**Project EU-En4s — JUST-AG-2018/JUST-JCOO-AG-2018**
**Funded by the European Union's Justice Programme (2014-2020)**


# Portuguese national report

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## Part 1: General inquiries regarding Enforcement titles

1.1 Briefly present how an "enforcement title" is defined in your national legal order.

Comment: *In addition to the definition, enumerate the domestic judicial (and other legal) instruments which conform to the above definition of an enforcement title. If there is a statutory definition, then please provide the citation to the exact article/paragraph of that law and an English translation. Provide a list of enforcement titles.*

- According to article 10(5) of the Portuguese Code of Civil Procedure (CPC – approved by the Act 41/2013, of 26th June), any enforcement procedure shall be founded on an enforcement title by which the purpose and limits of the execution/enforcement are decided.
- There is no statutory definition, but the law explicitly lists the enforcement titles.
- The enforcement title is a document to which the law grants strength enough to be enforceable. It is a document that states ("certifies") the existence of one or more obligations; it is the document that offers sufficiently secure data about the existence of a certain credit right and to which, therefore, the law gives the special relevance of its enforcement[1].
- The article 703(1) of the CPC indicates which enforcement titles exist in Portugal:
  a) Court decisions (enforceable decisions);
  b) Documents released or authenticated, by a notary or other entities or professionals with competence to do so[2], which require constitution or recognition of any obligation (constitutive or recognitive document of an obligation);
  c) Credit titles (debt securities as official cambial documents such as bank checks, bill of exchange and promissory notes); even if they are mere copyrights, provided that, in this case, the facts constituting the underlying relationship are contained in the document itself or are alleged in the executive order;
  d) Other documents to which, by a special legal provision, enforcement is granted (e.g. mediation agreements according with article 9(1)(e) of Law 29/2013, of 19th April; enforced order for payment - article 14 of Decree Law 269/98, of september 1; the condominium members' meeting minutes, which decide on the amount of the contributions due to the condominium or any expenses necessary for the conservation and enjoyment of the common parts - article 6 of Decree Law 268/94, of October 25th).

1.2 How are "civil and commercial" matters defined in your national legal order?

- There is no statutory definition.
- The concept and scope of Civil Law and Commercial Law results from the systematic organization of the Portuguese legal system.

[1] Cfr. FREITAS, J. Lebre de, *A ação executiva à luz do Código de Processo Civil de 2013*. 7.ª ed. Coimbra: Gestlegal, 2017, pp. 45-83; PINTO, Rui, *A ação executiva*. Lisboa: AAFDL, 2020, pp. 133-228.
[2] Lawyers, Solicitors, for example.

- Civil Law is the Common Private Law. It covers four fundamental areas: Law of Obligations, Property Law, Family Law and Inheritance Law. In addition, it has a general part about people's law. There is also Special Civil Law, which includes Commercial Law, Labor Law, Industrial Property Law, Banking Law.In any case, in a broad sense, Labor Law is considered Civil Law; Industrial Property Law, Banking Law is considered Commercial Law.
- The correlation between civil and commercial matters is one of subsidiarity/specialty.
- Therefore: We can only conclude it by interpretation to the contrary, from the special regimes. What is special between private persons will be Civil Law (= Common Private Law); To define what is commercial we have legal rules that determine the application of the Commercial Code, thus considering those referred to in Article 2, i.e., the acts objectively commercial, whether or not performed by traders, and the acts performed by traders in the exercise of their trade. Companies issues can also be expressly considered to be commercial matter, since the law expressly qualifies them as such (article 1(1) and (3) Code of Commercial Companies (CSC).
- In addition, and doctrinally, matters that, even though not in the Commercial Code, historically were regulated there: such as Insurance, Banking, Maritime Transport, etc. are also considered commercial matters.
- In short: Portugal do not have rules that directly delimit what is civil, but we do have rules that expressly delimit (at least some) cases from what is considered commercial. Thus, civil matter covers what is not commercial.

1.3 Which bodies conform to the definition of "Courts and Tribunals" as provided for by the B IA under your domestic legal system?

In the Portuguese judicial system there are the following categories of courts:

- The Constitutional Court («*Tribunal Constitucional*»), whose main function is to assess the constitutionality or legality of legal norms, as well as the constitutionality of omissions to legislate.
- The Court of Auditors («*Tribunal de Contas*»), which is the supreme body that oversees the legality of public expenses and with the assessment of accounts the law submits to it expenditure and appraises the accounts that the law requires it to submit.
- The Judicial Courts, which are the common courts in civil and criminal matters and which exercise jurisdiction in all matters not attributed to other judicial orders. They include the Supreme Court of Justice, the courts of second instance (which are, as a rule, the Courts of Appeal) and the courts of first instance (which are, as a rule, the District Courts). The following benches of specialised competence may be created: i) Central Civil (Central cível); ii) Local Civil (Local cível); iii) Central Criminal (Central criminal); iv) Local Criminal (Local criminal); v) Local Minor Criminal (Local de pequena criminalidade); vi) Criminal Enquiry (Instrução criminal); vii) Family and Youth (Família e menores); viii) Employment (Trabalho); ix) Commercial (Comércio); x) Enforcement (Execução).

- The Administrative and Tax Courts, whose function is to decide disputes arising from administrative and tax relations. They include the Supreme Administrative Court, the Central Administrative Courts, the Circle Administrative Courts and the Tax Courts.
- The Courts of Peace, which are courts with special characteristics and with jurisdiction to hear civil cases in which the value of the case does not exceed EUR 15 000.
- Military Courts may also be established during the state of war.
- Arbitral courts are also a court category by the Portuguese Constitution [article 209(2)].
- Regarding the injunction process, the Ordinance No. 220-A/2008, of 04 March created the National Injunctions Bureau (BNI) which can grant enforceability to a title if there is no opposition in the injunction procedure (article 14 of the Annex of Decree-Law 269/98, of 1st September).

1.4 Briefly present the types of domestic decisions (e.g. Judgments, Decrees, Decisions, Orders) which may be rendered/issued under your Member State's civil procedure.

Comment: *Briefly elaborate on the meaning and effects of these of types of decisions. Please note that the word "decision" is used as a generic and neutral term, e.g. in Slovenia, "decisions" rendered by the court shall take form either of a "judgment" (Slovene: "Sodba") or of a decree (Slovene: "Sklep"). "Civil procedure" is to be understood as any procedure so designated by domestic law. In addition, decisions not rendered in civil procedure, but having a civil character (e.g. decision on damages in criminal procedure), should also be included. Indicate which of these decisions may be considered enforcement titles. Additionally, please state what these decisions are called in the official language of your Member State. If enforcement titles are exhaustively enumerated by statute, please provide the citation to the exact article/paragraph of that statute and an English translation.*

- According to article 152.º of the Portuguese Code of Civil Procedure, judges have the duty to administer justice by delivering an order or sentence/judgement on pending actions.
- A "sentence" (*sentença*) is the act by which the judge decides the main action or some incident that presents the structure of an action.
- The decisions of the collegial courts are called judgements (acórdão).
- Orders (despachos) are intended to provide for the regular progress of the process, without interfering in the conflict of interest between the parties.
- Sentences and judgements are enforcement titles. The order for enforcement of the injunction application transform it into an enforceable title.
- Civil enforceable decisions are issued in criminal proceedings.
- Enforcement titles are exhaustively enumerated by statute, in article 703(1) of the CPC (see question 1.1.).

1.5 Taking account of the euro-autonomous definitions of "Judgment" and "Authentic instrument" elaborated by the CJEU for the purposes of B IA, which domestic decisions and instruments conform to these definitions?

Comment: *Please explain which domestic decisions and instruments are problematic in the light of the euro-autonomous definitions and why. Explain which decisions and instruments do not fall within the definitions. If you use English translations of domestic decisions, then please also provide the domestic term in brackets next to the translation, e.g. In Slovenia, condemnatory Judgements [Sodbe] issued in litigious proceedings…".*

- The concept of "Judgement" includes:
- Sentences (sentenças)
- Collegial courts judgements (acórdãos)
- Orders (despachos)
- And do not includes:
- Decisions of administrative bodies (Ministers, ministerial and administrative authorities);
- Court settlement (transação) (except if a judge homologates the agreement since in this case have the same value of a judicial judgement)
- The concept of "Authentic instrument" includes:
- - documents drafted or authenticated by a notary or registrar;
- - documents authenticated by lawyers or solicitors (article 38 Decree-Law No. 76-A/2006, of 29 March).

1.6 Have the national courts of your Member State addressed any questions for a preliminary ruling (Article 263 TFEU) to the CJEU regarding the notion of "Judgment"?

- The Portuguese courts have not requested a preliminary ruling on the concept of sentence to date.

1.7 Please explain the level of judicial control (the "power of assessment") exerted by the courts when rendering default judgments in your Member State.

Comment: *The power of assessment may significantly vary. For instance, the courts may be barred from examination of the substance of the case or limited to checking compliance with mandatory rules of law.*

- In Portugal there are no direct condemnations based in default.
- There are two types of default: operant and inoperant (article 566, 567 and 568 CPC).
- In any case, the judge must always verify that the defendant has been regularly served.
- In operant default, the court considers the facts alleged by the plaintiff to be proven, and then passes judgment in accordance with the law that applies materially to them.
- In non-operating default, the plaintiff continues to have the duty of evidence and the court judges the facts and applies the law.
- In any case, the court may examine procedural and/or substantive matters, of ex officio knowledge, and judge accordingly.

- Even in special cases of abbreviated proceedings, although the court has the power to confer immediate enforceability of the initial petition, it must always do so after checking questions of procedural conformity and if the application is not manifestly unfounded. (article 2 of the Annex of Decree-Law 269/98, of 1st September).

## Part 2: General aspects regarding the structure of Judgements

2.1. Which elements are comprised in the structure of a domestic (civil) Judgment in your legal order?

Comment: *A judgment normally contains an array of (necessary) information in separate constituent parts (elements), e.g. the title; the proclamation that the Court issues the Judgment in the name of the people; the Court and the judge rendering the judgment; Parties to the dispute; the Operative part; the Reasoning; the Legal instructions etc.*

- The judgment contains: the court identification, the case-number, the type of proceedings, the date on which the case-file was referred for decision (opening of the conclusion), the identification of the official who referred it, the date of the decision, the signature of the judge (currently digital).
- In the final part, it also contains the condemnation in procedural costs and the order to notify the parties of the judgment.
- Aside from these elements, the sentence is divided into four parts: Report; Reasoning of Fact; Reasoning of Law; Operative Part (Final decision/ jurisdictional order):

  I – Report: The report summarizes the whole process.It identifies the parties, indicates the claim, states the reason for the claim, including the facts, mentions that the defendant was served, if there was a complaint, the grounds for the defense, and whether there was a prior hearing and a final hearing. It also states that the case is still in order and valid as to the procedural premises. Finally, it identifies the issues to be considered.

