Family maintenance

Portugal

1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?

‘Maintenance’ is understood to be everything which is essential for the subsistence, housing and clothing of a person. In the event of an underage child, maintenance also includes education and instruction.

According to the law, the following are required to pay maintenance in the order indicated:

spouse or former spouse;

descendants;

ascendants;

siblings;

uncles and aunts, during the minority of the person maintained;

stepfather and stepmother of stepchildren underage who are or were under their care at the time of the spouse's death.

In addition to the aforementioned cases in which the maintenance obligation is legally determined, maintenance obligations may also result from a bequest (maintenance bequest left in a will) or a contract.

In general, the substantive rules governing maintenance obligations are laid down in Articles 2003 to 2023 of the Civil Code

2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?

The minor may receive maintenance until they reach the age of majority. The age of majority is age 18. Between the ages of 16 and 18, children may be emancipated by marriage.

There are differences between the rules of substantive law applying to child and adult maintenance: adult maintenance only covers the costs of subsistence, housing and clothing while child maintenance covers, in addition to these costs, the costs of education and instruction.

If, after a child reaches majority or emancipation, they decide to continue their training or education, they may bring maintenance proceedings against their parents. In this case, maintenance covers the costs of their education and training, in addition to their subsistence, housing and clothing. The duration of these payments is determined by agreement or decision. This decision sets the appropriate duration for a reasonable period of training or education.

In the exceptional situation described above, in which an adult child is continuing their training, adult maintenance includes the costs of education and instruction. In particular, the law assumes that when maintenance is requested for an adult child, until the said child reaches 25 years of age, the maintenance payment set when the child was a minor is kept. In this case, it is up to the defendant parent to prove that the maintenance payment set when the child was a minor is no longer necessary or is excessive since the child has achieved majority.

In particular, the substantive rules on maintenance for children who are minors, adults or emancipated are laid down in Articles 1878 to 1880 and 1905 of the Civil Code

The rules of civil procedure which apply to the setting and enforcement of child and adult maintenance also differ in some cases.

Differences in the applicable procedural rules will be mentioned in the answers to questions 3 and 10.

3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?

The response to this question varies depending on the situations outlined below.

Setting child maintenance and maintenance between spouses where there is an initial agreement

The person who is obliged to pay maintenance and/or the person who is entitled to receive it may agree on the setting of maintenance. In the case of child maintenance or maintenance between spouses, the parties may request that the agreement be approved before the court or before the Public Registrar (*Conservador do Registo Civil*), depending on whether the following circumstances apply.

In the event of contested divorce, an agreement may nevertheless be reached regarding the maintenance of minor children. In such a case, approval of the agreement on maintenance for minor children must be sought from the court in the proceedings to regulate the exercise of parental responsibilities. The following subheading outlines the main elements of these proceedings.

In the event of divorce by mutual consent, the Public Registrar is requested to approve the agreement on maintenance between spouses and/or for minor children. The Registrar has sole jurisdiction for these proceedings, which may be brought in any Civil Registry. With regard to agreements on child maintenance, the Public Prosecutor at the court in the area of the Civil Registry where the proceedings were brought must give its prior opinion. If the agreement is approved, the divorce is decreed. If the agreement is not approved, the proceedings for divorce by mutual consent are referred to the court where the action for divorce by mutual consent will be heard. In this case, the court is responsible for assessing and approving agreements regarding child maintenance or maintenance between spouses.

The same rules apply in the event of legal separation, declaration of nullity or annulment of marriage.

Even if it is not a case of divorce or separation, if there is an agreement, the parents must refer the agreement governing parental responsibility or any changes thereto for approval to the Civil Registry in a similar manner to that set out above.

Setting maintenance when there is no initial agreement

Maintenance from parents to minor children

In the event of a divorce without the consent of the other spouse, the setting of child maintenance must be requested in the guardianship proceedings to regulate the exercise of parental responsibility that are pending before the court. The parents may thereupon request the approval of the agreement on parental responsibility. Where there is no such agreement or if it is not approved, the Public Prosecutor requests regulation of the exercising of parental responsibility. The procedure takes place before the court. The parents are summoned to a meeting to which the minor and other relatives may also be invited. In the event that an agreement cannot be reached at the meeting, the judge lays down provisional parental responsibility arrangements and the parties are sent for mediation or to a specialised technical hearing. If it still proves to be impossible to reach an agreement, the parents are notified to submit pleadings and evidence. This is followed by the evidentiary stage, the trial and judgment.

The same rules apply in the event of legal separation, declaration of nullity or annulment of marriage.

Maintenance from parents or others obliged to pay child maintenance

Child maintenance may also be set in guardianship proceedings on child maintenance, whenever, for example, proceedings need to be brought against persons obliged to pay such maintenance specifically for this purpose. These proceedings are also intended to adjust maintenance that was previously set. This takes place in court. It begins with an application accompanied by the following items: certificates proving the degree of kinship or affinity existing between the child and the defendant; an authenticated copy of the judgment which previously set maintenance, where applicable; and a list of witnesses. The defendant is summoned. A meeting is then called to try and reach an agreement between the parties. If no agreement is reached, this is followed by the defence, the hearing of witnesses, trial and judgment.

Maintenance for an adult or emancipated child

The proceedings for setting maintenance for an adult or emancipated child may be brought before any Civil Registry, upon submission of an application indicating the pleas of fact and law relied on. The application must be accompanied by documentary evidence and indicate all other evidence. The defendant is summoned. If they do not object, the application is upheld and maintenance is set by decision of the Registrar. If they do object, the Registrar attempts to bring about a reconciliation between the parties. If reconciliation proves impossible, the case is prepared by the Registrar and referred to the competent court for trial.

If a court case already exists during which maintenance was set for the minor child, the application to set maintenance for a child who has since reached adulthood or been emancipated, is joined to the pre-existing case and heard in this court and not in the Civil Registry.

Between spouses and former spouses

When there is no initial agreement, the proceedings for setting maintenance between spouses and former spouses is brought before the court. The proceedings takes the form of a declaratory action, with an identical procedure to that outlined below for adult maintenance.

Adult maintenance

Aside from the aforementioned cases, the procedure for setting adult maintenance is brought before the court (e.g. maintenance request made by the parent to the children). The procedure takes the form of a declaratory judgment. It begins with the initial application being submitted to court.

In this application, the filing party must designate the court in which the action is being brought, identify the parties, indicate their names, places of residence or registered offices and, where possible, their occupations and places of work, identify the form of proceedings, set out the facts and legal reasons forming the grounds for the action, make the request and declare the amount involved in the case. At the end of the application, the list of witnesses is submitted and the other evidence requested. Documents must be attached to the initial application proving prior payment of the initial court fee and the power of attorney, if represented by a lawyer. Alternatively, a document proving that legal aid has been granted may be attached.

If a lawyer is appointed, the initial application is submitted electronically via a form available on the Citius (mj.pt) web page in accordance with the procedures and instructions explained therein. If the party is not represented by a legal representative, they may submit the application at the court registry offices in one of the following ways: in person, by registered post, or by fax.

