How to enforce a court decision

Portugāle

1 What does 'enforcement' mean in civil and commercial matters?

Enforcement in civil and commercial matters consists in a legal action brought by a creditor or party seeking enforcement against a debtor or person against whom enforcement is sought in which the creditor requests the court to enforce compliance with an obligation due to him or her.

The enforcement can have three aims: payment of a sum of money; delivery of a specific object; or performance or non-performance of an act.

Enforcement may take the form of standard legal proceedings (which can be ordinary, summary or singular) or special proceedings.

All enforcement proceedings for the payment of a sum of money take the form of ordinary standard legal proceedings with the exception of those set out below, which take the form of summary proceedings, and enforcement proceedings relating to maintenance, which take the form of special proceedings.

Summary proceedings are used in enforcement proceedings for the payment of a sum of money based on the following:

an arbitration award or court judgment in cases where such an award or judgment may not be enforced in the legal action itself;

an application for an order for payment to which an enforcement order has been appended;

an extrajudicial enforcement order relating to a past-due pecuniary obligation, guaranteed through a mortgage or lien;

an extrajudicial enforcement order relating to a past-due pecuniary obligation, the value of which does not exceed twice the value for which the court of first instance has jurisdiction.

Even when one of the above enforcement orders is involved, the ordinary form is applicable rather than the summary form in the following cases:

enforcement of an alternative obligation, dependent on an option or condition;

when the obligation to be enforced requires settlement at the enforcement stage and settlement does not depend on a simple arithmetic calculation;

when there is an enforceable title other than a judgment against only one of the spouses, and the party seeking enforcement claims in the enforcement application that the debt is joint;

in enforcement proceedings brought against only a subsidiary debtor who has not waived the defence of prior recourse (*benefício da excussão prévia*).

Enforcement proceedings relating to the delivery of a specific object and for the performance of an act take the form of single standard proceeding.

Enforcement for the delivery of a specific object may be converted into enforcement for payment of a sum of money when the object that the party seeking enforcement should receive cannot be found. In that case, the party seeking enforcement may, in the same proceedings, require payment of the value of the object that should have been delivered and the loss resulting from non-delivery.

Enforcement for the performance of an act may be converted into enforcement for payment of a sum of money if the party seeking enforcement seeks compensation for damage suffered and payment of the amount in question.

Enforcement in relation to maintenance follows a form of special proceedings whereby:

the party seeking enforcement may apply to be awarded part of amounts, salary or pension payments which a person against whom enforcement is sought is receiving, or to be assigned rentals belonging to the debtor for payment of instalments due or falling due, and the award or assignment is independent of seizure;

when the party seeking enforcement applies to be awarded the sums, salary or pension payments referred to above, the entity responsible for making the payments or for processing the respective payrolls is notified that it is to pay the part awarded directly to the party seeking enforcement;

when a party seeking enforcement applies for assignment of rentals, he or she must indicate the assets to which it applies, and the enforcement agent will carry it out in relation to the assets he or she considers sufficient to meet the payments due and falling due. The person against whom enforcement is sought may be heard for this purpose;

the party against whom enforcement is sought is always summoned after the seizure has been carried out, and his or her objection to the enforcement or seizure does not suspend the enforcement.

The enforcement procedure is laid down in Articles 550 and 551 (Forms of Procedure - Enforcement procedure), 703 to 877 (Enforcement procedure) and Articles 933 to 937 (Special enforcement in relation to maintenance) of the Code of Civil Procedure (*Código de Processo Civil*), which may be consulted via this link.

2 Which authority or authorities are competent for enforcement?

The competent authorities for enforcement are the courts and enforcement agents.

Enforcement itself takes place through a judicial enforcement process in which the courts are the competent authorities and are assisted by enforcement agents. In addition to the judicial process, the law also provides for a ‘pre-enforcement extrajudicial procedure’ (*procedimento extrajudicial pré-executivo*), which is optional and which the creditor may use when certain requirements are met. The competent authorities for the pre-enforcement extrajudicial procedure are enforcement agents.

