

Enforcement of Foreign Judgments

Fundamental Principles [Portugal]

2020



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I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)

A. Ability to Apply for Recognition and Enforcement of a Court Judgment

1. Is it possible to apply for enforcement of a foreign court judgment in your country?

Answer: Yes, it is correct to state that a foreign court judgment can be enforced in Portugal. The general rule establishes that a procedure of reviewing judgments is mandatory in order to apply for enforcement of a foreign court decision. The Civil Procedural Code allows some exceptions which are foreseen in Treaties, Conventions, European Regulations and Special Law in which the recognition of a foreign judgment may follow a simpler procedure.

B. Applicable Law: General Rules

1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?

Answer: The law that is generally applicable to the enforcement of a foreign court judgment is the Civil Procedural Code (Articles 86, 90, 703 to 851 and 978 to 985).

C. Special Rules: European Union

1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?

Answer: Yes. There are special rules regarding International Treaties or Regulations applicable in Portugal: e.g. Regulation (EU) No. 650/2012 of the European Parliament and of the Council, July 4, 2012; Regulation (EU) No. 1215/2012 of the European Parliament and of the Council, December 12, 2012.

2. Does the European Union have a special procedure to enforce court judgments coming from its member states?

Answer: Yes.

- Regulation (EU) No. 1215/2012 of the European Parliament and of the Council, December 12, 2012.

The current Regulation provides that a judgment issued in a Member State shall be recognized in other Member State without any special procedure being required.

A judgment issued in a Member State and enforceable in that State may be enforced in another Member State without any declaration of enforceability being required, on the application of any interested party.

In Portugal the application shall be submitted to the “Tribunal da Relação” (Court of Appeal).

An appeal challenge from a decision granting a declaration of enforceability may be lodged at the court with jurisdiction (in Portugal – Supremo Tribunal de Justiça).

- Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 of April 2004 creating an European Enforcement Order for uncontested claims and Council.

The Regulation applies to all Member States, except Denmark.

The European Enforcement Order for uncontested claims can be enforced immediately, without any formal recognition of enforceability, as only a translation of the judgment is necessary.

Abolishing exequatur (recognition) enables creditors to obtain quick and efficient enforcement abroad without involving the Member State courts where enforcement is sought in time-consuming and costly circumstances.

The relevant Articles for the purposes of enforcement procedure and refusal of enforcement are Articles 20 and 21, respectively.

D. Average Duration of Enforcement Procedure

1. What is the average length of time for this kind of procedure?

Answer:

The average length of time for the recognition of a foreign court judgment is approximately 2-4 months. However, this may vary substantially, depending on the service pending in the court, and if there is any opposition by the defendant.

In terms of the enforcement procedure itself, it depends on whether there are assets to seize, the type of assets to seize and the position adopted by the debtor in the procedure (e.g. if there is any opposition). Thus, the procedure may just take months or in some situations, years.

II. DENIAL OF RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT JUDGMENT: REASONS

A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?

Answer: Yes.

(i) Judgments issued in a country belonging to the EU: the general rule states that a judgment issued in the territory of a Member State shall be recognized in other Member State without any special procedure (Article 36 of the Regulation (EU) No. 1215/2012 of the European Parliament and of the Council, December 12, 2012). Nevertheless, Article 45 foresees situations where a judgment may not be recognized:

(a) if such recognition is manifestly contrary to public policy (ordre public) in the Member State addressed;

(b) where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;

(c) if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed;

(d) if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; or

(e) if the judgment conflicts with:

(i) Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or

(ii) Section 6 of Chapter II.

Furthermore, a judgment shall not be recognized in instances provided for in Article 72 (cases foreseen in Article 59 of the Brussels convention, relating to defendants domiciled or habitually resident in a third State).

- (ii) Judgments from a country with which Portugal has no International Treaty: in such cases the foreign judgment shall be subject to a procedure of revision, according to Article 978, no. 1 of the Civil Procedural Code. Article 980 contains mandatory requirements necessary to the judgment's confirmation.

Thus, the denial is considered justified in the situations mentioned below:

(i) The existence of doubt regarding the authenticity of the document/judgment;

(ii) The decision does not yet have *res judicata* effect according to the law of the country that issued the judgment;

(iii) If the decision was issued by a foreign court in which the jurisdiction has been triggered through means of legal fraud or is laid upon matters that are of the exclusive jurisdiction of the Portuguese courts;

(iv) The existence of a *lis pendens* or *res judicata* situation;

(v) If the defendant has not been duly summoned for the procedure or if the principles of due process and equality of the parties have not been fulfilled;

(vi) If the decision leads to an outcome which is clearly incompatible with the principles of international public order of the Portuguese State.

(vii) When it concerns a situation foreseen in subparagraphs *a)*, *c)* and *g)* of Article 696 of the Civil Procedural Code:

a) If another final decision has proved that the judgment was the result of an offence committed by the judge in the performance of his duties.

c) If a document was presented which the party was unaware of that in itself was sufficient to alter or affect the outcome of the judgment.

g) If the dispute was based on an act simulated by the parties and the court, has failed to acknowledge the existence of said fraud.