  II - Reasoning of Fact: It indicates the proven and unproven facts; it exposes the judge's conviction (reasons for the factual decision).

  III - Reasoning of Law: exposes the legal grounds and applies the right to the proven facts.

  IV - Operative Part: Indicates the final and concrete decision; whether the defendant is condemned or acquitted of the claim.

2.2. Is the structure of a Judgement prescribed by law or court rules or developed in court practice (tradition or custom convention)?

Comment: *If applicable, please provide the citation to the exact article/paragraph of the rule and an English translation.*

The nuclear structure of the judgement is established in Article 607 of the Civil Procedure Code:

(…)

No 2 - The judgement begins by identifying the parties and the object of the dispute, then stating the issues that court must resolve.

No 3 - The grounds are set out below, and judge must detail the facts he considers proved and indicate, interprets and apply the corresponding legal rules, concluding with the final decision.

No 4 - In the reasoning of the judgment, the judge shall state which facts he considers to be proved and which he deems to be unproven, analysing the evidence critically, indicating the

conclusions drawn from the instrumental facts and specifying the other grounds that were decisive for his conviction; the judge shall also take into consideration the facts that are admitted by agreement, proved by documents or by confession reduced to writing, making compatible all the facts acquired and extracting from the established facts the presumptions imposed by law or by rules of experience.

(…)

No 6 - At the end of the judgment, the judge shall order those responsible for the procedural costs, indicating the proportion of their liability.

*Artigo 607.º*

*(…) N.º 2 - A sentença começa por identificar as partes e o objeto do litígio, enunciando, de seguida, as questões que ao tribunal cumpre solucionar.*

*N.º 3 - Seguem-se os fundamentos, devendo o juiz discriminar os factos que considera provados e indicar, interpretar e aplicar as normas jurídicas correspondentes, concluindo pela decisão final.*

*N.º 4 - Na fundamentação da sentença, o juiz declara quais os factos que julga provados e quais os que julga não provados, analisando criticamente as provas, indicando as ilações tiradas dos factos instrumentais e especificando os demais fundamentos que foram decisivos para a sua convicção; o juiz toma ainda em consideração os factos que estão admitidos por acordo, provados por documentos ou por confissão reduzida a escrito, compatibilizando toda a matéria de facto adquirida e extraindo dos factos apurados as presunções impostas pela lei ou por regras de experiência.*

*(…)*

*N.º 6 - No final da sentença, deve o juiz condenar os responsáveis pelas custas processuais, indicando a proporção da respetiva responsabilidade.*

2.3. How standardised (regarding form and structure) do you consider judgments from your Member State to be (e.g. inadequately; adequately; standardised, although exceptions can be found)?

Comment: *If the law regulates this issue, then it is expected that judgments are standardised. However, if certain courts tend to disregard standards or if standards are too loosely defined, then please elaborate. If your Member State has multilevel governance structures (e.g. federalisation; autonomous regions) please elaborate if the different governance structures also apply different standards.*

Judgments are adequately standardised since the structure establish by Law is consistent with the purposes of a judicial decision.

2.4. How are the different elements of the Judgment separated from one another (e.g. headline, outline point etc.)?

The four parts of the judgement are numbered.

In each part, the main components are separated by title and/or underlined.

Each component and each part are separated by spaces or asterisks. (Reasoning of Judgment; Proven facts; Non proven facts; Reasons for the factual decision; Law reasoning, ….)

2.5. If courts, other than courts of first instance, may issue enforceable judgments, how does the structure of such judgments differ from judgments issued by the courts of first instance?

Comment: *The question comes into play especially in cases where, after recourse, appellate and other courts may modify first instance judgments or decide on the claim independently. In addition to general observations, please focus on the operating part, e.g. does it make reference to first instance judgements, how does it uphold or dismiss those judgements?*

If a court of second instance decides as a first instance court the judgment structure is the same mentioned above.

Nevertheless, if the second instance court is an appeal court the judgement structure is different, since the judgment refers to the appealed judgment. In this case the judgement has the following structure [according with Article 663(2) of the Civil Procedure Code]:

I – Report (*Relatório*) where a summary of the parties' allegations is made;

II – Reasoning

1. Delimitation of the appeal object (issue in discussion)
2. The merits of the appeal (legal assessment)
3. Concluding summary

III – Decision (the operative part)

This structure is the same adopted by the third instance court (*Supremo Tribunal de Justiça*) when a second appeal (*recurso de revista*) exists, as prescribe in Article 679 of the Civil Procedure Code.

2.6. How does the assertion of a counterclaim affect the structure of the Judgment?

Comment: *In addition, explain when a counterclaim can be entertained in the same proceedings and be decided in a single Judgment (if possible).*

In each part of the sentence, the relevant issues are intercalated in an autonomous manner for the consideration of the counterclaim.

In the end, the judge decides autonomously on each of the requests (main and counterclaim).

According with Article 266 of Civil Procedure Code, a counterclaim is only admissible in the following cases:

a) When the defendant's claim emerges from the same legal fact that serves as basis for the action or defence;

b) When the defendant proposes to make effective the right to improvements or expenses related to the thing whose delivery is requested;

c) When the defendant seeks recognition of a claim, either to obtain compensation or to obtain payment of an amount that exceeds the author' claim;

(d) where the defendant's claim tends to have the same legal effect for his benefit as the Claimant demands.

A counterclaim shall not be admissible where the defendant's claim corresponds to a different form of proceedings from the claimant action, unless the judge, in accordance with Article 37(2) and (3) of Civil Procedure Code, authorizes it with the necessary adaptations.

The counterclaim is only admitted if the court of the action is also competent for the questions deduced by way of counterclaim on the grounds of nationality, the matter and the hierarchy; if it is not, it is the acquitting party. When, by virtue of the counterclaim, the court ceases to have jurisdiction by reason of the value, the judge must officially refer the case to the competent court. (Article 93 Civil Procedure Code).

If there is a counterclaim and its value is distinct, the claim value and the counterclaim value must be added together, making this the "only" value of the cause, not having to make distinctions between "main claim" and "counterclaim" (Article 299 Civil Procedure Code).

2.7. Does the Judgment include a specification of the time-period within which the obligation in the operative part is to be (voluntarily) fulfilled by the defendant? Conversely, does the judgment contain a specification of the time-period within which the judgment is not to be enforced? Does the judgment contain a specification of the time-period after which the judgment is no longer enforceable?

Comment (2.7): *If applicable, please also explain what happens if the court does not include the above time period(s). If applicable, how would the court, acting as a court of the Member State addressed, deal with a situation where a judgment is no longer enforceable after the limitation period for enforcement has expired, and this time period was not specified by the court in the Member State of origin, either because there is no obligation for the court to specify the period or because the court unintentionally omitted the specification.?*

The sentence does not set a time limit, by order of the judge, during which it is not enforceable, nor is there a time limit to be enforced.

It may happen, for example in the execution of an obligation to do a fact that there is a time limit to be complied with, but this will always have to result from the request, the judge is limited to deciding according to what was requested.

The sentence, as long as it is enforceable, can be enforced immediately. And it can be enforced as long as the obligation does not expire, but in that case the obligation itself is extinguished and it is not the judgment that loses its enforceability. Moreover, as the statute of limitations is not a matter of official knowledge, it can happen that the execution is proposed and followed up, for payment.

Regarding actions for payment of an obligation, the fact that it is not due at the time the action was brought does not prevent the existence of the obligation from being known, provided that the defendant contests it, or the defendant is ordered to satisfy the benefit at the appropriate time. Thus, the defendant shall be ordered to pay even if the obligation is overcome in the course of

the proceedings or at a date subsequent to the judgment, but without prejudice to the time limit in the latter case.

For periodic obligations which have to be paid repeatedly over a certain period of time, the judgment may specify the monthly payments or the respective payment periods and amounts.

If a judgment imposes an obligation payment, it shall be enforceable until full payment is made.

The prescription period for obligations imposed by judgment is 20 years (Articles 311 and 309 of Civil Code). However, if the judgment refers to payments not yet due, the limitation period will be 5 years (Articles 311 and 310 of Civil Code).

2.8. What personal information must be specified in the Judgment for the purposes of identifying the Parties to the dispute?

Comment: *For example, in Slovenia, the Judgment will list the Parties' name and surname, residence and Unique Personal Identification Number (so-called "EMŠO"). This number is provided to each citizen of Slovenia and is also a feature in other countries of the former Yugoslavia. The information is stated in the Introduction to the judgment and is usually not repeated in other parts of the judgment.*

Parties are identified in the introductory part of the judgment by full name, civil (marital) status, tax number (NIF), residence. (article 552.º CPC)

After this identification, the parties are mentioned in the action only for their role as claimants or defendants.

2.9. How do courts indicate the amount in dispute?

Comment: *Please elaborate how this amount is specified (if this information is specified), especially in cases where amendments to claims occur during proceedings.*

The judgment cannot order a greater number or a different object than that requested (article 609 (1) CPC).

The amendment of the request is either by agreement or exceptionally in the case of Article 265.

In the sentence, the amounts indicated are those corresponding to the claim or its amendment, but all this will be explained in the part of the report

The monetary amounts are referred to by numerical value followed by the number in words.

Example: € 16 041,20 (sixteen thousand, forty-one euros and twenty cents euros)

2.10. How do courts indicate the underlying legal relationship (legal assessment of the dispute), if this circumstance bears further relevance, e.g. in enforcement proceedings.

Comment: *Take for example § 850f of the German ZPO, where enforcement is sought against earned income (wage) of the debtor. The law imposes limitations to the scope of the attachable part of the income. However, these limitations may be disregarded to an extent, if enforcement is pursued for a claim arising from an intentionally committed tort. The execution court must therefore be able to identify the legal relationship (intentional tort). Similar examples might include the indication of maintenance or annuity by way of damages.*

- The judgement reasoning indicates the underlying legal relationship, gives the legal assessment of the dispute and explains how that relationship justifies a conviction to pay a certain obligation.
- There are cases in which the nature of the debt determines lower restrictions on the attachment of salary, as in the case of execution for maintenance (Article 738(4) CPC). However, since this is a special process (Article 933 CPC), the nature of the underlying legal relationship is identified by the type of enforcement proceeding itself.
- However, there are other situations in which the nature of the underlying relationship is not relevant for the purposes of execution and property liability. For example, if the execution is based on a judgment that sentenced only one of the spouses, even if the debt is, under civil law, the responsibility of both spouses, the creditor can only execute the sentenced spouse in the declaratory process. The creditor has the duty to propose declaratory action against both spouses in order to enforce both spouses. This is because in the enforcement procedure the legitimacy is formal, it is determined by who appears in the enforcement instrument as debtor and as creditor (Article 53 CPC).