The defendant is summoned. If no agreement is reached during the case, the mandatory stages that follow are the defence, conclusive opening order (*saneamento*), evidentiary stage, trial and judgment.

Depending on the cases referred to above, the procedural rules governing the fixing of maintenance:

As regards the Civil Registry, they are provided for in Articles 5 to 20 of Decree-Law No 272/2001 of 13 October and Articles 274-A to 274-C of the Civil Registration Code

As regards the courts, they are provided for in Articles 45 to 47 of Law No 141/2015 of 8 September 2015 (maintenance for children) and 548 and 550 *et seq.* (persons obliged to provide maintenance), 931 and 994 (maintenance payable to the spouse in the even to separation or divorce) and 989 (maintenance for adult or emancipated children) of the Code of Civil Procedure.

4 Can a request be made on behalf of a relative (if yes, what grade), or a child?

In the case of child maintenance, the request may be made by the child's legal representative, by the Public Prosecutor, by the person to whom custody has been granted or by the director of the educational or care establishment to which the minor is entrusted. Anyone may notify the Public Prosecutor of the need to set child maintenance (Article 45 of Law 141/2015 of 8 September 2015).

In the case of maintenance due to adults lacking capacity, proceedings may be brought by their legal representatives (Article 16 of the Code of Civil Procedure.

Aside from these cases of incapacity, maintenance proceedings for adults or emancipated children must be brought by them, by a legal representative appointed by them or by an attorney to whom they have conferred power of attorney to bring the proceedings.

However, the law provides for the following particularity with respect to adult children: the parent who takes on the main responsibility of paying the expenses of adult or emancipated children who are unable to look after themselves may demand that the other parent contribute to the subsistence and education of the said adult children. This contribution may be made in whole or in part to the adult or emancipated children, when the judge so decides or if the parents agree (Article 989 of the Code of Civil Procedure).

5 If I plan to bring the case to court, how do I know which court has jurisdiction?

Child maintenance

The District Court, Family and Juvenile Court (*Tribunal de Comarca, Juízo de Família e Menores*) has jurisdiction over matters involving protective proceedings to regulate the exercise of parental responsibility and set child maintenance. In the absence of a Family and Children's Court, the case will, in principle, be heard in the District Court (*Tribunal de Comarca)*, Local Instance (*Juízo Local)* or General Jurisdiction Court (*Juízo de Competência Genérica*).

To understand which of the aforementioned courts has territorial jurisdiction, the following rules apply. In principle, the court for the place in which the child is resident at the time the proceedings are started has jurisdiction.

If the residence of the child is unknown, the court of the place of residence of the holders of parental responsibility has jurisdiction.

If the holders of parental responsibility are resident in different places, the court with jurisdiction is the court of the place of residence of the person to whom custody of the child has been granted or, in the case of joint custody, of the person with whom the child lives.

If any of the proceedings relate to two or more children who are children of the same parents and resident in different districts, the court of the place of residence of the largest number of such children has jurisdiction. All things being equal, the court in which the maintenance was requested at the first instance has jurisdiction.

If, when the proceedings are started, the child does not live in Portugal, the court of the place of residence of the applicant or the defendant has jurisdiction; if they also live abroad and the Portuguese court has jurisdiction internationally, the case is heard by the District Court of Lisbon, Family and Juvenile Court (*Tribunal da Comarca de Lisboa, Juízo de Família e Menores*), as this court has territorial jurisdiction for the municipality of Lisbon.

Maintenance for adult children

Any Civil Registry is competent to bring maintenance proceedings for adult children. This does not apply only if a court case already exists in which child maintenance was set. In this case, the application to set maintenance for a child who has, in the meantime, reached majority or been emancipated, is joined to the pre-existing case and heard in this court.

Maintenance for spouses or former spouses

The proceedings for setting maintenance between spouses and former spouses are brought before the District Court, Family and Children's Court of the place where the defendant resides. In the absence of a Family and Children's Court, the case will, in principle, be heard in the District Court, Local Instance or General Jurisdiction Court.

Adult maintenance

Aside from the aforementioned cases, proceedings for setting adult maintenance are brought before the District Court: Central Instance, Civil Court (if the value of the action exceeds €50 000.00); the Local Court or General Jurisdiction Court, where one exists, (if the value of the action does not exceed €50 000.00). From a territorial point of view, the court of the place of residence of the defendant has jurisdiction.

Maintenance enforcement

The courts shown below have jurisdiction when it comes to bringing special maintenance enforcement proceedings in the event of late payment.

If proceedings in which maintenance was set were heard before the District Court, Family and Juvenile Court(*Tribunal de Comarca, Juízo de Família e Menores*), the special maintenance enforcement proceedings will be heard before this court, as part of the case concerned, to which the enforcement application must be joined.

If the proceedings in which maintenance was set were heard before the District Court, Central Instance, Civil Court (*Tribunal de Comarca, Juízo Central Cível*), the Enforcement Court (*Secção de Execução*) which would be competent if the proceedings were not within the jurisdiction of that court of Central Instance owing to their monetary value, has jurisdiction for the special maintenance enforcement.

Where there is no Enforcement Court, the Civil Court of Central Instance where the respective declaratory action was heard has jurisdiction for the special maintenance enforcement and, in this case, the enforcement takes place in this procedure.

If the proceedings in which maintenance was set took place at the District Court, Local Civil Instance or General Jurisdiction Court, the enforcement takes place in this procedure provided the Central Instance does not have an Enforcement Court. If there is an Enforcement Court (whose territorial jurisdiction covers the area in which the General Jurisdiction or Local Civil Court where the condemnatory action was heard is located), it will have jurisdiction for the special maintenance enforcement.

With regard to the enforcement of court judgments, even if the enforcement does not take place in the court in which the enforceable judgment was handed down, the enforcement application is submitted in the declaratory proceedings where that judgment was handed down. In this case, when the Enforcement Court has jurisdiction, the sentencing court will urgently forward a copy of the sentence, the application that gave rise to the enforcement and accompanying documents to the Enforcement Court.

The same rule applies in cases where there is no Enforcement Court and the Local Civil Court or General Jurisdiction Court have jurisdiction with regard to enforcement proceedings.

If the proceedings in which maintenance was set were not heard before the court but rather before the Civil Registry, territorial jurisdiction for the special maintenance enforcement is governed by the following principles:

the enforcement must be brought before the court where the maintenance debtor is resident; the maintenance creditor may, however, opt for the court of the place in which the obligation is to be fulfilled if they reside in the metropolitan area of Lisbon or Porto and the maintenance debtor resides in the same metropolitan area;

when the enforcement must be brought in the place where the maintenance debtor is resident, and they are not resident in Portugal but do have assets here, the court of the place where these assets are located has jurisdiction.

With regard to the subject-matter jurisdiction for maintenance enforcement based on the decision of the Registrar, the following rules apply:

The District Court, Family and Juvenile Court has jurisdiction to prepare and judge maintenance enforcement proceedings between spouses and former spouses, for children and for adult and emancipated children. As in this case, however, the respective declaratory action was not heard in the Family and Children's Court, but rather in the Civil Registry, the courts may decide that the District Court, Enforcement Court has jurisdiction.