(viii) If the judgment is issued against a Portuguese party, in cases in which it is possible to claim that the outcome of the legal procedure would be more favorable if the court had applied the Portuguese substantive law, (when according to the Portuguese conflict-of-law rules Portuguese law would be applicable - Article 983, no. 2 of the Civil Procedural Code).

Judgments issued in a country with which Portugal has another International Treaty or a Convention may depend on the content of such treaty / convention.

B. Costs and expenses

1. What kind of cost and expenses can a claimant expect in this enforcement procedure?

Answer:

1. Expenses: court fees (for the recognition procedure and the enforcement procedure, varying according to the value of the decision to be recognized), for the translation of documents and for issuing documents (e.g. the certificates).
2. Fees: lawyer and paralegal fees, which may be fixed on an hourly basis or may depend on the amount claimed.

In terms of the enforcement procedure, there may also be bailiff's fees and expenses for research and seizure activities.

III. FORMAL REQUIREMENTS

A. Time limit

1. Is there a time limit to apply for enforcement of a foreign court judgment?

Answer: It essentially depends on the governing law applicable to the judgment to be enforced.

B. Final and Definitive Court Judgment: Provisional Enforcement

1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?

Answer:

- (i) Judgments from a country belonging to the EU: It should be assessed on a case by case scenario. A judgment issued in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there (Article 36 of the Regulation (EU) No. 1215/2012 of the European Parliament and of the Council, December 12, 2012). However, Article 38 foresees that if the decision is subject to any form of appeal in the original Member

State - therefore, not yet final - the Court may suspend the recognition procedure. Furthermore, interim orders may also be subject to recognition and enforcement as long as the Defendant is summoned before enforcement.

- (ii) Judgments from a country with which Portugal has no International Treaty: it is not possible to enforce a foreign court judgment before it is final and definitive, since that is the general rule established in Article 980, subparagraph *b)* of the Civil Procedure Code. Interim measures may be subject to enforcement as long as they have *res judicata* effect.
- (iii) Judgments from a country with which Portugal has an International Treaty are governed by the terms established in that Treaty.

C. Necessary Requirements

1. What necessary requirements must the foreign court Judgment fulfill to be recognized and enforced?

Answer:

- a) Judgments from a country belonging to the EU: “A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there” (Article 36 of the Regulation (EU) No. 1215/2012 of the European Parliament and of the Council, December 12, 2012).
- b) Judgments from a country with which Portugal has no International Treaty: When it fulfills the requirements established in Article 980 of the Civil Procedural Code, as mentioned in Answer A from Group II.
- c) Judgments from a country with which Portugal has an International Treaty are governed by the terms established in that Treaty.

D. Other Formal Requirements: Court Fees

1. Is it mandatory to pay Court Fees for this kind of application?

Answer: Yes, it is. Please refer to Answer B1 of Group II.

E. Are there any other formal requirements in your country to enforce a court judgment?

Answer: No.

IV. PROCEDURE

A. Competent court

1. Which Court or courts are competent to decide an enforcement application?

Answer:

- (i) Judgments from a country belonging to the EU: in Portugal the application for enforcement must be submitted to the Court of First Instance in the place of the residence of the defendant or where the assets are located (Articles 86 and 90 of the Civil Procedural Code).
- (ii) Judgments from a country with which Portugal has no International Treaty: The competent court that decides recognition applications is, according to Article 979 of the Civil Procedural Code, the Appeal Court (“Tribunal da Relação”) in the place of residence of the defendant (as per the general rule established in Article 85, no. 1 of the Civil Procedural Code). There are, however, some special rules concerning legal persons, the plurality of defendants, and the judgment of appeals. In regards to the enforcement of such decisions, the relevant court is the Court of First Instance, pursuant to Articles 86 and 90.

B. Informational Requirements for the Application to Enforce a Foreign Court Judgment

1. What information must be contained in the enforcement application of a foreign court judgment?

Answer:

After the recognition stage, the enforcement application must include the names and addresses of the parties, the names and addresses of their legal representatives, the designation of an enforcement agent, details of the purpose of the enforcement, information on the facts on which the claim is based, amount to be claimed, details on the liquidation of the obligation, an indication (when possible) of the debtor’s employer and summon or summon dismissal (where applicable), according to Article 724, no. 1 of the Civil Procedural Code. The creditor should also provide specifics regarding the assets to be seized (where he has knowledge of such).

C. What documents must be included with/attached to the application to enforce a foreign court judgment?

Answer:

- (i) Judgments from a country belonging to the EU (Article 42 of the Regulation (EU) No. 1215/2012 of the European Parliament and of the Council, December 12, 2012):

1. A copy of the judgment that satisfies the conditions necessary to establish its authenticity; and
2. The certificate issued pursuant to Article 53, certifying that the judgment is enforceable and containing an extract from the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest.