2.11. Can the Claimant seek interim declaratory relief and what effects (if any) are attributed to the decision on this claim? How is the decision specified in the Judgment?

Interim declaratory relief can be sought but there must be a main action or a main action must be brought subsequently.

Neither the decision of the facts nor the final judgment given in the interim declaratory relief have any influence on the judgment of the main action [Article 364(4)]

The final interim declaratory relief decision is enforceable.

With the main action judgment, the interim declaratory relief declines and is replaced by it.

2.12. What kinds of decisions can a court issue in regular litigation proceedings?

Comment: *For example, in certain Member States, the court may decide on procedural issues (e.g. admission of evidence; modification of claim) with a "decree" and a "Judgment" on the merits of the case. Provisional and protective measures may or may not be tied to the proceedings.*

In regular juridical proceedings, the judgment is usually the decision that ends the proceedings and judges the merits of the case.

But, in exceptional cases, the process also ends through a decree («Saneador Sentença») in the intermediate phase, which also judges the merits of the case, whenever the status of the case allows, without the need for further evidence, the total or partial appraisal of the claimed – Article 595(1.b).

However, this intermediate decree («Despacho Saneador») usually decides on procedural issues, which may also end the process but do not judge the merits of the case (article 595(1.a).

The process is decided by judgment. However, the judge during the course of the proceedings shall give decisions on special requests or procedural incidents by decree.

Other decrees may be issued, either in the proceedings themselves ( to settle procedural faults, decide nullities, order or authorize evidences, order on the proceedings) or in attachments to the procedure (incidental matters or provisional).

The interlocutory decisions can be on:

- simplification or procedural adjustments [Article 6(1)];

- procedural invalidities or nullities [Article 195(1)];

- evidence (Article 547).

2.13. How are Judgments drafted when (if) they contain a "decision" on issues other than the merits of the case?

Comment: *Such decisions can, for example, pertain to the modification of a claim, withdrawal of a claim, joinder of parties, joinder of proceedings etc.*

As a rule, nullities and procedural issues (dilatory exceptions) if not previously resolved, are decided at intermediate stage of the proceedings («despacho saneador»). Otherwise, if there is no order or, exceptionally, because there is no evidence, the judge reserves these issues for final decision. In this case, in the judgment, these issues are decided first, because they may determine that the merits of the case will remain unknown (Articles 200, 595 (1a.; 4), 608 CPC).

The way the sentence is drafted is not different in essence. The procedural issues to be decided are listed, with an indication of a title (e.g. "of illegitimacy" or "of incompetence"; the different parties and/or claims to be considered are identified along the grounds and autonomized in the operative part.

"Article 608 (Issues to be resolved - Judgment)

1 - Without prejudice to the provisions of paragraph 3 of Article 278, the judgment shall first know the procedural issues that may determine the acquittal of the instance, according to the order imposed by its logical precedence.

2 - The judge shall settle all questions that the parties have submitted for his consideration, except those whose decision is prejudiced by the solution given to others; he may deal only with questions raised by the parties, unless the law allows him or imposes the officious knowledge of others."

2.13.1. How does this effect the operative part and/or the reasoning?

The joinder of proceedings gives rise to a single sentence, preceded by a single final hearing. The selection of the factual matter of instruction or even the elaboration of the subjects of the evidence must be brought together in a single cast[3].

If proceedings are joined, the court decision given in the main proceedings is unique and must hear each of the claims filed in each of the joined proceedings individually and particularly[4].

The decision to admit a party to an application is consequential to an incident of its own and to a decision on its admissibility. Then, the sentence is already drafted by counting the original parties and the intervening parties.

2.13.2. Which decisions (2.12) can be incorporated into the judgment?

See, above, 2.13. The judge must decide in the judgement all procedural issues that are still unresolved such as nullities, dilatory exceptions, or other questions of a procedural nature that interfere with the outcome and which have not been decided before.

2.13.3. Can provisional and protective measures form part of a Judgment or can they only be issued separately?

As a rule, provisional or protective measures shall be taken separately.

But in certain cases the judgment may dictate certain preventive measures.

For example, in actions for the protection of personality (Article 878 CPC), it may be necessary to take appropriate measures to prevent the consummation of any direct and illicit threat to the physical or moral personality of a human being, or to mitigate, or stop, the effects of an offense already committed.

Except in a reversal of the litigation («inversão do contencioso» - article 369 ), the preliminary remedy is dependent on a cause that is based on the right to be protected (article 364 of the Code of Civil Procedure), provisionally safeguarding or anticipating the effects of the definitive judgment, on the assumption that the applicant will be in favor of the decision to be rendered in the main proceedings.

Upon request, the judge, in the decision that decrees the providence, may not impose on the plaintiff the obligation to submit the main action («inversão do contencioso») if the matter acquired in the procedure allows him to form a firm conviction about the existence of the right in question and if the nature of the providence decreed is adequate to carry out the definitive composition of the dispute.

Also in the injunctions some provisional or protective measures can be decreed in the judgment to prevent the illicit behaviour from being continued.

[3] Judgment of the Court of Appeal – Guimarães, 05.04.2018, Proc. 441/08.5TBPRG-B.G1, available at www.dgsi.pt.
[4] Supreme Court of Justice Judgement, 05.05.2015,Proc. 1805/08.0TBVIG.P1-A.S1, available at www.dgsi.pt.

## Part 3: Special aspects regarding the operative part

3.1. What does the operative part communicate?

The decision, also referred to as the operative part of the judgment, consists of the final conclusion in that the judge determines, in a clear and concise manner, the legal effects recognised and dictates the concrete corrective commands, or denies the action requested.

This is a prescriptive discourse, through which the judge, as the case may be:

- either dictates a concrete command of conduct, the purpose of which is to give or to do;
- or states the existence or non-existence of a fact or a right;
- or decrees the production of a constitutive, amending or extinctive effect.

The operative part of the judgment shall not, in principle, contain any mention of the rules applicable, since they must be included in the part concerning the legal basis.

The device of the merit sentence decomposes, analytically:

(a) in the formulation of a judgment of provenance or of dismissal of the action, the counterclaim or the peremptory exception in question;

(b) if all or part of the claims are well-founded:

- in actions of simple evaluation, the recognized legal effect is declared;
- in actions for condemnation, the defendant shall be condemned in the provision or instalments of dare or of make sure they're actually due;
- the constitutive, modifying or extinctive effect of the operate;

(c) in the event of dismissal, the defendant shall be acquitted.

The operative part of the judgement has also to indicate the court costs [Article 607(6) CPC Portuguese].

3.1.1. Must the operative part contain a threat of enforcement?

Comment: *A threat of enforcement is to be understood as a legal instruction referring to the possibility of enforcement proceedings if the debtor does not voluntarily perform the obligations imposed by the judgment.*

No. The possibility of enforcement is common knowledge.

3.1.2. Must the operative part include declaratory relief if the Claimant sought payment (e.g. if the debtor's obligation to perform is found to be due and the Claimant requested performance)?

If the Claimant sought payment, the judge has to declare if that payment is due or not.

If the defendant accepted the debt but requested a moratorium or payment by instalments the judge must decide and declare his/her decision on that requests.

3.1.3. Is the specification of the debtor's obligation finalized by the court or is it left to later procedures/authorities?

As a rule, the judgment condemns a specific obligation and a fixed amount, with the exception of interest which will be calculated in the enforcement proceedings.

As for court costs, it is the court office that determines the final amount to be paid by the parties.

There are exceptional cases in which the obligation in which the defendant was sentenced is not immediately determined in the decision as to its quantity or quality.

For example, in cases in which the plaintiff makes a generic request and, at the end of the process, there are still no elements to fix the object or quantity, the court condemns in what will be determined (generic condemnation sentence). (articles 556; 609(2)). That will be determinate in a proper incident, in the declarative phase, and the process can be reopened for that purpose (article 358), without prejudice of immediate condemnation in the part that is already liquid.

Another example is the judgments in cases that began with alternative requests, in which the judge can condemn in alternative obligations, whereby the debtor is released with the fulfilment of any of them. However, the choice still has to be made (by the creditor, the debtor or a third party, according to the applicable regime). This may be done in the enforcement phase (article 553).

3.1.4. How is the operative part drafted in a case of a prohibitory injunction (German: "Unterlassungsklage")?

The structure is the same. However, in this type of proceedings, the court must obtain a summary demonstration, that is, less rigorous than in the main action, of the serious probability of the existence of the right to be protected and of the sufficiently justified nature of the fear of its injury.

3.1.5. If applicable, how is the operative part drafted in an interim judgment?

Comment: *Should a claim be in dispute both on its merits and as regards its amount, the court may take a (preliminary) decision on the merits. An interim judgement in the context of the above question should therefore be understood as a judgement on the merits (basis, grounds, liability) of the claim (e.g. a court issues a judgement regarding the liability of a defendant for tort, but leaves the amount of the damages to be decided later in a "final" judgement).*

The procedural law admits an interim decision on the merits of the case if all the evidence has already been in the process and no further evidence is required (because, for example, all the evidence is documentary and is already in the process).

In that case, that decision becomes the final decision (called *Saneador Sentença*) in accordance with Article 595(1)(b) of Portuguese CPC). See above 3.1.3.

Nevertheless, the operative part has similar structure since the judge must, in the same way, declare whether or not each claim is granted and what the defendant has to do or not.

*Ex: For these reasons, the claim made cannot proceed. Therefore and in view of the foregoing, the claimant's request for payment of the sum of EUR 18,790.25 and, consequently, the respective interest accounted for in the amount of EUR 3,620.08, is rejected.*

However, if it is a question of failure to clear amounts, the process must continue and the decision will be final overall.

3.1.6. If applicable, how is the operative part drafted in an interlocutory judgment?

Comment: *Within the context of the question, an interlocutory judgement refers to a temporary decision regulating the matter of the dispute. Take for example the French "Ordonnance de référé«, which is a provisional decision made on the application of one party, the other one being there or having been called, in cases where the power to order immediately the necessary measures is vested to a judge who is not called to decide the whole case.*

The operative part drafted in an interlocutory judgment is the same.

The operative part refers to the specific interlocutory measure.

3.1.7. How is the operative part drafted in the case of alternative obligations, i.e. where the debtor may decide among several modes of fulfilling a claim?