If there is no Enforcement Court, the Local Civil Instance or General Jurisdiction Court has jurisdiction for special maintenance enforcement.

Notice:

The aforementioned rules on jurisdiction are subject to fluctuations in the interpretation of the national courts.

6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?

As a general rule, it is not necessary to appoint a lawyer for child maintenance proceedings, except at the appeal stage. Adult or emancipated applicants (e. g. the child's guardian) may appear on their own in court when the proceedings are being heard at first instance. However, a lawyer must be appointed for the child when the interests of the child conflict with those of their parents, the legal representative or the person who has de facto custody, and also when a child who is sufficiently mature requests the court to appoint one.

For other maintenance proceedings, the general principles set out below apply.

It is necessary to appoint a lawyer: in matters which fall within the jurisdiction of courts that are subject to thresholds and in which an ordinary appeal is allowed; in cases in which appeals are always allowed, regardless of the value; in appeals and cases brought in the higher courts.

Currently, in 2022, ordinary appeal is only admissible when the value of the case exceeds the limit of the court against which the appeal is brought and the decisions challenged are unfavourable to the appellant by an amount also exceeding half of the limit of that court. In the event of doubts concerning the value of the loss borne by the defeated party, only the value of the action will be taken into account. This legal principle has various exceptions laid down therein and in other specific legal provisions. In 2022, at the time of reviewing this factsheet, in civil matters, the limit of the courts is as follows: Court of Appeal (*Tribunal da Relação*) – €30 000.00; Court of First Instance (*Tribunal de Primeira Instância*) – €5 000.00.

Even where it is compulsory to be represented by counsel, trainee lawyers, solicitors and the parties themselves may make applications in which matters of law are not raised.

7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?

The reply to this question varies depending on whether the proceedings to set maintenance are heard in court or the Civil Registry and whether the parties receive legal aid or not. Costs are due in the courts. Costs are due in the courts. Fees are due in the Civil Registry Office.

The payment of costs is provided for in the Procedural Costs Regulation

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The costs include the court fee, charges and the costs of the party – Article 529 of the Code of Civil Procedure

Exemptions

Under Article 4(1)(i) and (l) of the Procedural Costs Regulation

Minors are exempt from costs when they are represented by the Public Prosecutor or by a court-appointed lawyer in cases heard in court and are exempt from fees in cases that take place at the Civil Registry Office.

Minors or their legal representatives are also exempt from costs in appeals against decisions relating to the application, adjustment or termination of maintenance, handed down in juvenile court proceedings. Juvenile court proceedings in which maintenance can be set are usually child maintenance proceedings and proceedings to regulate parental responsibility. These are special, non-contentious proceedings.

Under Article 15(1)(f) of the Procedural Costs Regulation:

Parties in juvenile court proceedings are exempt from the prior payment of court fees, including those proceedings in which maintenance is set. In these cases, instead of paying the court fee at the outset, the party is requested to pay the court fee within a ten-day period after a judgment has been handed down in the main proceedings. This is the case even if the judgment has not become final.

Aside from the cases mentioned above, in principle costs are due. This will only not be the case if the party receives legal aid and/or if Chapter V of Council Regulation (EC) No 4/2009 of 18 December 2009, which will be mentioned below, applies to the proceedings in question.

Recovery of costs

Apart from the exceptions noted above, an initial court fee is due in order to bring an action with the objective of setting maintenance. The initial court fee corresponds to an advance on the final costs.

The costs include the court fee, charges and the costs of the party.

Court fees

In order to determine the amount of court fee due, it is essential to know the value of the action, since the court fee is calculated on the basis of this amount, in accordance with one of the tables annexed to the Procedural Costs Regulation.

The value of the action for the purpose of applying the aforementioned tables results from Articles 296 to 310 of the Code of Civil Procedure

For example:

definitive maintenance proceedings have a value equal to five times the annuity requested in the application, i.e. the value of this action corresponds to the sum of the requested monthly payment multiplied by sixty;

precautionary provisional maintenance proceedings have a value corresponding to the requested monthly payment multiplied by twelve;

divorce proceedings and proceedings to regulate the exercise of parental responsibility, which are concerned with other intangible interests aside from maintenance, have at least a value of the limit of the Court of Appeal plus one cent (in 2022: €30 000.01 - Article 44 of Law 62/2013).

Charges

The following rules apply to the charges (Article 532 of the Code of Civil Procedure, which can be found at Law 41/2013 of 26 June 2013

With regard to expenses and charges arising from investigations (payment to experts, reporting, etc.), the rule is that each party pays the expenses and charges to which it has given rise.

If the investigation proves to be manifestly unnecessary or dilatory, the party that requested it bears the respective charge regardless of success or the order as to costs.

When all parties have an interest in the investigations or the expenditure, when they both gain equal advantage, or when it is not possible to determine who is the interested party, the charges are borne equally by the parties.

Costs of the parties

As regards the costs of the parties, Article 533 of the Code of Civil Procedure lays down as follows: the costs of the successful party are borne by the losing party on a sliding scale in proportion to their loss.

The costs of the parties include court fees paid in advance, the costs actually incurred by the party, the fees paid to the enforcement agent and their expenditure, the fees paid to the legal representative and their expenditure.

Costs account

Except in the cases noted above, in which the parties are exempt from the advance payment of court fees, in principle, the court registrar only prepares the costs account after the judgment has become final and unappealable, and in accordance with the respective order. The parties are notified of the account.

If there are no appeals or complaints regarding the account, or they have been resolved, this gives rise to payment of what is owed by the losing party and/or reimbursement to the successful party of the amount it advanced.

The costs of the parties are paid directly by the losing party to the party owed. If the losing party has legal aid, the payment of the sums in questions to the party owed is made by the State – Article 26 of the Procedural Costs Regulation.

Legal aid in cases within the jurisdiction of the courts

If the applicant does not have the means to pay for the proceedings, they may obtain legal assistance. According to national legislation, legal aid may only be granted to natural persons or not-for-profit legal persons.

The legal aid scheme is enshrined in Law 34/2004.

Legal aid for individuals may be granted in various forms: legal advice, exemption from court fees and charges, phased payment of court fees and charges, appointment and payment of the legal representative's fees, appointment and phased payment of the legal representative's fees, and assignment of an enforcement agent.

The Portuguese legal aid system, in all the terms laid down therein, applies to all courts and to any form of proceedings.

Applications for legal aid are submitted via a form. It must be delivered in person or sent by post to any public service of the Institute of Social Security IP (*Instituto da Segurança Social IP*). The forms and instructions regarding their completion are provided by that entity. The general response period is 30 days.

Both the practical information and the forms are available at Proteção Jurídica - seg-social.pt

When bringing an action, the applicant must attach to the initial application documentary evidence of prior payment of the court fee due or of the granting of legal aid in terms of exemption from prior payment of the aforementioned fee. When legal aid is granted in the form of phased payment of court fees, evidence of this must be attached along with payment of the outstanding amount – Articles 14 to 15 of the Judicial Costs Regulation

Fees in cases within the jurisdiction of the Civil Registry Office

Minors are exempt from fees when they are represented by the Public Prosecutor or by a court-appointed lawyer in cases that are heard before the Civil Registry Office.