Judicial Enforcement Procedure

Enforcement starts with the submission of the enforcement application in court. The model and the terms of submission of the enforcement application are set out in a ministerial implementing order (*Portaria*), i.e. Minsterial Implementing Order No 282/2013 of 29 August 2013 regulating various aspects of civil enforcement actions (as amended, as of the date on which this factsheet was revised, by Order No 239/2020 of 12 October 2020), which can be consulted at this link.

The forms for use by the party seeking enforcement for enforcement not requiring legal representation by a lawyer, trainee lawyer or legal agent are available on the **CITIUS portal**

Enforcement application

Application for Enforcement of a Judgment

The enforcement agent must be appointed by the party seeking enforcement. If the said party does not do so, the registrar of the court appoints an enforcement agent automatically and randomly. In exceptional cases provided for in law, the duties of an enforcement agent may be performed by a judicial officer.

In general, the distribution of competences between the court and the enforcement agent is as follows:

It is the responsibility of the enforcement agent to perform all enforcement formalities that are not assigned to the registrar or are not the competence of the judge, including more specifically, summons, notifications, publication, database consultation, seizures and records of seizures, settlements and payments. Even when a case does not proceed to judgment, an enforcement agent must ensure that the acts arising from the case requiring his or her intervention are carried out.
In addition to the competences expressly attributed by law, it is the responsibility of the registrar of the court to ensure the smooth running of administrative matters and the handling of the process and to implement judicial orders, both with respect to the preliminary phase and the declaratory proceedings, except for the steps relating to the summons, which are the responsibility of the enforcement agent.
It is also the responsibility of the registrar of the court to notify the enforcement agent as a matter of course of ongoing declaratory procedures or steps and respective act performed which may influence proceedings.
In particular,
it is the responsibility of the judge to:
issue a preliminary injunction, if necessary;
rule on the objection to enforcement and seizure and verify and rank the claims within a maximum period of three months from the date when the objection or claim was filed;
rule, with no appeal possible, on challenges to measures and decisions of the enforcement agent;
decide on other issues raised by the enforcement agent, by parties or intervening third parties.
It is the responsibility of the enforcement agent to:
take the necessary measures to verify the legality of the enforcement title and consult the computer record of enforcements and the online databases that can be consulted directly to establish seizable assets;
serve a summons on the person against whom enforcement is sought, including cases in which the person concerned is summoned to indicate assets for seizure when no seizable assets have been identified;
conduct the seizure and the summonses which take place after the seizure has been conducted;
conduct the sale, settlement and payment.
For enforcement proceedings instigated in Portugal, the subject-matter jurisdiction of the courts is as follows:
(Articles 111 to 131 of Law No 62/2013 of 26 August 2013, which can be consulted via this link)
The enforcement chambers of the central District Court (*Instância Central do Tribunal de Comarca*) have jurisdiction for civil enforcement proceedings, with the exception of: competences attributed to the intellectual property court, to the competition, regulation and supervision court, the maritime court, the family and juvenile benches, the labour benches, the commercial benches, as well as the enforcement of judgments handed down by the criminal bench which, pursuant to criminal proceedings, may not be brought before a civil bench.
Where there is no enforcement court or a different court or specialised court with jurisdiction, the courts with general jurisdiction (or, where there is one, the respective civil court) of the local District Court (*Instância Local do Tribunal de Comarca*) has jurisdiction.
The territorial jurisdiction of Portuguese courts for initiating enforcement proceedings is as follows (Articles 85 to 90 of the Code of Civil Procedure, which can be consulted via this link)
As a general rule, the court of the debtor’s domicile is competent for enforcement unless otherwise provided for in a specific legal provision or in the rules set out below.
The creditor may opt for the court of the place where the obligation is to be complied with when the debtor is a legal person or when the creditor's domicile is in the metropolitan area of Lisbon or Porto and the debtor is domiciled in the same metropolitan area.
If the enforcement is for the handing over of a certain item or a debt with security in rem, the court of the place where the item is located or the place where the encumbered assets are to be found are respectively competent.
When the enforcement is to be brought in the area where the debtor is resident, and they are not resident in Portugal but do have assets here, the court for the place where these assets are located has jurisdiction.
The court where the assets are located is also competent when: the enforcement must be brought in a Portuguese court as it relates to the validity of the forming/winding-up of companies/other legal persons with a registered office in Portugal, or to the validity of the decisions of their corporate bodies; and none of the situations occurs as provided for in the preceding or following rules applicable to enforcement.
In cases involving several enforcements, the assessment of which falls within the jurisdiction of different courts, the court of the debtor's domicile will be competent.
In the enforcement of a decision by the Portuguese courts, the enforcement application is made as part of the proceedings in which the decision was handed down, and the enforcement is recorded in the same case file. If the case has subsequently gone to appeal, a copy of the file is transferred. When a specialised section is competent for enforcement, a copy of the judgment, the petition which gave rise to the enforcement and accompanying documents must be sent to this specialised section as soon as possible.
If the decision was handed down by arbitrators in an arbitration which took place in Portugal, the competent court for enforcement is the district court of the place where the arbitration took place.
If the case was brought before the appeal court or the Supreme Court of Justice, the court of the debtor’s domicile is competent.
In enforcement proceedings relating to costs, fines or compensation due as a result of abusive litigation, the court where the proceedings led to notification of the respective bill or settlement has jurisdiction. Enforcements relating to costs, fines or compensation take place through joining to the respective case.
When the order to pay costs, fines or compensation has been made in an appeal court or the Supreme Court of Justice, enforcement is a matter for the court of first instance which is competent in the area where the case was heard.
For enforcement based on a foreign judgment, including a European Enforcement Order, the court of the domicile of the defendant has jurisdiction.