When two alternative requests are made and the choice belongs to the defendant, the judge cannot decide on which alternative he is obliged to comply with. In case of non-compliance with any of the alternatives, the option for one of them will be decided only in the enforcement procedure [according to article 714(1) of the Portuguese CPC].

The same applies when the choice belongs to a third party.

If the choice is a creditor's right, the creditor makes the choice in the enforcement application.

3.1.8. How is the operative part drafted when a claim is wholly or partially dismissed (on substantive grounds)?

Comment: *For the purposes of the question, a "dismissal" refers to the situation where a claim appears to be without justification, either in and of itself or as the result of an objection lodged by the defendant (German: Klageabweisung).*

In the operative part of the judgement it has to be indicated whether the requests made by the claimant are partially or totally granted or totally dismissal. The drafted in terms of structure is the same.

*Ex.: Accordingly, on the basis of the above grounds:*

*(a) I declare the action to be fully well-founded, stating that the claimant does not owe the defendant the sum of EUR 1 618.92;*

*b) I dismiss the counterclaim in its entirety, acquitting the applicant of the defendant's claim.*

3.1.9. How is the operative part drafted when a claim is wholly or partially rejected (on formal/procedural grounds)?

Comment*: For the purposes of the question, a "rejection" refers to the situation where the court finds it cannot entertain a claim due to formal/procedural reasons (or lack thereof), e.g. if it lacks jurisdiction or if the prescribed time for filing the action has elapsed.*

If the proceedings are terminated for procedural reasons, the operative part shall, as a rule, acquit the defendant from the proceedings and dismiss the case.

The operative part of a formal decision normally determines "that the defendant is acquitted of the proceedings" («*absolvição do réu da instância*») [articles 278 and 577 CPC].

In ordinary cases, this type of decision takes place at the intermediate stage because the case only goes to the judge after the pleadings.

Exceptionally, when there is a preliminary ruling [«*despacho liminar*» - articles 590(1) and 226(4) CPC] the judge may reject the case on formal grounds, in which case the decision is rejected as a preliminary ruling («*indeferimento liminar*»), stating the reasons. The claimant may propose a new application within 10 days [article 560(1) CPC]. There is always an appeal against that decision (article 629(3.c) Portuguese CPC).

However, there are cases of lack of jurisdiction where the case is referred to the competent court [Articles 102 and 105(3)].

3.1.10. How is the operative part drafted if the debtor invokes set-off? Provide an example.

Comment: *In certain jurisdiction, set-off (compensation invoked in proceedings) requires the operative part to specify how the claim and counter-claim are extinguished and to what extent. This may, for instance, be done by specifying the amount of both claims and declaring the amount to be compensated.*

If set-off (compensation) is invoked in the counterclaim, the judge must declare whether it is well founded or unfounded and must specify the amount of both claims or declare the amount to be compensated.

Ex.2: *In view of the foregoing, I consider the present action to be partially proven and well-founded, and the counterclaim to be fully justified and, consequently, I order the Claimant to acknowledge the right to the compensation carried out by the Defendant in the amount of EUR 1,211.00 (one thousand two hundred and eleven euros)*

3.2. Are there specifications pertaining to the structure and substance of the operative part of the Judgment in your national legal system – set out by law or court rules or developed in court practice? If so, please provide an English translation of the relevant provisions.

Regarding the operative part of the sentence (*Dispositivo*) the Portuguese Code of Civil Procedure refers the following rules:

**Article 607(3)** Portuguese CPC:

*The grounds are set out below, and the judge must specify the facts he considers to be established and indicate, interpret and apply the corresponding legal rules, concluding with the final decision.*

**Article 607(6)** Portuguese CPC:

*6 - At the end of the sentence, the judge shall condemn those responsible for the procedural costs, indicating the proportion of their responsibility.*

**Article 608** Portuguese CPC - Issues to be resolved - Order of the trial:

*1 - Without prejudice to the provisions of Article 278(3), the judgment shall first hear procedural questions which may lead to the acquittal of the case, in the order imposed by its logical precedence.*

*2 - The judge shall settle all questions referred to him by the parties, except those whose decision is prejudiced by the solution given to others; he may deal only with questions raised by the parties, unless the law allows him or imposes on him the knowledge of his own motion of others.*

**Article 609** Portuguese CPC - Limits of the judgment

*1 - The sentence cannot condemn in greater quantity or in object other than what is requested.*

*2 - If there are no elements to fix the object or quantity, the court condemns what is to be liquidated, without prejudice of immediate condemnation in the part that is already liquid.*

3 - If maintenance has been requested instead of restitution of possession, or this instead, the judge shall hear the request corresponding to the situation actually verified.

3.3. Does the operative part contain elements from or references to the reasoning of the judgment (grounds for the decision/legal assessment)?

No. The judge shall only declare whether the action is well-founded or unfounded (proceeds or dismisses) and shall state clearly which orders the parties will have to obey (a concrete command of conduct) if it is the case.

Ex:

"1. I now judge this action to be fully justified and, consequently,

2. I sentence the defendant L )(...), S.A., to pay to the plaintiff M (...) S.A., the amount of EUR 313,933.60 (three hundred and thirteen thousand, nine hundred and thirty-three euros and sixty cents), relating to the value of the principal secured by the invoices, to which must be added the default interest, at the commercial legal rate, the interest due on the date of the injunction totals EUR 51,753.93 (fifty-one thousand, seven hundred and fifty-three euros and ninety-three cents) and the interest due until actual and full payment".

3.4. Elaborate on the wording used in your national legal system, mandating the debtor to perform.

Comment: *For instance, in Slovenia, the debtor is not specifically "ordered" to perform by the wording of the operative part, since the operative part only finds the debtor "liable to pay" a certain amount. However, in practice, it is universally understood that this "liability" is to be understood as a duty to perform and not merely as declaratory relief. Would you find such wording problematic?*

In Portugal the wording of the operative part of the judgment must be clear and precise, necessary and sufficient to define the specific legal effects of the order decreed, so as not to raise doubts about the practical implementation of the enforcement or execution of the decision. Indeed, it is a requirement dictated by reasons of legal certainty and objective understanding of the verdict.

This definition is particularly acute in the field of facere obligations (doing something), in which adequate precision of the service to be performence is required, in special for the purpose of enforcing the sentence.

3.5. If applicable, explain how the operative part is drafted in cases of reciprocal relationships where the Claimant's (counter-)performance is prescribed as a condition for the debtor's performance? How specifically is this condition set out?

The wording of operative part must be clear about the obligations to be fulfilled by the claimant and the defendant, and may specify dates, amounts and rules on the fulfilment of obligations.

3.6. How are the interest rates specified and phrased in a judgment ordering payment?

Comment: *Please provide a typical wording and the legal basis – not concerning the merits but concerning the requirement in procedural law as to how to draft the operative part.*

Regarding interest the judgement should indicate the due interest and the legal rate (different rates may be indicated if they are durable obligations).

The obligation to pay interest not yet due is specified by stating the legal rate and the date from which the interest is due.

*Ex.: In view of the foregoing and in accordance with the grounds of law invoked, I find the action to be partially well-founded and, consequently, I order the Defendant's husband to pay the Claimant the sum of EUR 3,500.00 (three thousand and five hundred Euros), and also default interest, at the legal rate of 4%, from February 8, 2018, until full payment.*

3.7. Please demonstrate how the operative part differs when claims to impose different obligations on the debtor are joined (e.g. performance, prohibitory injunction etc.) or when the action is of a different relief sought (e.g. action for performance, action for declaratory relief, action requesting modification or cancellation of a legal relationship).

Comment: *Please elaborate on the second part of the question only if such a joinder of claims is admissible. Please accompany your answer by providing typical (abstracted) examples of operative parts in situations where the debtor is ordered to pay an amount of money; when he is ordered to perform an action; when a prohibitory injunction is issued against him; when he is ordered to hand over moveable property. Additionally, formulate abstracted examples of declaratory relief (including negative declaratory relief) and actions for the creation, modification or cancellation of legal relationships).*

Regarding this aspect:

- in actions of simple appreciation, the judgment declares the legal effect recognized;

*Ex.: The claimant is the owner of the land*

- In conviction proceedings, the defendant shall be ordered to pay the actual amount of money or services due;

*Ex.: The defendant has to pay EUR 3,500.00 (three thousand and five hundred Euros)*

- in constitutive actions, the judge decrees the constitutive, modifying or extinctive effect to be operated;

*Ex.: The contract is declared ineffective against the claimant*

In the event of dismissal, the defendant shall be acquitted in the operative part.

3.8. May the operative part refer to an attachment/index (for example, a list of "tested claims" in insolvency proceedings)?

Comment: *Please explain the "technique" of drafting such operative parts and how attachments are actually attached/connected to the judgment? Which attachments can be referred to in the operative part?*

The operative part of judgment does not refer to any attachments. If necessary the judge shall specify all the details essential to comply with the orders decreed.

*Ex.: Accordingly, on the basis of the above grounds, the action is fully proceed and I declare that, during the execution of the electric power supply contract entered into between the claimant and the defendant on 22.11.2016, the prices applicable for the contracted power/kVA and for the hourly cycles (EUR/kWh) are those referred to in the communication sent by letter of 01.12.2016, respectively 0.1508 EUR/day, 0.3206 EUR/kWh, 0.1604 EUR/kWh and 0.0975 EUR/kWh.*

3.9. What are the legal ramifications, if the operative part is incomplete, undetermined, incomprehensible or inconsistent?

Comment: *Explain whether this presents a ground for appeal or other legal remedy. Explain how this affects enforcement proceedings.*

According to Article 614 of the Portuguese CPC, if the sentence has errors in writing or calculation or any inaccuracies due to another omission or manifest lapse, it may be corrected by order, at the request of any of the parties or at the initiative of the judge.

In case of appeal, the rectification can only take place before it goes up, and the parties can argue before the superior court what they think regarding the rectification.

If neither party appeals, the rectification may take place at any time.

In accordance with Article 615(1)(e) CPC, the sentence is void when the judge order the defendant to pay a greater quantity or in an object other than the requested.

In addition to the appeal, the parties may challenge the court decision on the ground of error detected by a complaint addressed to the judge who issued it.

3.10. May the operative part deviate from the application as set out by the claimant? If so, to what extent? In other words, how much discretion does the court enjoy when formulating the operative part?

The judge is limited to the request. He may not condemn in any other object or in any greater amount.
In accordance with Article 615(1) CPC, the sentence is void, besides other reasons, when:
- the judge does not consider matters that he should examine or know of matters that he could not know of;

- the judge order the defendant to pay a greater quantity or in an object other than the requested.