The fees due for cases within the jurisdiction of Civil Registry Offices are set out in the Fee Regulations for Registry Offices and Notaries.

For example, in 2022 the fees charged in cases within the jurisdiction of Civil Registry Offices, which can be consulted in Article 18 of the Fee Regulations for Registry Offices and Notaries, are as follows:

divorce proceedings or legal separation by mutual consent (without property settlement) including decisions approving agreements regarding maintenance between spouses or for minor children – €280;
proceeding for granting maintenance for adult or emancipated children – €120;
proceedings for amending maintenance agreements – €100.
These sums are valid for 2022, the time of updating of this factsheet, and are subject to review. It is therefore necessary to consult national legislation on a case-by-case basis.

Legal aid in cases within the jurisdiction of the Civil Registry Office

Legal aid only applies in two situations to cases heard before the Civil Registry Office: appointment of legal counsel and payment of their fees; appointment of legal counsel and payment by instalment of their fees.
Furthermore, in Civil Registry Offices, certain acts are free of charge for individual applicants who are able to prove their financial hardship.
Financial hardship may be proved by the following means: a document issued by the competent administrative authority; a statement issued by a public social welfare institution where the individual has been admitted.
In these cases, the following acts are free of charge: acts of civil registry or nationality; proceedings and declarations relating to them; documents required and procedures relating to their supply; certificates required for any purpose.
The same rule applies to the cases within the jurisdiction of the Civil Registry Office in which maintenance was set.

8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?

As a rule, maintenance is set as monthly monetary payments, except where there is an agreement or legal provision to the contrary or where there are reasons to justify exceptional measures. If, for example, the person required to pay maintenance shows that they cannot pay it as an allowance but only in the form of their house and company, this may exceptionally be ordered.

Calculation of maintenance

The maintenance obligation and the calculation of maintenance are regulated by Articles 1871 to 1880, 1905, 2003 to 2023 of the Civil Code.
Maintenance must be proportional to the means of the maintenance debtor and the needs of the maintenance creditor. In setting maintenance, the possibility of the maintenance creditor supporting themselves is also examined.
The needs of the maintenance creditor depend on whether they are children, adult children continuing their training or education, or simply adults. These have already been mentioned in the reply to question 1.
With regard to the maintenance debtor's means that must be considered, it is important to note the specific criteria to be taken into account, depending on whether the maintenance is being set for children or former spouses.

Maintenance set for children

The duty of child maintenance is a fundamental duty of their parents. It is based directly on Article 36(5) of the Constitution of the Portuguese Republic.
Maintenance due to children must be proportional to the means of the maintenance debtor.
In accordance with the leading case-law of the Portuguese Supreme Court of Justice (*Supremo Tribunal de Justiça*), in order to calculate the amount of maintenance due to a child, the court must consider not only the value of the income currently earned by the debtor, but also, in a comprehensive and overarching manner, their social status, their ability to work, the duty to actively strive for a profession that enables them to fulfil such duty, and the entire range of assets which they own.

Maintenance set for former spouses

In determining the amount of maintenance due to former spouses, the court must take into account the duration of the marriage, the contribution made towards the family finances, the age and state of health of the spouses, their professional qualifications and employment prospects, the time they will have to devote to bringing up their joint children, their earnings and income, remarriage or cohabitation and, in general, all circumstances affecting the needs of the spouse receiving the maintenance and the possibilities of the maintenance debtor.
According to the majority of national case-law, the creditor spouse has no right to demand that the standard of living they enjoyed during marriage be maintained.

The time from when maintenance is due

Maintenance set by judicial decision is due from the date on which the action was brought. Maintenance set by agreement of the parties and approved by decision of the court or the Registrar is due from the date on which the debtor is in default. The debtor is in default on the date set for payment or, failing that, when they are demanded to make payment. Without prejudice to the cases mentioned above, Portuguese law does not provide for setting maintenance retroactively.

Adjustment of maintenance that has been set

If there is a change in circumstances after maintenance has been set, maintenance may be adjusted or terminated.
If there is no pending special maintenance enforcement, the application to adjust or terminate maintenance is brought alongside the condemnatory action. If there is a pending special maintenance enforcement, the application to adjust or terminate maintenance is joined to the enforcement procedure.
The maintenance debtor may request that maintenance be reduced or terminated if, for example, there is a reduction in their financial means, an improvement in those of the maintenance creditor, the maintenance creditor reaches majority, or the maintenance creditor is able to contribute to their subsistence.
The maintenance creditor may request that maintenance be increased if, for example, their economic situation worsens, their family circumstances change, their needs increase, the cost of living increases and this increase can and should be supported by the maintenance debtor (because, for example, their salary has also increased).

Automatic update

In order to cope with the rising cost of living, the decision setting maintenance may determine that the awarded amount must undergo a regular automatic update (usually annual).
The update may be based on the increase in the rate of inflation published annually by the National Institute of Statistics (*Instituto Nacional de Estatística*) or on an increase in a certain interest rate indicated by the court. It may also consist, however, of a fixed annual increase of a certain amount as stipulated in the decision.
The judge is responsible for determining this automatic update and choosing the appropriate means of achieving it, according to their discretion. The automatic update may also be determined by an approved agreement between the parties.

Provisional maintenance

In addition to definitive maintenance, provisional maintenance may also be set.

If definitive maintenance has not yet been set, the court may, at the request of the maintenance creditor or *ex officio*, if the latter is a minor, grant provisional maintenance, which will be determined at the court's discretion. Provisional maintenance is never refunded. It is due while the main proceedings to set the amount of definitive maintenance are pending. Definitive maintenance is due once it has been set.
In the event that contested divorce proceedings are pending, the judge may set provisional maintenance for one of the spouses or the children while the proceedings are pending. While proceedings to regulate parental responsibility are pending, the judge may also set provisional maintenance for minor children. In the aforementioned cases, provisional maintenance may be set during a hearing within the proceedings themselves.
Alternatively, provisional maintenance may be set in interim proceedings that will be joined to the main proceedings in which definitive maintenance is set.

9 How and to whom will the maintenance be paid?

Maintenance will be paid under the terms and to the person indicated in the court decision or in the court-approved agreement of the parties.
As a rule, if the beneficiary is an adult with legal capacity, or an emancipated child, the maintenance will be paid to them directly.
If they are adults without legal capacity, the maintenance will be paid to the party that is under the legal obligation to exercise financial rights on their behalf (guardian, trustee or judicial property administrator); even an institution may receive the maintenance.
If the beneficiary is a minor, the maintenance will be paid to the person who has custody, who may be one of the parents, another family member, a third party (foster family) or the director of an institution to which the minor has been entrusted.
The law does not impose fixed methods of payment and the parties may agree on how payment is to be made. If there is no agreement, the courts decide on the most practical and least costly method either for the person paying or for the person receiving the maintenance.
Generally, the monthly maintenance payment is paid in cash and must be delivered to the creditor at the beginning of the month to which it relates.
The time and place of payment are set out in the agreement or decision setting the maintenance. If they have not been set out, the supplementary rules of the Civil Code apply in that regard. These rules state, in principle, that in the absence of stipulation:
maintenance paid in cash is to be paid at the place where the creditor is residing at the time the payment is due;
as the payments correspond to the months of the Gregorian calendar, the creditor may request payment at any time from the first day of the month in question.
The most common methods are bank transfer, deposit into an account opened at a bank, sending of a postal order or cheque, or the personal delivery of cash.

