Article 65(3) - Information on how to determine, in accordance with national law, the effects of the judgments referred to in Article 65(2) of the Regulation

Not applicable

Article 74 - Description of national rules and procedures concerning enforcement

An **enforcement action** is a legal action brought by the creditor or party seeking enforcement against the debtor or defendant in which the creditor asks the court to enforce an obligation to which they are entitled. Enforcement actions are based on the assumption that the right in question was previously declared or recognised by means of an **enforceable order**. Such actions aim to ensure coercive fulfilment of the obligation through the authority of the State. An **enforceable order** sets out the legal facts underpinning the request made by the party seeking enforcement and provides the degree of certainty required to apply coercive measures against the defendant. The Code of Civil Procedure (*Código de Processo Civil*) classifies the following as enforceable orders:

a) **Convictions:** Convictions constitute enforceable orders only after a judgment becomes final, unless an appeal lodged against a conviction is merely devolutive in effect. Rulings by a court of arbitration (*tribunal arbitral*) are enforceable in the same terms as rulings by ordinary courts (Article 47 of Law 63 /2011 of 14 December 2011).

b) **Documents drawn up or authenticated by a notary or by any other body or professional with the power to do so, establishing or recognising any obligation:** This includes authentic documents (documents drawn up in accordance with legal formalities by public authorities within the limits of their powers or within the field of activity assigned to them by a notary or other public official accredited by the State) and authenticated documents (documents drawn up by private individuals and subsequently attested by them before a notary or other body or professional with equivalent powers).

c) **Credit notes, even if unsecured, provided that the facts underpinning the relations are set out in the document or given in the enforcement order:** for instance, the letter, the promissory note or the cheque.

d) **Documents made enforceable by special provision:** for instance, an injunction order to which an enforcement order has been appended (Articles 6-8 of Decree-Law No 32/2003 of 17 February 2003 and Articles 7-21 of Decree-Law No 269/98 of 1 September 1998).

In order for an obligation to be enforced, it must be **certain** (i.e. of determined nature – *an debeatur*), **due** (i.e. the due date has passed or the obligation is due automatically upon the debtor receiving the demand) and **net** (i.e. of determined amount – *quantum debeatur*).

Different **forms of procedure** apply according to the **purpose of enforcement** (payment of a specific sum, delivery of a specific item, performance or non-performance of a specific act). Wherever the law provides for a form of **special enforcement procedure** (e.g. the enforcement procedure for maintenance obligations), this form applies. In all cases where the special form of procedure does not apply, the **general form** is used. The **general enforcement procedure** may be **summary** or **ordinary**, depending on the purpose of enforcement and the type of enforcement order.

The **competent authorities for enforcement** are the enforcement agents and the courts (judge and court registry). The **enforcement agent** carries out all enforcement activities which are not assigned to the court registry or which fall under the remit of the judge, such as summonses, notifications, publications, database searches, attachments and registration thereof, settlements and payments. It is for the **judge** to carry out any procedural acts subject to the principle of the judge's prerogative or which conflict with the fundamental rights of the parties or of third parties. The **court registry** handles administrative aspects and ensures that enforcement procedures are conducted properly.

As regards **restrictions on enforcement on the grounds of debtor protection**, it should be noted that the usual enforcement act in respect of payment of a specific amount is **attachment**. This consists of the legal seizure of assets belonging to the party against whom enforcement is sought, with a view to selling said assets and using the proceeds of the sale to satisfy the obligation being enforced. In principle, all attachable assets belonging to the debtor which are liable for the outstanding debt under substantive law may be subject to enforcement. However, the law excludes from the debtor's assets, in whole or in part, certain attachable assets or rights, by means of **absolute** or **relative immunity from attachment** or **total** or **partial immunity from attachment**. In addition, attachment must be limited to the assets necessary to pay the enforced debt and cover any foreseeable enforcement-related costs.

The Code of Civil Procedure lays down **restrictions on enforcement on the grounds of expiry and limitation**. These restrictions serve as grounds for opposing enforcement by means of a procedural step known as 'opposition to enforcement by attachment', but only if the expiry or limitation post-dates closure of the discussion in the declaratory act.

As a general rule, any alienable rights or rights which the law does not declare exempt are **subject to limitation** if they are not exercised within the period of time laid down by law.

The courts may not invoke limitation *ex officio*. It must therefore be invoked by the person whom it benefits, their representative or the Public Prosecutor's Office (*Ministério Público*).