Thus, the operative part cannot deviate from the application as set out by the claimant.

Exceptionally, in labour disputes, it may occur cases of extra vel ultra petitum condemnation.

In accordance with Article 74 (*Condenação extra vel ultra petitum*) of the Code of Labour Procedure: *The judge must order more than the claim or in an object other than the claim where this results from the application to the proven matter, or to the facts on which, in accordance with Article 412 of the Code of Civil Procedure, he may rely, of the indissoluble precepts of laws or instruments of collective labour regulation*.

## Part 4: Special aspects regarding the reasoning

4.1. If applicable, how does the law or court rules or legal practice govern the structure and content of the reasoning of the judgment?

The judgement shall be reasoned by stating the relevant facts and the legal reasoning on which the decision is based, as required by Article 205(1) of the Constitution and Articles 154(1) and 607(3) and (4) of the CPC.

According with Article 607(4) CPC, the reasoning for the judgment integrates:

A – a detailed exposition of all the facts lawfully admitted by agreement, proven by document and by confession, with full probative force, of the facts proven as a result of the free evidence produced, declaring also the facts deemed not proven;

B – an explanation regarding the reasons that justify the decision about the prove and unproven facts;

C – finally, it is presented the legal framework regarding the factuality decision.

4.1.1. Is there a specific order to be followed when drafting the reasoning?

Comment: *The reasoning usually contains both factual and legal grounds for the decision. Should these aspects follow a predetermined order or may they intertwine?*

The reasoning must respect the order indicated in the above question (4.1).

*Ex.:*

*(…)*

*II – Reasoning of facts*

*A - Proven facts and an explanation regarding the reasons that justify it*

*B - Unproven facts and an explanation regarding the reasons that justify it*

*C - Conviction of the Court and legal framework*

4.1.2. How lengthy/detailed is the reasoning?

The reasoning is very detailed. The lengthy depends on the facts indicated by Claimant and Defendant since each fact point out must be justified.

4.1.3. Do you find the reasoning to be too detailed?

The detail of the reasoning depends on each judge and on each case. Currently, with the possibility of "copy and past", the judgments have tended to become more extensive. The possibility of judgment annulment for lack of reasoning justifies the judge dedicating more space to this party.

4.1.4. Are the parties' statements (adequately) summarised in the grounds for decision?

Yes. The exact words of the parties and witnesses are often reproduced by direct quotation.

4.1.5. Is it possible to distinguish between the parties' statements and the court's assessment (the problem of an unclear distinction between the parties' statements and the court's findings and interpretation)?

Yes. The parties' statements and the court's findings and interpretation are clearly distinguished. The judge often uses expressions like "the court based its conviction on A's testimony when he/she said that....".

4.2. In the reasoning, do the courts address procedural prerequisites and applications made after the filing of the claim?

Comment: *Prerequisites are to be understood as all criteria necessary to initiate the proceedings correctly under national law, e.g. jurisdiction, standing, party capacity etc.*

In a common procedure, as a rule, the procedural conditions are assessed at the intermediate stage of the proceedings (by order called "Despacho Saneador). but, in any event, the judgment must contain a statement that all the procedural conditions are maintained or have been remedied and that there are no nullities or have been remedied, when this is possible.

There are abbreviated procedures, in particular for debt recovery, where there is no such intermediate stage and no order to remedy and the judge assesses and decides the procedural issues in the final judgment.

4.3. Are independent procedural rulings properly re-addressed in the judgment?

In the judgment, the only procedural questions to be decided are those which have not been decided before for lack of elements.

When an interim decision has been taken on procedural questions, these are definitively decided and are not re-examined.

In any event, the judge shall check that there are no new questions and shall declare once again that everything remains in order.

4.4. What legal effects (if any) are attributable to the reasoning, e.g. is the reasoning encompassed within the effects of the finality of the Judgment?

A judgment shall be null and void if it does not state the reasons of law on which it is based; or the grounds are in opposition to the decision or there is some ambiguity or

obscurity which renders the decision unintelligible, according with Article 615(1)(b) and (c) CPC.

## Part 5: Effects of judgments – the objective dimension of res judicata

5.1. A final judgment will, in most Member States, obtain res judicata effect.[5] With regard to this point, please answer the following questions:

5.1.1. What are the effects associated with res judicata in your national legal order?

Whatever their content, even when ruling on procedural questions, the decisions delivered in the case form a res judicata, with effect from within the proceedings themselves, and cannot thereafter be modified (formal res judicata) - article 621 CPC.

When the decision is on the merits of the case, it has force both within and outside the proceedings (material res judicata) - article 619 CPC ("*Res judicata on the judgment or order on the merits of the case, the decision on the substantive issues at issue becomes binding both within and outside the proceedings*").

Thus a res judicata has two effects: it can prevent that the same legal situation that has already been decided from being re-examined and it can bind the court and the parties to abide by what has been decided in other judgments.

As prescribed in Article 621 CPC, a judgment has res judicata within the precise limits and under the terms of the decision.

5.1.2. What decisions in your Member State have the capacity to become res judicata?

Sentences, whether final or intermediate decisions (*Despacho Saneador Sentença*), provided they judge the merits of the case;

Interlocutory decisions, for example on incidental matters, as to the internal effects on the case itself;

Decisions on procedural questions, with effect in the proceedings themselves.

Mere procedural orders are not covered.

5.1.3. At what moment does a Judgment become res judicata?

Comment: *Pinpoint the time and/or requirements when the judgment meets the criteria for becoming res judicata*.

The judgment becomes res judicata when it is no longer susceptible of complaint or ordinary appeal, whether no objection has taken place within the legal timeframes or the admissible used means of objection have been exhausted (Article 628 CPC).

[5] If your national legal order does not operate with the principle of res judicata, then please thoroughly describe the alternative doctrine governing finality of judgements. Please answer the questions in this Part of the questionnaire by mutatis mutandis applying your respective doctrine. If this is not possible, please approximate the answers as far as possible or provide additional explanations.

As rule, the time limit for appeal is 30 days and shall run from notification of the judgement, reducing it to 15 days in in certain cases, for example those listed in Article 644(2); and is extended by 10 days (to 40 days) if the purpose of the appeal is to reconsider recorded evidence 638(7).

5.1.3.1. How (if at all) does the exercise of the right to appeal/the exercise of legal remedies affect this moment?

If an «ordinary» appeal is admissible, it avoids the formation of a res judicata.

A res judicata is only possible if the decision does not allow for appeal or if the time limits for lodging an appeal have expired.

5.1.3.2. How does the answer to this question differ depending on whether the remedies being invoked are considered "ordinary" or "extraordinary" under your domestic law – is the classification of remedies into one of these two categories dependent on these effects?

Yes. Only the ordinary appeal is considered for this purpose. Extraordinary appeal is an exceptional appeal for the review of decisions which are already res judicata.

Ordinary appeals are: «*apelação*» (from the first instance to the second instance - Article 644 CPC) and «*revista*» (from the second instance to the supreme court of justice Article 671 CPC.

Extraordinary appeals are: «*revisão*» (Article 696 CPC) and also that ones for uniformity of jurisprudence (Article 688 CPC).

Article 696 provides the grounds for appeals against a decision carried over in res judicata.

5.1.4. Is res judicata restricted to the operative part of the judgment in your legal system or does it extend to the key elements of the reasoning or other parts of the judgment?

Are courts bound by prior rulings on preliminary questions of law?

*Comment: A court in Member State A has to rule whether a seller must deliver goods. In its decision, the court argues that the contract between the seller and the buyer is null and void because of some errors of will. If the seller in Member State B later submits an action for the payment of the purchase price, does a court in Member State B have to dismiss that claim, as it is bound by the reasoning in the judgment of the court in Member State A, which argued that there had been an error of will? Will this be the case in your Member State? In other words, does finality pertain to preliminary questions on points of law? If it does, how are preliminary questions decided upon? Does the decision on preliminary issues form part of the operative part or reasoning? How are they elaborated in the Judgment?*

It is the operative part which constitutes res judicata. Therefore, the res judicata does not include the factual or legal reasoning of the judgment. However, the operative part constitutes the conclusion arising from internal syllogisms of a decision, in which the factual or legal reasoning are the premises.

Therefore, and without prejudice to what has just been said, it has been understood that the operative part is binding as a conclusion of the respective reasoning.

5.1.4.1. Does your legal order operate with the concept of "claim preclusion"?

*Comment: Claim preclusion bars a claim from being brought again on an event, which was the subject of a previous legal cause of action that has already been finally decided between the parties. Consider the following examples.*

*First example: A claimant files suit for damages he incurred in a traffic accident, alleging that the defendant acted negligently. The court dismisses the claim. The claimant then files a second action for damages arising from the same traffic accident; however, this time he alleges battery (intentional tort) on defendant's side. Is the second action admissible?*

*Second example: A claimant files suit for personal injury (non-material damages) he incurred in a traffic accident. The court awards the claimant the relief sought. The claimant then files a second action, wherein he claims material damages from the same traffic accident. Is the second action admissible or should the claimant have requested all damages in the first action?*

Yes the concept of "claim preclusion" operate in Portugal. Res judicata exists regarding the same parties, request and cause of action (Articles 577, 580 and 581 CPC).

In what concerns with the cause of action there will be an identity of actions even if the legal qualification is different. Thus, the claimant cannot file a second action regarding the same facts with a new legal framework.

*Ex.:*

*If the claimant obtains a judgement that decide that the defendant has to pay an amount for a breach in a contract of loan, he cannot latter file a second action based on the same facts but qualifying the contract as a mandate.*

5.1.4.2.Are courts bound by the determination of facts in earlier judgements?

*Comment: Consider the following example. A claimant files suit for personal injury (non-material damages) he incurred in a traffic accident. The court finds that the claimant correctly observed traffic rules and drove through a green light. The court awards the claimant the relief sought. The claimant then files a second action, wherein he claims material damages. In these proceedings, however, the court finds that the*

*claimant drove through a red light. Is this a permissible finding or should the court give effect to the findings of the first judgement?*

I. The authority of the res judicata case implies compliance with a decision rendered in a previous action, the object of which is included, as an indisputable assumption, in the object of a subsequent action, even if not entirely identical, so as to prevent the legal relationship defined therein from being contemplated, once again, in a different manner.