10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?

In the event that the maintenance debtor defaults, the maintenance creditor may resort to civil and criminal enforcement measures.

Civil enforcement measures

Pre-enforcement hearing

In the case of child maintenance, set in maintenance enforcement proceedings or proceedings to regulate parental responsibility, the law makes a pre-enforcement hearing available to the maintenance creditor.
The beneficiary of child maintenance may call on a pre-enforcement hearing as laid down in Article 48 of the General Regime of the Civil Custody Procedure (*Regime Geral do Processo Tutelar Cível*), provided that the following conditions apply: There is non-compliance or late payment of the maintenance payment; the maintenance debtor receives regular income from employment, a pension, subsidies, commissions, percentages, fees, bonuses, contributions or similar income.
The application is joined to the proceedings to regulate the exercise of parental responsibility or the proceedings for setting child maintenance, which are heard before the court. The maintenance debtor is notified to pay maintenance within ten days of the date when it became payable. If the maintenance debtor fails to attach documentary evidence of payment, the maintenance payments will be deducted on a monthly basis from their wages, salary, pension, subsidies or other income of which they are in receipt. To this effect, the entity responsible for payment will be notified to process the monthly deduction and deposit it directly into the maintenance creditor's nominated bank account. The amounts deducted also cover maintenance payments becoming due.
Once they have been notified, all persons or entities who are responsible for processing or paying the aforementioned income thereby assume the role of approved depositaries of the amounts deducted as maintenance. As a result, if they fail to deduct the agreed amount, enforcement will be brought against them as part of the ongoing proceedings.
The amounts deducted do not cover maintenance accrued before the notification for the maintenance debtor to make payment. However, maintenance payments which are falling due are covered. In order to recover the maintenance accrued prior to the notification laid down in this hearing, the maintenance creditor will need to bring enforcement proceedings. Thus, when maintenance is due to minors, nothing prevents the lender from simultaneously bringing both pre-enforcement hearings (for the payment amounts falling due) and special maintenance enforcement (for the payment of overdue amounts).
It is not necessary to use a pre-enforcement hearing before resorting to enforcement. It just offers an alternative to enforcement. Opposition is not permitted, but on the other hand, the maintenance creditor has more limited means at their disposal than in enforcement, as the maintenance creditor may only request deductions from salaries, wages, pensions, subsidies or similar periodic income (they may not request the seizure of property, deposits or credit rights).
If maintenance is due to minors, the maintenance creditor may, alternatively, just bring special maintenance proceedings, as laid down in the Code of Civil Procedure. Thus, in a single action, they may recover in full the amounts due or falling due. In an enforcement action, the maintenance creditor may make use of broader means of enforcement, such as seizure and pledge of income. The process involved in these proceedings will be explained below.

Non-compliance hearing

In the case of child maintenance set in proceedings to regulate parental responsibility, the law also makes a non-compliance hearing available to the maintenance creditor as provided for in Article 41 of the General Regime of the Civil Custody Procedure (*Regime Geral do Processo Tutelar*).
This hearing is for the creditor to request the court to order the necessary steps to enforce compliance and to sentence the defaulter to pay a fine. With the request joined to proceedings, the court summons the parents to a meeting or notifies the defendant to plead as they deem appropriate, within five days.
The parents may agree to amend the regime set. In the absence of an agreement, the judge will decide provisionally on the request and refer the parties for mediation or to a specialised technical hearing. If it still proves to be impossible to reach an agreement, the parents are notified to submit pleadings and request evidence. This is followed by the evidentiary stage, the trial and judgment.

Special maintenance enforcement

In any cases where there is a delay in the payment of maintenance, the maintenance creditor may bring special maintenance enforcement proceedings in accordance with Articles 933 to 937 of the Code of Civil Procedure. This option exists whether the maintenance is due to children or adults, and whether the maintenance is definitive or provisional.
In special maintenance enforcement, the applicant may request: the adjudication of a proportion of the amounts, salaries or pensions the other party receives; or an assignment of income belonging to the maintenance debtor.
The adjudication or pledge takes place independently of seizure and is intended to cover the payment of overdue amounts and amounts that will become due.

When the applicant requests the adjudication of amounts, salaries or pensions, the body responsible for paying these or for processing the respective payments will be notified that it is to pay the adjudicated part directly to the applicant. The amount adjudicated must be deposited monthly in the bank account of the applicant, who must give the account number in the initial application.
If the petitioner requests an assignment of income, he or she must indicate the property to which this applies and the enforcement agent will order that the property considered sufficient to meet the maintenance due and falling due be assigned. The defendant may be heard for this purpose.
If, once the assignment has been made, it transpires that the income assigned is insufficient, the petitioner may indicate other property. If, on the other hand, it transpires that the income is excessive, the petitioner is obliged to reimburse the excess to the defendant, as and when the excess is received. The defendant may also ask for the assignment to be limited to part of the property or to be transferred to other property.
The amounts awarded or the value of the assignment of income should be sufficient to cover overdue payments, the interest on arrears when the maintenance creditor requests as such, payments falling due and automatic updates, if these have been set.
The maintenance creditor may still request the seizure of the maintenance debtor's property. Seizure may involve movable property and immovable property, bank deposits, credit rights, commercial establishments or company shares.
If the seized property is sold to pay off a maintenance debt, the return of the excess to the maintenance debtor should not be ordered unless the payment of maintenance that will become due is ensured to the extent that the judge considers appropriate, unless a security or other suitable guarantee is provided.
The maintenance debtor should only be summoned after the seizure/adjudication/pledge of income has taken place. The maintenance debtor's opposition to the enforcement or seizure does not stay the enforcement.
In the case of a request to amend or terminate maintenance payments while special maintenance enforcement is pending, the request for amendment or termination is joined to the enforcement.

European enforcement order

In the event of non-compliance with a maintenance agreement arising from an authentic instrument made before administrative authorities, or an instrument authenticated by such authorities, in a Member State not bound by the Hague Protocol of 2007, the maintenance creditor may rely on Regulation (CE) No 805 /2004 of 21 April 2004, which provides for a European Enforcement Order (Article 4(3)(b) of the aforementioned Regulation and Article 68(2) of Regulation No 4/2009 of 18 December 2008).

Criminal enforcement measures

Article 250 of the Criminal Code provides for and punishes the crime of breaching maintenance obligations with imprisonment of between one month and two years or a fine of up to two hundred and forty days, depending on the cases laid down therein.
Criminal proceedings require a complaint to be lodged.
If the obligation is then fulfilled, the court may waive the sentence or declare that the sentence not yet served is cancelled, in full or in part.