Pre-enforcement extrajudicial procedure

As an alternative to the judicial procedure, creditors may choose to use a prior administrative procedure referred to as PEPEX (*procedimento extrajudicial pré-executivo* (pre-enforcement extrajudicial procedure)).
Enforcement agents are the competent authority for carrying out the measures under this procedure.
It is possible to use PEPEX in cases of: national enforcement judgments; other national enforcement orders; foreign judgments declared enforceable; judgments whose enforceability results from EU legislation, treaties or conventions that are binding on Portugal; European enforcement orders. In any of these cases, the following requirements must both be satisfied:
the creditor must hold an enforceable order which meets the requirements for applying the summary form of the standard enforcement proceedings for payment of a sum of money; and
the applicant and the defendant must both have a tax identification number in Portugal, regardless of their nationality or residence.

Enforcement agents conduct the search for assets and income using the defendant's tax number and may only do so in Portuguese databases (they may not consult databases of other Member States). Portuguese legislation allows both legal and natural foreign persons to apply for a tax number even if they do not exercise any activity or have their domicile in Portugal.

PEPEX is a paperless, electronic procedure which is fast and cheaper than judicial proceedings. The initial application is submitted directly by the creditor by accessing the following IT platform at:

Access to the tax and customs authority portal is obtained via access credentials or through the digital certificate of the 'citizen's card' (*cartão de cidadão*). When a creditor appoints an authorised representative, the lawyers (*Advogados*) and legal agents (*Solicitadores)* may access the platform using a digital certificate issued for the purpose by their respective professional bodies.

When the application is submitted, the procedure is assigned to an enforcement agent automatically and creditors rapidly (as a rule, in five days after submitting the application) obtain information about the real possibility of recovering the money owed to them or certification that it is uncollectable for tax purposes, without the need to have recourse to judicial proceedings.

The main aim of this procedure is to obtain voluntary payment. Seizure/attachment measures may not take place under a PEPEX procedure. For this to happen, a PEPEX procedure must be converted into enforcement proceedings.

During a PEPEX procedure, the addressee of the application may make voluntary payment or reach a payment agreement with the applicant.