II. Although, as a rule, the res judicata does not extend to grounds of fact and law, the force of the substantive res judicata covers, in addition to the questions directly decided in the operative part of the judgment, those which are necessary logical precedents for the issue of the operative part of the judgment. III. Thus, the effectiveness of res judicata presupposes an earlier decision defining rights or legal effects which presents itself as an indisputable presupposition of the practical-legal effect sought in a subsequent action in the context of the material relationship at issue here. IV. The positive or negative evidentiary judgments constituting the so-called "de facto decision" do not in themselves have the nature of a decision defining legal effects, but merely constitute de facto grounds of the legal decision to which they belong. V. To that extent, although such probationary rulings are within the objective limits of a substantive res judicata under Article 621 of the CPC, no autonomous res judicata effect is formed on them, in particular one that confers on them, as proven or unproven facts, res judicata authority in the context of other proceedings. VI. Moreover, facts established as proved or unproven in the context of a particular judicial claim are not assumed to be an absolute material truth, but only with the meaning and scope they have in that particular context. Moreover, the consistency of de facto judgments depends on the contingencies of the mechanisms of proof inherent in each case to which they refer, and therefore such judgments cannot be transposed, without further ado, to the scope of another action[6].

5.2. If part of a civil claim is being claimed in civil proceedings, how does this affect the remainder of the claim, taking into account res judicata effects?

If just a part of a civil claim is being claimed the res judicata just affects this part and the claimant maintain the possibility of claim the other part.

According with article 621 CPC if the action is dismissed because a condition has not been met, a time limit has not expired or a certain fact has not been committed, the judgment shall not prevent the claim from being renewed when the condition is met, the time limit is met or the fact is committed.

[6] Cfr. Portuguese Supreme Court of Justice, 8 November 2018, Case 478/08.4TBASL.E1.S1.

5.3. In the case of a negative declaratory action, what is the effect of a finding that the matter is res judicata?

Comment: *For example, A initiates an action against B for a declaration that he does not have to pay B 1000 EUR (negative declaration). If the court dismisses the claim, does the judgment at the same moment declare that A does have to pay B 1000 EUR? If the dismissal of a negative declaratory action is the equivalent of a declaration of the converse (in inter partes proceedings), is such a judgment enforceable for the creditor (in this case: B)?*

If the action is of a simple assessment, that is to say, it merely states the existence or non-existence of a right or of a fact, that judgment is not, as a rule, enforceable.

A judgment must be of a condemnatory nature in order to be enforceable. The enforceable title is a judgment that is condemning and not any judgment [Article 704(a)].

Therefore, if a judgement declares that there is no right to a claim, it does not mean that the defendant is obliged to pay this amount.

In the case of a negative declaratory action if the court dismisses the claim the judge can declare the converse right of the defendant in a counterclaim exist. In this case such judgement is enforceable.

5.4. If a court issues an interim judgment concerning the well-foundedness of a claim, does this judgment have any effects outside of the pending dispute?

Comment: *Can a party rely on the res judicata effects of such a judgment in separate proceedings (is the court in another set of proceedings bound by the judgment) or are these effects confined to the dispute in which the judgment was rendered? Note: an interim judgment on the well-foundedness of a claim refers to a judgment finding the liability of the defendant to pay, but leaves the amount of payment to be determined in a subsequent judgement (the same as under question 3.1.5).*

No. That judgement as only effects inside the pending dispute [Article 620(1) CPC].

5.5. Suppose the following hypothetical. If, in Member State Y, a seller (S) as claimant is suing the buyer (B) as defendant for payment of the purchase price, B will not be able to sue S in Member State Z for liability on a warranty at the same time due to lis pendens rules under B IA.

5.5.1. Is it possible for B to sue S in Member State Z after the case in Member State Y has been decided with res judicata effect? What is the position regarding this question in your Member State?

Except as provided for in conventions, in accordance with domestic law, the exception of lis pendens cannot be invoked on the basis of an action pending before a foreign court [Article 580(3)].

However, when a res judicata of the foreign judgement has been formed, it may be enforced in the internal legal system provided that: it has been recognised and reviewed by means of a foreign judgement review procedure and the defendant has been served, in that foreign case, at first ( i.e. in a situation of avoidance of jurisdiction) - Article 980(d).

5.5.2. If it is possible for B to sue S in Member State Z (in the above situation), will the court in State Z be bound by the reasoning in the judgment from the court in Member State Y? What is the position on that question in your national legal order:

5.5.2.1. If in domestic cases you do not extend res judicata effect to the elements of a court's reasoning (Question 5.1.4)?

Not applicable.

5.5.2.2. If res judicata effect is extended to elements of the reasoning in the Member State of origin but not in the Member State addressed?

Not applicable.

5.5.2.3. If res judicata effect is not extended to elements of the reasoning in the Member State of origin but is in Member State addressed?

Not applicable.

5.5.3. How do you handle the limitation period problem in the scenario described above? The lis pendens case law of the CJEU prevents the filing of a warranty liability claim in State Z as long as a payment claim is pending in State Y. How can the buyer prevent the limitation period from running in State Z (your home State) without making the warranty case pending?

The interruption of the limitation period may be caused by the holder of the right, in accordance with Article 323 of the Civil Code.

One of the ways to promote interruption (in addition to service in judicial proceedings) is by means of a separate judicial notice (a formal communication expressing the intention to exercise the right, made through the court) called «*notificação judicial avulsa*» - Articles 256 - 258 CPC.

## Part 6: Effects of judgements - res judicata and enforceability

6.1. What is the relation of res judicata to enforceability, i.e. can a judgment be enforced before it is res judicata?

*Comment: Does your legal order operate with the institution of "provisional enforceability", i.e. the enforceability of judgments that are not (yet) res judicata, but have nonetheless been endowed, either by the decision of a court or by operation of law, with the attribute of enforceability? Do you think such (foreign) judgments might be controversial from the perspective of the (procedural) legal order of your Member State, if the creditor attempted to enforce them? For an example of provisional enforceability, see §§704, 708, 709 of the German ZPO).*

Portuguese procedural law allows the provisional enforceability of a judgment, while an appeal is pending, provided that the appeal has a merely devolutive effect.

However, if the appeal has suspensive effect (in situations typified by law; or at the applicant's request if he shows that enforcement will cause him serious harm, in which case security may be required) the decision is enforceable only after the appeals have been exhausted.

So, as a rule a judgment can be enforced only after it is res judicata. However, if the appeal has purely devolutive effect the judgment can be enforced before it is res judicata.

Article 704 - "*The sentence only constitutes an enforcement title after res judicata, unless the appeal against it has a purely devolution effect.* "

6.1.1. Is provisional enforceability suspended (by operation of law or at the discretion of the court) if an appeal is lodged?

As a rule, the provisional enforceability of the judgment is determined by law. It is the law that defines the cases in which the appeal has merely devolutive effect and it is in those cases that the appeals do not prevent enforcement. It is also the law that defines the cases in which the appeal has suspensive effect and it is in those cases that the judgment is not enforceable.

However, by way of exception, the debtor may apply to the court, when appealing and if it is not suspensive, for the suspensive effect of the appeal to be given on grounds of the damage which enforcement will cause. In that case, it is the court which decides on the suspension of provisional enforceability and also the court which decides whether to require the provision of security. "*Article 647(4) - Apart from the cases provided for in the preceding paragraph, the appellant may request, when filing the appeal, that the appeal has a suspensive effect when the execution of the decision causes him considerable damage and if he offers to provide security, the attribution of this effect being conditioned to the effective provision of the security within the period set by the court*."

6.1.2. Who bears the risk if the provisionally enforceable judgement is reversed or modified?

In provisional executions, the seized property may be seized, the seized property may be sold, but there is no payment.

The creditor, in case he wants to receive it, has to guarantee it Article 704(3) of the CPC.

If the judgment revokes the sentence that is being enforced, the rights of the defendant are protected, because [Article 839(1)(a) and (3) CPC:

- if the judgement is revoked the execution is extinguished and the amounts that are deposited in the proceedings are handed over to the defendant;

- if the seized property has been sold, the defendant has the right to request that the sale be rendered null and void within 30 days of the final judgment, in which case the property is returned. The third party purchaser is entitled to the price and costs he has incurred. It has been understood that the person liable to reimburse the third party is the plaintiff.

- if the attached property has been sold but the defendant does not want it returned, he is entitled to the price

- if the execution requires nothing, he is only entitled to the price and the sale takes effect.

6.1.2.1. Must the judgment creditor provide security before the judgment can be enforced?

If the judgment is enforceable, even if it is provisional because an appeal is pending, the creditor does not have to provide security to propose enforcement.

He only has to provide security if, in the enforcement itself, he wants to receive payment pending the appeal [Article 704(3)].

6.1.2.2. Must the creditor compensate the debtor for damages he has suffered by the judgement being enforced, or by the payments he had to make, or any other actions he had to take in order to avert enforcement?

A liability case is provided for in cases where the execution has an immediate seizure (before the service of the defendant - cases where the execution follows the summary form) and then the defendant wins the opposition to the execution.

The duty to pay compensation depends on the general requirements of civil liability.

Liability must be declared in a separate action and presupposes damage caused by intention. It is therefore difficult to apply in practice.

*Article 858 - Penalties for the exequent*

*If the opposition to the execution is made, the executor, without prejudice to any criminal liability, shall be liable for the culpable damage caused to the executor, if he has not acted with normal prudence, and shall incur a fine corresponding to 10% of*

*the value of the execution, or of the part thereof that was the object of the opposition, but not less than 10 CUs, nor more than twice the maximum of the judicial fee.*

6.1.2.3. Does the answer to the previous question (6.1.2.2) vary, if the debtor voluntarily payed (performed) the claim?

No. Even if the executioner pays voluntarily, if he does so already at the execution, it is still understood that he gave cause for execution.

But if the debtor has paid before enforcement is offered and the debtor proves it, enforcement is deemed unfair and the system explained in the previous question applies.

6.1.2.4. Does the answer to the previous question (6.1.2.2) vary, if the judgement was a default judgement, by a first instance court or a court of appeals?

The answer is not different.

6.1.2.5. What is the scope of the compensation? Is it limited to direct loss or is indirect loss?

The duty to compensate and the damages to be compensated result from the general regime of civil liability, depending on the evidence.

6.2. Does your legal order prescribe a suspensive period within which the judgement creditor cannot initiate the enforcement proceedings? For example, must the judgement creditor first demand payment from the debtor before he can move to enforcement (execution of the judgement)?

*Comment: The question is framed in general terms regarding enforcement of judgements, not in relation to provisional enforceability. If answered in the positive, please indicate what are the legal consequences of the suspension, i.e. is the judgement by operation of law not considered enforceable within this period or does the judgement creditor merely take on the risk of bearing costs for enforcement.*

No, expressly this term does not exist.

6.3. Does the judgment incorporate elements akin to the French "command and order to the enforcement officer" (*Mandons et ordonnons a tous huissiers de justice à ce requis de mettre le present jugement à execution*) and what are its effect?