11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system

The rules applicable to the attachment of assets or rights and the respective limits and grounds for opposition are laid down in Articles 735 to 783 of the Code of Civil Procedure
In principle, all the debtor's seizable assets that is liable for the enforcement debt in accordance with substantive law may be subject to enforcement. Seizure is limited to the assets required to pay the enforcement debt and foreseeable enforcement costs.
In addition, the law lays down the limits on seizure and limitation periods of maintenance obligations mentioned below.

Limits on seizure

There are certain kinds of property that may not be seized under any circumstances (absolutely unseizable assets), others that may be seized only in certain circumstances (relatively unseizable assets) and others that may only be partially seized (partially seizable assets).

Unattachable assets

In addition to goods exempt from seizure under a special provision, the following enjoy absolute immunity from seizure:
inalienable objects or rights;
assets which are the public property of the State and of other public legal persons;
objects whose seizure would be immoral or would be financially unjustified because their market value is insignificant;
objects specifically intended for the exercise of public worship;
tombs;
instruments and objects which are essential for the disabled and for treating the sick.

Assets relatively immune from seizure

The following property is relatively unseizable:
Except where enforcement is for payment of a debt with a security *in rem*, the assets of the State and other public legal persons, entities holding public works or public service concessions of and of charities that are specially allocated to public purposes are exempt from seizure.
The maintenance debtor's working tools and objects essential for the exercise of their profession or professional training are also exempt from seizure, unless the maintenance debtor indicates that they may be seized, if the enforcement is for the payment of their purchase price or the cost of their repair, or if they are seized as tangible assets of a commercial establishment;
Also exempt from seizure are assets that are household essentials in the actual home of the party against whom enforcement is sought, except if the enforcement is for payment for the items themselves or cost of their repair.
Sums of money or bank deposits resulting from satisfaction of a claim immune from seizure are immune from seizure, on the same terms as the original claim.
When a maintenance claim is recovered, the aforementioned rules on absolute and relative seizability apply.
As a rule, when it comes to property partially seized during maintenance enforcement, the amount that can be seized is higher than in enforcement founded on other claims, as will be explained below.

Partially seizable assets

Two-thirds of the net salaries, wages, periodic amounts received as retirement pension or any other social benefits, insurance, accident indemnity, annuity, or payment of any kind that ensure the maintenance debtor's sustenance are unseizable.
This unseizability has a maximum limit equivalent to three national minimum wages at the time of each seizure and a minimum limit, when the maintenance debtor has no other income, equivalent to one national minimum wage. When the outstanding debts are for maintenance, an amount equivalent to a full non-contributory pension cannot be seized.
When seizing money or bank balances, the amount equivalent to the national minimum wage is unseizable or, in the case of maintenance obligations, the amount equivalent to a full non-contributory pension.

The unseizability laid down for salaries, wages or periodic payments cannot be combined with the unseizability laid down for money or bank balances.
If the aforementioned rules on seizability are not complied with, the maintenance debtor may object to the seizure.

Periods of limitation

The limitation period for maintenance claims is laid down in Articles 303, 310, 313, 314, 320 and 323 of the Civil Code.
The Portuguese Civil Code lays down a limitation period of five years for overdue maintenance payments (Article 310(f) of the Civil Code). So, five years after the due date of the maintenance payments, the right to these payments is prescribed due to non-use. The limitation period is interrupted by a summons for legal proceedings concerned with maintenance payments. For their part, the maintenance debtor may waive the limitation after expiry of the limitation period. Since it is a presumptive limitation period, it may be rebutted by express or tacit admission. The court may not of its own motion supply a limitation period; in order to be effective, it must be invoked.
In the case of child maintenance, the limitation period does not start or run while the child does not have a representative. Even if the child has a representative, the limitation period does not come to expire earlier than one year from the date on which the child reached the age of majority.
Portuguese civil procedural law does not lay down a limitation period after which the maintenance creditor can no longer bring maintenance enforcement proceedings. Prescribed maintenance payments may therefore be subject to enforcement. In this case, the court may not be aware, *ex officio*, of the prescription. In order to be effective, the prescription must be invoked by the maintenance debtor, who may object to enforcement on that basis.

Objection to seizure

Articles 784 and 785 of the Code of Civil Procedure lay down the following rules:
The general time limit for challenging seizure is ten days from the maintenance debtor being notified of the seizure. The general time limit for challenging enforcement is 20 days from the maintenance debtor being summoned.
In the case of special maintenance enforcement, the maintenance debtor is summoned in respect of the enforcement action only after the seizure, award or assignment of income has taken place. Along with the summons, they are notified of the seizure that has already taken place.
In the case of pre-enforcement hearings in juvenile court, the maintenance debtor is notified before the assignment of income is ordered but may not lodge a challenge. They may only provide documentary evidence of payment.

12 Is there an organisation or an authority which can help me to recover maintenance?

In the case of child maintenance, the Public Prosecutor is entitled to bring the respective proceedings for the setting of maintenance. Anyone may notify the Public Prosecutor of the need to set or adjust child maintenance. For this purpose, the Public Prosecutor has a front desk service in every court.

13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?

Yes, in the case of child maintenance. It is known as the Guarantee Fund for Maintenance due to Minors (*Fundo de Garantia de Alimentos Devidos a Menores*, hereinafter referred to as 'the Fund'). The Fund is managed by the Social Security Financial Management Institute IP (*Instituto de Gestão Financeira da Segurança Social IP*).
The maintenance guarantee for children is regulated by Law 164/99
The Fund is responsible for ensuring the payment, up to a certain limit, of maintenance due to minors. The payment is made by order of the court with jurisdiction.

Requirements

The requirements to set the Fund's guarantee in motion are as follows:
the minor must be resident in Portugal;
maintenance payments must have been set by a court judgment (the Civil Registrar's decisions setting maintenance in the cases for which they are responsible produce the same effects as legal judgments);
the maintenance debtor must be in default;
the pre-enforcement hearing laid down in Article 48 of the General Regime of the Civil Custody Procedure must have previously been set in motion (under national law, subject to fluctuations, this requirement may also be fulfilled by an application giving rise to a hearing for non-compliance with maintenance, as laid down in Article 41 of the General Regime of the Civil Custody Procedure or special maintenance enforcement proceedings);
the child's gross income must not exceed the value of the social support index (*IAS - Indexante dos Apoios Sociais*);
the child must not benefit from the income of another person in whose care he/she has been placed that is higher than the IAS (this occurs when the per capita income of the minor's household does not exceed the IAS).
In 2022, at the time of updating of this factsheet, the IAS is €443.20. The IAS amount is, in principle, updated annually; the relevant national legislation should always be consulted for the applicable amount.

Limits on payment

If the above requirements are verified, the State guarantees monthly maintenance payments up to the limit shown below.
For each maintenance debtor, the monthly maintenance payments granted may not exceed 1 IAS, regardless of the number of minor children.
Within this limit, the value of the payments to be guaranteed by the Fund must be set by the court. In setting this value, the court takes into account the economic capacity of the household, the amount of the maintenance set and the specific needs of the child.
The Fund does not guarantee overdue payments. Payments guaranteed by the Fund are due from the first day of the month following that in which the court's decision set the guaranteed value.
Payment is guaranteed until the maintenance debtor begins to effectively comply with their obligation.
Payments from the Fund cease when the child reaches 18.
Children admitted to public or private non-profit social support institutions, financed by the State, legal persons under public law, private law or public utility, educational guardianship centres and detention centres are not entitled to maintenance payments guaranteed by the Fund.