Once the limitation period has elapsed, the beneficiary (i.e. the debtor) may refuse to comply with the obligation or object in any way to exercise of the time-barred right.

The **ordinary limitation period** is 20 years, but there is provision for shorter periods. **Limitation periods may be interrupted or suspended**. The difference is that suspension occurs by force of law and independently of the will of the creditor, while an interruption depends on action taken by the creditor to that end.

As regards the **duration of the interruption of the limitation period**, if interruption is the result of a summons, notification or equivalent act or of an arbitration agreement, the new limitation period begins only once the decision closing the procedure becomes final.

Once the limitation period has elapsed, the beneficiary may refuse to comply with the obligation or object in any way to exercise of the time-barred right. However, if a debtor performs an act of their own volition in respect of a time-barred obligation, they may not subsequently claim restitution, even if they were unaware of the limitation.

As regards **invoking limitation**, this can be done only by creditors and third parties with a legitimate interest in limitation being declared, even if the debtor has waived it. If limitation is waived, it can be invoked by the creditors only if the conditions laid down in civil law for avoidance action (*actio pauliana*) are met. If, in the event of charges being brought, the debtor does not invoke limitation periods and is convicted, the final decision does not affect the recognised right of their creditors.

As regards **expiry**, when by law or will of the parties a right must be exercised within a certain period, the rules on expiry apply, unless the law expressly refers to limitation. Expiry may be prevented only by performing whatever act the law or contract lends preventive effect within the legal or contractual deadline.

Bringing a declaratory or enforcement action prevents expiry, without the need to serve notice on the debtor. The expiry period may be suspended or interrupted only in cases where the law so provides and, if the law sets no other specific date, the expiry period begins at the moment in which the rights may lawfully be exercised. Expiry is assessed by the court *ex officio* and may be invoked at any stage of proceedings in the case of inalienable rights. Where enforcement is initiated on the basis of alienable rights, expiry must be invoked by the person whom it benefits (in principle, the debtor/party against whom enforcement is sought).

For further and more detailed information, please consult Procedures for enforcing a judgment – Portugal.

Article 75 (a) – Names and contact details of the courts to which the applications are to be submitted pursuant to Articles 36(2), 45(4) and 47(1)

The courts with jurisdiction to hear and rule on the applications referred to in Articles 36(2), 45(4) and 47(1) are:

- the Central Civil Division (*Juízo Central Cível*) of the competent District Court, if one exists; or
- the Local Civil Division (*Juízo Local Cível*), or if none exists, the Local General Division (*Juízo Local de Competência Genérica*) of the competent District Court.

Article 75 (b) – Names and contact details of the courts with which an appeal against the decision on the application for refusal of enforcement is to be lodged pursuant to Article 49(2)

Appeals against decisions on applications for refusal of enforcement, pursuant to Article 49(2), must be lodged with the **Court of Appeal** (*Tribunal da Relação*).

Article 75 (c) – Names and contact details of the courts with which any further appeal is to be lodged pursuant to Article 50

Any subsequent appeals must be lodged with the **Supreme Court of Justice** (*Supremo Tribunal de Justiça*).

Article 75 (d) – Languages accepted for translations of the certificates concerning judgments, authentic instruments and court settlements

Not applicable. Only Portuguese is accepted.

Article 76(1)(a) – Rules of jurisdiction referred to in Articles 5(2) and 6(2) of the Regulation

The rules of national jurisdiction referred to in Articles 5(2) and 6(2) are:

- **Article 63(1) of the Code of Civil Procedure** (*Código de Processo Civil*), which provides for the extraterritorial jurisdiction of courts, in particular the court at the seat of the branch, agency, office, delegation or representation (if located in Portugal), in cases where application is made for service on the head office (if located abroad); and
- **Article 10 of the Code of Labour Procedure** (*Código de Processo do Trabalho*), which provides for the extraterritorial jurisdiction of courts, in particular the court of the place of residence of the applicant in proceedings relating to employment contracts brought by an employee against the employer.

Article 76(1)(b) – Rules on third party notice referred to in Article 65 of the Regulation

Not applicable.

Article 76(1)(c) – Conventions referred to in Article 69 of the Regulation

Convention between the Czechoslovak Republic and Portugal on the recognition and enforcement of judgments, signed in Lisbon on 23 November 1927.

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