- (ii) Judgments from a country with which Portugal has no International Treaty:

The documents that should be attached to the application to enforce a foreign court judgment, under the terms of Article 724, no. 4 of the Civil Procedural Code, are:

- a) The certified copy of the foreign judgment and the translation, if necessary (Article 134 of the Civil Procedural Code);
- b) The documents which the party requesting the enforcement has relating to the seized assets; and
- c) Proof of payment of the court fee.

The party seeking enforcement should also present the power of attorney when necessary (Article 41 of the Civil Procedural Code).

Furthermore, it is necessary the decision of the Portuguese court recognizing the foreign court judgment.

- (iii) Judgments from a country with which Portugal has an International Treaty are governed by the terms of the Treaty.

D. Phases of the Procedure

- 1. What are the phases of the procedure to enforce a foreign court judgment?**

Answer:

- (i) Judgments from a country belonging to the EU and from a country with which Portugal has no International Treaty:
 - 1. Enforcement Request.
 - 2. Possible opposition by the defendant and decision by the court.
 - 3. Seizure of assets and sale.
- (ii) Judgments from a country with which Portugal has an International Treaty are governed by the terms established on the Treaty.

E. Opposition of the Defendant

1. Can a defendant oppose to this enforcement application?

Answer: Yes, under the terms of Article 728 of the Civil Procedural Code the defendant may oppose to the enforcement application within 20 days of being summoned.

2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?

Answer: Yes, there are.

According to Article 729, opposition may be based on:

- a) The inexistence or unenforceability of the document/judgment;
- b) Falsehood of the procedure or documents attached;
- c) A lack of procedural requirements;
- d) A lack, or nullity, of the summon of the process of recognition, in cases in which the debtor did not intervene in the procedure;
- e) Uncertainty, unenforceability or illiquidity of the debt;
- f) *Res judicata* situations;
- g) Any fact that may extinct or modify the debt that arises after the procedure;
- h) The existence of a right to compensation by the party being enforced;

- i) In case of a judgment recognizing a confession or a settlement, any cause of nullity or annulment of such acts.

F. Appeal and its Consequences in this Procedure

1. Is it possible to appeal a court decision to recognize and enforce a foreign court decision?

Answer:

- (i) Judgments from a country belonging to the EU:

The appeal, by either party, of a court decision concerning an application for refusal of enforcement of a foreign court judgment is possible under the terms of Article 49 of the Regulation (EU) No. 1215/2012 of the European Parliament and of the Council, December 12, 2012).

- (ii) Judgments from a country with which Portugal has no International treaty:

In regards to the recognition procedure, Article 985 provides that recognition is determined by the Court of Appeal (“Tribunal da Relação”) and the appeal may be submitted to the Supreme Court of Justice.

In terms of the enforcement, the decision which overrules the party’s opposition to the enforcement is subject to appeal in the terms set out in Article 627 and the following of the Civil Procedural Code.

- (iii) Judgments from a country with which Portugal has signed an International Treaty or a Convention shall be governed by the terms established on that Treaty or Convention.

2. Can this appeal suspend the enforcement?

Answer:

- (i) Judgments from a country belonging to the EU and from a country with which Portugal has no International Treaty: The appeal does not suspend the effects, according to Article 647 of the Civil Procedure Code. However, there are some exceptions to this rule, (e.g. if the debtor invokes that the immediate enforcement may result in a considerable prejudice and offers a security/bond (“caução”).

- (ii) Judgments from a country with which Portugal has an International Treaty shall be governed by the terms of the Treaty.

G. Recovery of judicial costs and expenses

- 1. **Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?**

Answer:

The claimant should pay in advance all expenses (court and solicitor fees) and will be reimbursed if assets are seized, except if the opposition or appeal is admitted and accepted by the court, in which case the costs and expenses shall be paid by the creditor.

V. RECOVERY OF THE DEBT

A. Means of Enforcement

- 1. **What types of assets are subject to enforcement of the court's judgment?**

Answer:

There are several assets which may be subject to enforcement of the courts' judgment, such as real estate (Article 755 of the Civil Procedural Code), movable assets (Article 764 and 768) and credit rights (Article 773) such as salaries, bank accounts, etc.

Article 735 of the Civil Procedural Code provides that all the debtor's assets may be subject to enforcement, and in special cases, it is even possible to pledge/seize the assets of a third party provided an execution is filed against that third party (e.g. guarantor).

Nonetheless, there are some assets considered absolutely unseizable/pledged (Article 736), such as inalienable rights or assets, assets of public domain, tombs and others. Under Portuguese law, there are also certain assets that may not be subject to being pawned (e.g. State assets or working tools) and assets only partially subject to being pawned (e.g., 2/3 of the salary, pensions, wages, compensation, social benefits or other payments).

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer: In Portugal there is an electronic application called *Citius* which is used to send all papers and documents to court, including enforcement requests.

Furthermore, all communications between the parties, the court and the bailiff are made through this electronic application. Taking in consideration the above mentioned, the enforcement procedure in Portugal is electronic.

Portugal

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