Processing

Applications for setting the amounts payable by the Fund must be submitted to the court during non-compliance proceedings. The Public Prosecutor or the maintenance creditor is responsible for submitting the application.
The judge orders an inquiry based on the child's needs and then makes a decision setting the payments to be made by the Fund within the limits indicated above.
In cases where maintenance is urgently due, the judge may set provisional maintenance to be guaranteed by the Fund until a final decision is reached.
The maintenance creditor must prove each year that they still meet the requirements to guarantee these payments from the Fund, otherwise they will come to an end.
The child's legal representative or the person in whose custody they have been placed has a duty to inform the court or the Fund of any changes in, or the ending of, the situation of non-compliance or the child's situation.
The Fund is subrogated to the rights of the child, up to the limit that it paid, for the purposes of claiming reimbursement from the maintenance debtor.

14 If I am in this Member State and the debtor has his/her residence in another country:

14.1 Can I obtain the assistance of an authority or private organisation in this Member State?

If the maintenance creditor is in Portugal and wishes to recover maintenance in another Member State of the European Union, they must submit the application to the Directorate-General of Justice Administration (*Direcção Geral da Administração da Justiça*), which is a public entity. National legislation does not provide for the intervention of a private organization for such purposes.

The Directorate-General of Justice Administration is the Portuguese Central Authority for the purposes of applying Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (hereinafter also referred to as 'the Regulation').

This Regulation enables the cross-border recovery of maintenance. The Regulation applies to decisions handed down in Member States of the European Union (also known as 'Member State') and decisions handed down in non-Member States of the European Union (also referred to as 'third State'). It applies not only to decisions that set maintenance made after its entry into force, on 18 June 2011, but also to those made before this date. It covers the recovery of overdue and falling due payments, automatic updates set by the decision and interest on arrears. Under the Regulation, maintenance set by court order or by decision of another competent authority may be recovered.

The application for recovery of maintenance in another Member State is submitted to the Directorate-General of Justice Administration by completing and adjoining the appropriate forms annexed to the Regulation. The creditor must attach certain documents and information to the forms, which can be, as appropriate: a certificate of the judgment or decision setting the definitive maintenance along with notice that the decision/judgment has been rendered final and unappealable which must consist of the form contained in Annex I to the Regulation; document showing they received or are in a position to receive legal aid or free proceedings; bank details to deposit the amounts recovered; birth certificates of minor children; school attendance certificates for their adult children; the power of attorney granted to the central authority; a list of the amounts due.

The form or forms to be completed and the documents and information to be attached by the maintenance creditor are found in instructions that can be obtained from the Directorate-General of Justice Administration. The contact details of this authority are given in the answer to question 14.2.

The type of proceedings that can be requested of the Directorate-General of Justice Administration are explained in the reply to question 15.4.

14.2 If so, how can that authority or private organisation be contacted?

The contact details of the Portuguese Central Authority are:

Directorate-General for Justice Administration (*Direção-Geral da Administração da Justiça*)

D. João II, 1.08.01 D/E

1990-097 LISBON - PORTUGAL

Tel.: (+351) 21 790 65 00

E-mail address: correio.dsjcji@dgaj.mj.pt

Website: http://www.dgaj.mj.pt/

Languages: Portuguese, Spanish, French and English.

15 If I am in another country and the debtor is in this Member State:

15.1 Can I address a request directly to such an authority or private organisation in this Member State?

In its role as the Central Authority under the aforementioned Council Regulation (EC) No 4/2009 of 18 December 2008, the Directorate-General of Justice Administration will provide the necessary support as described in the reply to question 14.1.

If the maintenance creditor is in another Member State and wishes to request the application of one of the proceedings laid down in the Regulation, they must file the application with the central authority appointed by the Member State where they are based. This central authority, in turn, forwards the request to the Portuguese central authority who takes charge of passing it on to the competent national court, as appropriate.

15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?

If the applicant is in another Member State, they should be able to contact the Directorate-General of Justice Administration via the central authority of the Member State where the applicant is based.

The following assistance may be provided:

In order to recover maintenance set by a decision handed down in another Member State, the Regulation lays down three different sections of rules:

(i) rules applying to decisions handed down in a Member State bound by the 2007 Hague Protocol (as is the case with Portugal);

(ii) rules applying to decisions handed down in a Member State not bound by the 2007 Hague Protocol;

(iii) rules applying to decisions handed down in all Member States.

The decisions provided for (i):

are recognised in the requested Member State without any possibility of opposition;

benefit from the abolition of exequatur; are immediately enforceable in the requested Member State;

enable the maintenance creditor to bring precautionary measures laid down in the legislation of the requested Member State.

The decisions laid down in the section referred to in (ii):

are recognised in the requested Member State except if any of the grounds for refusal of recognition laid down in the Regulation are proven to exist;

if they are enforceable in the Member State of origin, the maintenance creditor may request that the court or competent authority of the requested Member State recognises its enforceability in accordance with the procedure laid down in the Regulation;

the recognition of enforceability may only refer to part of a decision.

The decisions laid down in the section referred to in (iii):

may be provisionally enforceable if the Member State of origin declares that an appeal against the decision will have a non-suspensive effect.

if the maintenance creditor invokes the decision in the requested Member State, they must prove its authenticity by completing the forms and requirements laid down in the Regulation;

if necessary, the maintenance creditor must attach a translation of the decision;

enforcement of the judgment takes place according to the law of the requested Member State;

under no circumstances may a judgment be reviewed as to its substance in the requested Member State;

the costs of applying the Regulation do not take precedence over the recovery of outstanding maintenance.

The Regulation sets out the procedures that are available to maintenance creditors in Article 56. In some cases, these procedures cover not only decisions of the Member States but also decisions of third States.

Specifically, the maintenance creditor may:

request from a Member State the recognition and declaration of enforceability of a decision handed down in another State;

bring an action to set maintenance in the requested Member State;

combine an application to establish parentage with this action;
bring an action to set maintenance in the requested Member State when it proves impossible to obtain recognition or enforcement of a judgment handed down in another State;
request modification of a decision handed down in the requested Member State;
request modification of a decision handed down in a State other than the requested Member State.
These procedures are governed by the law and rules of jurisdiction of the requested Member State, unless other arrangements are laid down in the Regulation. In such cases, the maintenance creditor is aided and represented by the central authority or other public authority, body or person appointed by the requested Member State.

16 Is this Member State bound by the 2007 Hague Protocol?

Yes, Portugal is bound by the Hague Protocol of 2007. As such, the following rules of Council Regulation (EC) No 4/2009 of 18 December 2008 apply to maintenance judgments handed down in Portugal: Articles 8, 13 and 17 to 22.

17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?

The answer to this question is nullified by the affirmative answer to the previous question.

18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?