No.

6.4. How would your legal order deal with foreign enforcement titles, which involve property rights or concepts of property law unknown in your system?

The foreign judgment must be reviewed by a court of Appeal. If it is considered that the sentence is pronounced on a matter that is the exclusive competence of the Portuguese courts, the request for review is dismissed [Articles 980(c) and 63(a) CPC].

As property rights are typified, national law may not admit other figures or institutes. It may be a violation of international public order, but it would have to be assessed in the specific case.

No case law has been found with a similar case.

## Part 7: Effects of Judgments – Personal boundaries of res judicata

7.1. How are co-litigants and third persons (individuals who are not direct parties of the proceedings) affected by the judgment (e.g. alienation of a property or a right, which is the subject of an ongoing litigation; indispensable parties)?

The formation of a res judicata presupposes the identity of the parties.

That identity of parties is an identity relating to the legal status of the parties.

The effects of a res judicata include not only the actual holders of the right or the property in dispute who were parties to the case at the time the judgment was res judicata, but also their transmissiaries or successors in title after res judicata. However, in the case of unavailable or non-transferable rights, this is not applicable.

Co-debtors or subsidiary debtors are not covered and, in general, those who could participate in voluntary litigation.

7.2. Do certain judgments produce in rem (erga omnes) binding effects?

Normally, the res judicata has effect between parties.

However, the people's actions case can be cited as a situation where the res judicata case goes beyond the parties. Article 19 of the Law of Popular Action, on res judicata: Except when they are dismissed due to insufficient evidence or when the judge must decide differently based on reasons specific to the case, the effects of res judicata handed down in the context of proceedings for the defence of homogeneous individual interests shall cover the holders of rights or interests who have not exercised the right to exclude themselves from representation.

7.3. How are (singular and universal) successors of parties affected by the judgment?

*Comment (7.3): Explain how succession of parties occurs after the rendering of the judgment as well as in potential enforcement proceedings, and what acts, if any, must be undertaken for interested persons to demonstrate succession. In addition, explain whether there are circumstances in which succession is not possible, e.g. succession to non-pecuniary damages claims.*

They are bound to the extent that they succeed the part. In the event of the death of the defendant, the execution can be proposed against the heirs [Article 54(1) of the CPC, without prejudice to the limitations in terms of attachment provided for in Article 744(1) of CPC].

The creditor demonstrates the succession in the executive application or, if the succession occurs during the process, a habilitation incident is deducted.

In an enforcement against the successors, only assets which have entered the debtor's assets through succession may be seized.

## Part 8: Effects of Judgments - Temporal dimensions

8.1. Can changes to statute or case-law affect the validity of a judgment or present grounds for challenge?

The judgment shall be delivered on the basis of the law applicable on that date.

For legislative changes, account must be taken of the rules of application of the law in time.

As regards case law, where there is uniform case law, the decision finding that there is a contradiction in case law repeals the judgment under appeal and replaces it with a decision on the disputed issue. But the decision to grant the appeal does not affect any judgment that precedes the one challenged or the legal situations constituted under it [Article 695(2) and (3) CPC].

8.2. If the judgment requires the debtor to pay future (periodic) instalments (e.g. maintenance or an annuity by way of damages), how can the judgment be challenged in order to amend the amount payable in each instalment?

As a rule it's not possible. But there are processes in which the decisions may be amended on the basis of later changes in the facts [voluntary jurisdiction Article 988(1) of the CPC].

It happens, for example, in maintenance payments and the amendment is requested in the procedure itself.

Article 988(1) "*In proceedings of voluntary jurisdiction, resolutions may be amended, without prejudice to the effects already produced, on the basis of supervening circumstances justifying the change; the circumstances that occurred after the decision and those before the decision are supervening, which have not been alleged out of ignorance or other ponderous motive*."

8.3. Can facts that occur after the last session of the main hearing and are beneficial to the defendant (debtor), be invoked in enforcement proceedings with a legal remedy?

As a rule and accordingly with Article 729(g) of the CPC, when the enforcement title is a judgement only facts that occur after the declaration process and that are proven by document can be invoked in enforcement proceedings.

Article 729(g) - "*If enforcement is based on a judgment, the opposition can only have one of the following grounds:*

(...)

*g) any extinguishing or amending fact of the obligation, provided that it is subsequent to the closure of the discussion in the declaration process and is provided by document; the prescription of the right or obligation may be proved by any means*".

8.4. Can set-off of a judicial claim be invoked by the debtor in enforcement proceedings, even if the debtor's counterclaim already existed during the original proceedings?

The law allows the counter-credit to be invoked for the purpose of compensation, as a defence of the defendant, even when the enforcement order is a judgement.

If the claim is subsequent to the closing of the hearing, there is no doubt that it can be invoked.

However, if the claim was earlier, neither doctrine nor case law have constant positions. There are restrictive interpretations which they do not accept, arguing that there is a burden of counterclaim in declaratory action.

Article 729(h) "*Countercredit on the applicant, with the aim to obtaining the compensation of credits*".

## Part 9: Lis pendens and related actions in another Member State and irreconcilability as a ground for refusal of recognition and enforcement

9.1. The B IA Regulation uses the concept of a "cause of action" for the purposes of determining lis pendens.

9.1.1. How does your national legal order determine lis pendens?

Lis pendens is determined in Arts. 580, 581 and 582.

Article 580 - "*Concepts of lis pendens and res judicata*

*1 - The exceptions of lis pendens and res judicata presuppose the repetition of a cause; if the cause is repeated while the previous one is still in progress, there is a place for lis pendens; if the repetition occurs after the first case has been decided by a sentence that no longer allows ordinary appeal, there is room for the exception of the res judicata.*

*2 - Both the exception of lis pendens and that of res judicata are intended to prevent the court from being placed in the alternative of contradicting or reproducing an earlier decision.*

*3 - The pending case before foreign jurisdiction is irrelevant, unless another solution is established in international convention.*"

Article 581 – "*Requirements for lis pendens and res judicata*

*1 - The cause is repeated when an action is proposed that is identical to another as regards the parties, the request and the cause of action.*

*2 - There is identity of parties when the parties are the same from the point of view of their legal quality.*

*3 - There is a identity of claims when in one and the other case it is intended to obtain the same legal effect.*

*4 - There is a cause of action identity when the claim deducted in the two lawsuits proceeds from the same legal fact. In Property Law actions the cause for asking is the legal fact from which the Property Law right derives; in constitutive and annulment actions, it is the concrete fact or specific nullity that is invoked to obtain the desired effect.* "

Article 582 - "*In what action should lis pendens be deducted*

*1 - The lis pendens must be deducted in the action proposed in second place.*

*2 - The action for which the defendant was subsequently summoned is considered proposed in second place.*

*3 - If in both actions the summons was made on the same day, the order of actions is determined by the order of entry of the respective initial petitions.*"

9.1.2. How does the B IA concept of a "cause of action" correspond to any similar domestic concept in your national legal order? Describe how your national legal order establishes the identity of claims.

In the Portuguese legal order, there are also the concept of a "cause of action".

Article 581(3) defines identity of claims: "*There is a identity of claims when in one and the other case it is intended to obtain the same legal effect*".

9.1.3. Does your national legal order allow a negative declaratory action? If so, how is this action treated in relation to contradictory actions (e.g. for (payment of) damages)?

Yes [Article 10(3)(a) of the CPC].

But there could hardly be a counterclaim, given the requirements established in Article 266 of the CPC.

9.1.4. How do you determine the identity of parties in national proceedings and how (if at all) does the methodology differ from that of the B IA?

Internal law provides for the identity of subjects when the parties are the same from the point of view of their legal status [Article 581(2)].

9.1.5. How should we understand the requirement that judgments need to have "the same end in view" as expressed by the CJEU?

The Portuguese legal order, in Art 581(3) defines identity of claims: "*There is an identity of claims when in one and the other case it is intended to obtain the same legal effect*".

9.2. Does your national legal order operate with the notion of "related actions"? If so, what are the effects it ascribes to them? Please accompany the answer with relevant case law.

The aggregation of cases finds its basis in the existing connection between them, having as objectives the economy of procedural activity and the coherence or uniformity of judgment. The aggregation of the actions, with the justicipated preconditions, comforts a situation in which the court considers that two cases proposed and brought at different times should be brought together or coupled in such a way as to avoid the court producing judgments of value and conviction which may be contradictory and irreconcilable in terms of the trial or resolution of a dispute.

The law provides for the aggregation of actions. Thus, if actions are proposed separately which, because the conditions of admissibility of the litigious-consortium, coalition,

opposition or counterclaim are met, could be brought together in a single case, they are ordered to be joined at the request of any of the parties with an interest in joining, even if they are pending in different courts, unless the state of the case or other special reason makes aggregation inconvenient. (Article 267 CPC).

The Portuguese legal order operate with the notion of "related actions". Article 36 defines the effects: "*1 - The coalition of plaintiffs against one or more defendants is permitted and an plaintiff is allowed to sue several defendants jointly, for different requests, when the cause of request is the same and only or when the requests are in a harmful relationship or dependency.*

*2 - The coalition is also lawful when, although the cause of the request is different, the origin of the main requests depends essentially on the assessment of the same facts or on the interpretation and application of the same rules of law or of perfectly similar contract clauses.*

*3 - The coalition is allowed when the claims filed against the various defendants are based on the invocation of the credit title obligation, for some, and the respective underlying relationship, for others*."

9.3. Has your Member State experienced cross-border cases involving related actions within the meaning of the B IA?

No information about.

9.3.1. How have your courts defined irreconcilability for the purpose of related actions?

The final decision may be reviewed where it is irreconcilable with a final decision of an international appeal body binding on the Portuguese State [Article 696(f)].

In Portuguese case law, the judgment of the STJ of 4 July 2017 (Case 5817/07) assessed the delimitation of cases in which the decision is irreconcilable (or not), in the case with a transfer from the ECtHR.

9.3.2. How have your courts exercised the discretion to stay proceedings?

There is no paradigm.

To give an example, the Guimarães Court of Appeal ruling of 20 February 2020 (Case 6592/18.0T8BRG.G1): I. It will not prevent the revision and confirmation of a judgment handed down by a Swiss court (which decrees a divorce between spouses), the pending of an identical action (of divorce, between the same parties) before a Portuguese court, or the res judicata formed by a previous judgment of the latter, because the other has prevented the respective jurisdiction (with regard to the date of filing of the respective action, filed in the first place). II. There are justifiable grounds for suspending a divorce action brought before a Portuguese court pending another, identical and prior, action

brought before a Swiss court, otherwise the respective parties will have two decisions on the same applications, which may be contradictory and both enforceable in the Portuguese legal system (that issued by the national court, directly enforceable, and that issued by the foreign court, enforceable after review and confirmation).