Whenever an applicant opts for service of notice on the other party, it is served in person by an enforcement agent.

Addressees of an application who are validly served notice of the procedure and take no action will be included on the public list of debtors, and the abovementioned certificate of uncollectability may thus be issued for legal and taxation purposes. Later, by payment in full of the claim, this situation will be reversed with removal of the debtor's name from the list and notification of the tax authority.

In a PEPEX procedure, the parties may request the intervention of a judge: the applicant may convert the PEPEX procedure into enforcement proceedings when voluntary payment has not been obtained; the addressee of the application may do so by objecting to the PEPEX procedure.

With respect to costs, the PEPEX procedure is less expensive than judicial proceedings. At a cost of only €51.00 plus VAT, creditors can find out whether or not recovery of their claim is viable, regardless of the value of the claim. If collection is obtained, costs can be greater than €51.00, depending on the case.

It should also be noted that, if the PEPEX procedure is converted into enforcement proceedings, creditors are exempt from payment of the initial court fee.

The PEPEX procedure is provided for by Law No 32/2014 of 30 May 2014, which can be consulted via this link and is regulated by Order No 233/2014 of 14 November 2014, which can be consulted via this link Pepex Order.

3 What are the conditions under which an enforceable title or decision may be issued?

3.1 The procedure

The entire enforcement procedure is based on an order which determines the purpose and the limits of the enforcement action. Enforcement orders are considered to include late payment interest, at the legal rate, on the obligation therein.

Judgments are enforceable and enforcement orders may be issued under the following circumstances:

a) Judgments against the defendant

A judgment is considered to be an enforceable order only after becoming definitive, except if the appeal lodged against it does not have suspensive effect;

From an enforceability point of view, orders and any other decisions or acts of the judicial authority which require compliance with an obligation are equivalent to judgments. Decisions of the Court of Arbitration (*Tribunal Arbitral*) are enforceable on the same terms as judgments of ordinary courts.

Without prejudice to the provisions of treaties, conventions, EU regulations and special laws, judgments handed down by courts or arbitrators in a foreign country may serve as the basis for enforcement only after being reviewed and confirmed by the Portuguese court with jurisdiction;

Orders issued in foreign countries do not need to be reviewed in order to be enforceable.

b) Documents drawn up or certified by a notary or other entities or professionals with competence for the purpose, which require the establishment or recognition of any obligation

Documents drawn up or certified by a notary or other entities or professionals with competence for the purpose, in which future payments are agreed or future obligations are set out, may serve as the basis for enforcement, provided that it is proven, by a document drawn up in compliance with the clauses set out in such documents or, should such clauses be absent, with its own enforceability, that a payment was made for the conclusion of a business deal or that an obligation was established as a consequence of an agreement between the parties;

Any document signed on behalf of someone else is enforceable only if the signature has been certified by a notary or other entities or professionals with competence for the purpose.

c) Debt instruments, even though merely handwritten, provided that, in this case, the facts which constitute the underlying relationship feature in the document itself or are set out in the enforcement application

Debt instruments include cheques, bills of exchange and promissory notes.

d) Documents to which enforceability is attributed under a special provision

For example, applications for an order to which an enforcement order and minutes of condominium meetings have been appended.

3.2 The main conditions

With regard to the claim

The claim to be enforced must be certain, due and of a fixed amount. If it is not in the light of the instrument, the enforcement will begin with measures to make the obligation certain, due and of a fixed amount.

With regard to the creditor

The claim to be enforced must be brought by the person who is named as the creditor in the enforceable instrument. If the instrument is a bearer security, enforcement will be sought by the bearer of the instrument.

In the event of succession to the right or obligation, enforcement must take place between the successors to the persons who appear in the instrument as creditor or debtor of the obligation to be enforced. In the enforcement application itself, the party seeking enforcement must set out the facts constituting succession.

With regard to the debtor

The enforcement must be sought against the person who is in the position of debtor in the instrument.