Portuguese national law – Law No 34/2004 – contains rules which provide legal aid comparable to that set out in Chapter V of Council Regulation (EC) No 4 /2009 of 18 December of 2008.
With regard to natural persons, the following are entitled to legal aid, provided that they are able to prove their economic hardship:
Portuguese citizens and citizens of the European Union.
Foreigners and stateless persons with a valid residence permit in a Member State of the European Union.
Foreigners without a valid residence permit in a Member State of the European Union – if the laws of their countries of origin grant the same right to Portuguese citizens.
Persons who live or reside in a Member State of the European Union other than the Member State in which the proceedings are to be held (cross-border disputes).
National legislation provides for the application of the following criteria for assessing the economic hardship of natural persons:
applicants whose household has a relevant income for the purposes of legal aid equal to or less than three-quarters of the social support reference rate are not in a position to bear any amount relating to the costs of a process, and should also benefit from the assignment of an enforcement agent and free legal consultation;
applicants whose household has a relevant income for the purposes of legal aid of greater than three-quarters and equal to or less than two and a half times the social support reference rate are in a position to bear the costs of legal advice subject to prior payment of a fee, but are not in a position to promptly meet the costs of proceedings and, therefore, benefit from legal aid in the form of phased payment and the assignment of an enforcement agent;
applicants whose household has a relevant income for the purposes of legal aid of greater than two and half times the social support reference rate are not considered to be economically insufficient;
the relevant income for the purposes of legal aid is the amount resulting from the difference between the value of the full net household income and the value of the relevant deduction for legal aid (the criteria for calculating these values are set by law);
persons living in the same household as the applicant for legal aid are considered to belong to the same household;
if the applicant or any member of their household hold credits deposited in bank accounts and securities admitted to trading on a regulated market that amount to more than 24 times the social support reference rate, it is considered that the applicant is not in a situation of economically hardship, regardless of the value of the household's relevant income for the purposes of legal aid;
the applicant may request, exceptionally and for good reason, that the assessment of economic hardship takes into account only their income, assets and own ongoing expenses or those of some of the members of their household;
in the event of a dispute with one or more household members, the assessment of economic hardship takes into account only the income, assets and ongoing expenses of the applicant or the applicant and some members of their household, if the said applicant so requests;
if, in a certain case, the chief of the social security services responsible for the decision to grant legal aid understands that the application of the criteria laid down in the preceding paragraphs would lead to a manifest denial of access to the law and to the courts they may, by reasoned order, make a different decision to that which would have resulted from application of the aforementioned criteria.
Legal advice enables the party to consult a lawyer in order to obtain technical information on a specific dispute before bringing or contesting an action in court.
Legal aid, in turn, may be granted in the following terms:
exemption from court fees and other case-related expenses;
payment of court fees and other case-related expenses in instalments;
appointment of legal counsel and payment of their fees;
appointment of legal counsel and payment by instalment of their fees.
assignment of an enforcement agent to carry out enforcement measures (for example, seizure).
Legal aid covers the specific costs resulting from the cross-border nature of the dispute.
Thus, in the case of an application for legal aid submitted by a citizen from another Member State for an action in which the Portuguese courts have jurisdiction, legal aid comprises the costs of translation, interpretation and travel expenses of persons who are to appear in court when their presence is required and/or the court considers that they could not otherwise be heard.
In the case of an application for legal aid requested by a Portuguese citizen in order to bring an action for which the courts of another Member State have jurisdiction, legal aid covers the pre-litigation support, until the proceedings have been instituted in another Member State, and the costs of translating the applications and other documents.
If the recipient of legal aid loses the action, the system for reimbursing advance payments and expenses paid by the successful party is the same for all categories of individual beneficiaries indicated above, without discrimination between them.
However, rules exist in national law that provide less extensive legal aid than that provided for in Chapter V of the Regulation and therefore must be supplemented by this.
In Portugal, minors are exempt from fees when they are represented by the Public Prosecutor or by a court-appointed lawyer.
Minors or their legal representatives are also exempt from costs in appeals against decisions relating to the application, adjustment or termination of maintenance, handed down in juvenile court proceedings.

Parties in juvenile court proceedings and actions against the status of a person are exempt from prior payment of court fees. According to national legislation, majority is reached at the age of 18.
However, prior payment of court fees cannot be demanded in proceedings brought in Portuguese courts and to which the Regulation applies. This is the case whether these proceedings relate to children or to adults, whatever the form of the process and whether or not a maintenance request overlaps with a request on the status of persons (Article 44 of the Regulation).
In such proceedings, if the applicant does not qualify for legal aid or free proceedings, the court fee may be demanded at the end. Moreover, the proceedings laid down in Article 56 of the Regulation, where the obligation of parents to provide maintenance for a child under 21 years of age is concerned (Article 46 of the Regulation) must be completely free.
The aforementioned rules of the Regulation are directly applicable and extend, internally, the scope of legal aid afforded by national legislation.

19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?

In accordance with the aforementioned Article 51 of Council Regulation (EC) No 4/2009 of 18 December 2008, the Directorate General of Justice Administration, as the Portuguese central authority, provides assistance in those proceedings laid down in the Regulation and will take all appropriate measures to that end.
In particular, the Executive Director shall be responsible for:
transmit and receive such applications;
initiating or facilitating the instigation of proceedings in the competent court;
where the circumstances require, to provide or facilitate the provision of legal aid;
helping to locate the debtor;
helping to obtain relevant information concerning the income and assets of the debtor;
encouraging amicable solutions with a view to obtaining voluntary payment of maintenance, by use of mediation, conciliation or similar processes;
to facilitate the ongoing enforcement of maintenance decisions, including any arrears;
to facilitate the collection and expeditious transfer of maintenance payments;
facilitating the acquisition of documentary or other evidence;
to provide assistance in establishing parentage where necessary for the recovery of maintenance;
initiating or facilitating the instigation of proceedings to obtain any necessary provisional measures to secure the outcome of a pending maintenance application;
facilitating service of documents.
In order to achieve these goals, the Portuguese State, and in particular the Directorate-General of Justice Administration, as the central authority, adopted the following measures:
reinforcement of the number of legal and administrative staff to receive and transmit orders made under the Regulation;
a family mediator is now available;
setting up of an area on its website dedicated exclusively to international judicial cooperation in civil and commercial matters, where information can be found relating to maintenance obligations, instructions on the documents and forms necessary to bring proceedings laid down in the Regulation and to complete a standard form specifying the amount in arrears;
when requested, it forwards the application for legal aid to the competent authorities for the purpose;
forwards applications to the competent national courts;
translates the documents required for bringing claims when Portugal is the requested State;
requests information and evidence from the national police, administrative and tax authorities and Immigration and Border Control on the whereabouts and property of the maintenance debtor;
with regard to conciliation, when the maintenance debtor is summoned to appear or make contact with the central authority, they will be made aware of the application for setting, adjusting or recovering maintenance and presented with the possible scenarios, particularly those that are most beneficial for both parties, in order to encourage voluntary payment.

Warning
The Contact Point, the courts or other entities and authorities are not bound by the information contained in this factsheet. It is also still necessary to read the legal texts in force. These are subject to regular updates and evolutionary interpretation of case-law.

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