## Part 10: Court settlements

10.1. What are the prerequisites for the conclusion of a court settlement?

The prerequisites for the conclusion of a court settlement are defined in Article 290(3).

Article 290(3) – "*Having drawn up the term or attached to the document, it is examined whether, by its object and the quality of the people who intervened, the confession, the withdrawal or the transaction is valid, and, if so, so it is declared by sentence, condemning or absolving in its precise terms*."

10.1.1. Describe the necessary elements a court settlement must contain.

The necessary elements a court settlement must contain are defined in Article 290(1).

Article 290(1) - "The confession, withdrawal or transaction can be made by authentic or private document, without prejudice to the requirements of form of the substantive law, or by declaration in the process."

10.1.2. What formal requirements must be satisfied (e.g. signature of the parties; service)?

The formal requirements that must be satisfied are defined in Article 290.

Can be ordered in a judgment by the judge or signed by the lawyers of the parties.

10.1.3. How are the parties identified?

By reference to the parties of the process.

There are no specific rules.

10.1.4. What (substantive) legal relationships can be settled in a court settlement?

All those referring to available(disposable) rights. (Art, 289º nº 1)

10.2. When does a court settlement become enforceable?

Once approved by the judge.

10.3. How are (singular and universal) successors of parties affected by the judgment?

*Comment: Explain how succession of parties occurs after the rendering of the judgment as well as in potential enforcement proceedings, and what acts, if any, must be undertaken for interested persons to demonstrate succession. In addition, explain whether there are circumstances in which succession is not possible.*

Totally affected, according to previous answer. They are bound to the extent that they succeed the part. In the event of the death of the defendant, the execution can be proposed against the heirs [Article 54(1) of the CPC, without prejudice to the limitations in terms of attachment provided for in Article 744(1) of CPC].

See, above, question 7.3.

10.4. If applicable, describe how the legal relationship, once settled, can be amended?

By agreement between the parties that, after the sentence, can be invoked in opposition to the execution by execution embargo [Article 729(g) of the CPC)].

10.5. If applicable, describe how (under what circumstances) a court settlement can no longer be considered enforceable?

Once approved, the agreement can always be executed.

If it is voluntarily fulfilled, it can no longer be executed.

The same occurs if the obligation has since been extinguished by prescription, But it must be invoked in the executive procedure.

10.6. If applicable, describe how errors in a court settlement can be remedied and the recourses that are available against a notarial act, whether independently or during enforcement proceedings.

As for notarial acts, there may be rectifications.

As for the agreement, there may be correction, also by agreement.

Or the agreement can be not applicable based in a cause of nullity or annulment of these acts [Article 729(i) of the CPC].

An appeal against a review (i.e. a decision which has already become final) shall lie on the ground that the confession, withdrawal or transaction on which the decision was based is null and void or may be annulled [Article 696(d) CPC].

## Part 11: Enforceable notarial acts

11.1. Briefly describe the competence the notary holds in civil and commercial matters in your Member State.

The notary is a private worker to whom the government gave "public faith" to its acts. His competence includes making contracts regarding whatever the parts want, including real estate transfers and commercial acts, like creating companies and all the other acts within involving their associates and managers.

11.2. Is (can) a notarial act be considered an enforcement title in your respective Member State/Candidate Country? If so, briefly present, how the concept of a notarial act as an enforcement title is defined in your national legal order.

*Comment: If the definition is provided by a provision of law, then please provide the citation to the exact article/paragraph of that rule and an English translation.*

Yes, accordingly to Article 703(1)(b) "*Authentic documents certified by a notary or other competent body or person, which declares the recognition of any obligation*;"

The Portuguese law confers authenticity to the documents that the notary issues. The articles of the Portuguese Civil Code are:

Article 369 - "*1. The document shall be authentic only where the authority or public official who has exercised it is competent, on account of the matter and place, and is not legally prevented from drafting it.*"

Article 370 - "*1. The document shall be presumed to come from the authority or public officer to whom it is assigned, when it is subscribed by the author with a notarized signature or with the seal of his service*."

Article 371 - "*1. Authentic documents shall provide full proof of the facts which they refer to as carried out by the respective public authority or official, as well as of the facts attested to them on the basis of the perceptions of the documenting entity; the mere personal judgments of the documenter are only valid as elements subject to the free assessment of the judge*."

11.3. Is, according to your domestic legal order, a notarial act an enforcement title per se or must it contain additional conditions/clauses to be considered as such?

*Comment: For instance, in Slovenia, notarial acts are considered enforcement titles only if they contain a so called 'direct enforceability clause'.*

A notarial act is an enforcement title *per se*, without prejudice of the dispositions of Article 707 for future obligations.

In Portugal, the "enforcement titles" list in defined by Civil Procedure Code. Depending on the document issued by the notary, if its in that list it is an enforcement title. For example, the public deeds and the notarization of private documents are always enforcement titles, not being necessary any particular clause. The parties just have to declare to the notary that they agree with what is written on the document that they wish to authenticate

11.3.1. If there is a certain clause (that constitutes the notarial deed an enforcement title) please set out an example of such a clause (cite an example clause). Furthermore, explain if there a difference in said clause if the deed refers to monetary or non-monetary claims?

Doesn't apply

11.3.2. Is the debtor's consent to direct enforceability considered to be part of a notarial act?

The debtor's consent must be notarized. The notarial act is a "authentication term" of the document signed by the debtor, where he declares to the notary that he agrees with what is written on the document that he wishes to authenticate.

11.3.3. If the previous question is answered in the positive, can such consent be of a general nature or specific and concrete to the debtor's obligations arising from the notarial act?

The consent must normally be specific and concrete so that can be considered a enforcement title.

11.4. How is a notarial act structured in your domestic legal order? What elements must it contain?

Depending on the act, it necessary more or less requirements. All acts must have date of issue, location, the identification and signature of the notary. More elaborated acts, such as authentication terms and public deed, must have the full identification of the parties.

11.5. What personal information must be specified in the notarial act for the purposes of identifying the Parties?

Full name, marital status, birth place, full address, fiscal number and ID number.

11.6. Must a notarial act, considered to be an enforcement title, contain a threat of enforcement?

No.

11.7. If applicable, how lengthy and important is the part of the notarial act, which contains warnings and explanations by the notary?

Depending on the contents of the act, the notary reads and explains it to the parties. Some contracts, live real estate purchase, must have some legal warnings.

11.7.1. Is the notary obliged to explicitly warn the parties about the direct enforceability of the act?

No.

11.7.2. Is there a need for parties and/or the notary to sign each page of a notarial act, to be considered valid?

If it is a public instrument, the parties only sign the last page and the notary signs all the pages. If it is a private document, the parties should sign all the pages.

11.8. What are the consequences if the parties fail to meet the formal requirements for a valid notarial act?

If the parties fail to meet the formal requirements, the notary does not make the notarial act.

11.9. What kind of (substantive) obligations, arising out of legal relationships and contained in a notarial act can become directly enforceable, according to your domestic legal order (e.g. mortgage)? Conversely, are there legally valid obligations, which cannot become directly enforceable due to restrictions in legislation or due to judicial decisions?

Comment: *For instance, in Slovenia, taxes, which arise from the claim-enforcement procedure, cannot be directly enforced by the creditor. The same applies to some bank products.*

What can be directly enforceable are the obligations constituted or recognized in the notarial instrument. Taxes cannot, for taxes there are specific titles and specific processes (tax enforcement)

The mortgage can only be executed/enforceable if registered on the Land register department. Other valid obligation that may be in a notarial act are only enforceable in the Civil Procedure Code says so.

11.10. Is it possible that conditional claims, contained in a notary act are directly enforceable? If so, are there any special conditions, which have to be met in notarial acts or in enforcement procedure?

They can be enforceable. But with their own rules. The execution must be mandatory (first it is cited and only later it is seized) [Article 550(3)(a) and there is a mini preliminary procedure to demonstrate the verification of the condition (Article 715 CPC)].

11.11. Can obligations, contained in a directly enforceable notary deed, be contained in attachments to the notarial act or must they be set out specifically within the text of the act?

Yes they can be attachments to the notarial act. Attachments are an integral part of the notarial act. They can be on a document that stays archived with the deed and has the same importance and legal value.

11.12. Is it possible for parties to conclude a contract wherein they set up a legal (contractual) relationship and only later bring said contract to the notary in order to confirm the direct enforceability of obligations, arising out of the contract?

Yes, in Portugal is possible. Depending on the contents of the contract, yes.

It is not an authentic document (type deed) but it is a certified document [Article 703(b)].

11.13. Must the notarial act include the specification of the time period in which the obligation of the debtor is to be performed? In conjunction, is there the possibility that a notarial act is directly enforceable even if the time period has not yet expired? If so, under what conditions?

No, that kind of contents is entirely within the parties will, *e.g.* they can define that date. In that case the obligation cannot be executed until it is due (Article 713 of the CPC)

But if the parties have not fixed a deadline, the obligation is enforceable at all times and executive action can be proposed. However, the debtor is only in default on the summons.

If the debtor does not object, the creditor will pay the costs of the proceedings [Article 535(2)(b)]

11.14. Disregarding EU legislation, are there any special restrictions regarding recognition and enforcement under the private international law of you Member State, pertaining specifically to foreign notarial acts?

Disregarding the European Regulation, the internal procedural law states, in article 706 CPC, with regard to the enforceability of judgments and titles issued in a foreign country, that Judgments given by courts or arbitrators in a foreign country may serve as a basis for enforcement only after being reviewed and confirmed by the competent Portuguese court. However, notarial documents issued in a foreign country do not need to be reviewed to be enforceable.

11.15. Is it possible to bring grounds of objection in enforcement proceedings, concerning not only enforcement proper (execution), but opposition to the claim itself? In other words, can the debtor raise grounds against the claim contained in the notary act in enforcement proceedings?

Yes. If the title is extrajudicial (as is the case with notarial acts), any ground for opposition is valid (Article 731 of the CPC)

11.16. If your domestic legal order does not operate with enforceable notarial acts, how would you enforce a foreign enforceable notarial act?

Portuguese domestic legal order does operate with enforceable notarial acts.

11.17. Are there other authentic instruments under your domestic legal order, which are considered enforcement titles?

Yes. Lawyers and solicitors have also the competence do authenticate private documents. They then are considered enforcement titles. Article 703(1)(b) - "Authentic documents certified by a notary or other competent body or person, which declares the recognition of any obligation;"

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