court issues on its own motion a declaration of enforceability.
Effects for the order of payment	It is final. The only possible way to oppose the enforcement is by arguing the extinction of the obligation by fact occurred after the issuing of the declaration of enforceability.

COURT FEES

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

ENFORCEMENT OF NATIONAL ORDER OF PAYMENT

**Domestically
and abroad**

The enforcement of the national order domestically follows the general rules for enforcement.

COMPARING NATIONAL AND EU ORDER FOR PAYMENT

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