The assets of the person against whom enforcement is sought are seized even if, for any reason, they are in the possession of a third party, without prejudice, however, to rights which such a third party is entitled to assert against the party seeking enforcement.

The enforcement of a debt backed by a security in rem on third-party assets must be brought directly against that third party if the party seeking enforcement wishes to enforce the security, notwithstanding the fact that the debtor may also be sued immediately.

When the enforcement proceedings have been brought against the third party only, and it is recognised that the assets burdened with the security in rem are insufficient, the party seeking enforcement can, in the same proceedings, request the continuation of the enforcement proceedings against the debtor, who

will be sued for full satisfaction of the claim. When the burdened assets belong to the debtor but they are in the possession of a third party, the latter as well as the debtor may be sued jointly.
In enforcement proceedings brought against a subsidiary debtor, the assets of the subsidiary debtor may not be seized until all of the assets of the main debtor have been seized, provided that the subsidiary debtor invokes a well-founded defence of prior recourse within the enforcement objection period
When the common assets of a married couple are seized in enforcement proceedings brought against only one of the spouses, because it is considered that the party against whom enforcement is sought has insufficient assets, the spouse of the party against whom enforcement is sought is given notice to apply for the separation of assets or to append a certificate evidencing that an action is pending in which separation has already been requested, failing which the enforcement proceedings will continue against the common assets.
When enforcement proceedings are brought against one of the spouses, the party seeking enforcement may allege, stating reasons, that the debt, recorded in an instrument other than the judgment, is joint. In such cases, the spouse of the party against whom enforcement is sought is given notice to declare if he or she accepts that the debt is joint, based on the reasons put forward; otherwise, if the spouse remains silent, the debt is considered joint, without prejudice to any challenge he or she may lodge.
When enforcement proceedings are brought against one or more of the joint owners of an autonomous estate or a joint estate, the assets comprised in the autonomous estate or a fraction thereof, or a specified part of the joint estate, may not be seized.
When enforcement proceedings are brought against heirs, only assets which they have received from the deceased may be seized. When the seizure covers other assets, the party against whom seizure is sought may request the enforcement agent to release the property, indicating which succession assets he has in his possession. The request will be granted if the party seeking enforcement, having been heard, does not object. If the party seeking enforcement objects to the release of the property, the party against whom enforcement is sought may only obtain its release if the inheritance has been accepted unconditionally (without an inventory process having been opened) and provided that he asserts and proves before the court:
a) that the assets seized did not come from the estate;
b) that he did not receive from the estate more assets than those indicated or, if he did so, that the other assets were all used to settle liabilities of the estate.
The legal provisions on which this scheme is based are those mentioned in the reply to question No 1.

4 Object and nature of enforcement measures

The main enforcement measures are:
seizure;
sale;
payment;
delivery of an object;
performance of the act by another at the expense of the party against whom enforcement is sought.
These main enforcement measures may be preceded or followed by other instrumental measures necessary for their implementation (e.g. choice of fulfilment when the obligation is alternative; proof that a requirement has been met or that the performance of a service on which the obligation to be enforced depends; liquidation of the obligation to be enforced when it is illiquid; evaluation of the cost of fungible performance by a third-party; prior consultations to locate and identify seizable assets; registration of seizure; setting up of a depository for the seized assets; publication of the sale of the seized assets; communication of the sale to the registration office).
The choice of enforcement measures depends on the purpose of the enforcement, which may be: payment of a sum of money; delivery of a certain object; or performance of an act.
In enforcement proceedings for payment of a sum of money, the enforcement measures most appropriate to the purpose of the enforcement proceedings are seizure, sale and payment.
In enforcement proceedings for delivery of a certain object, the enforcement measure most appropriate to the purpose of the enforcement proceedings is the delivery of the said object by the enforcement agent. When the object which the party seeking enforcement should receive cannot be found, he or she may convert the action into enforcement proceedings for payment of a sum of money through payment of the value of the object plus damages resulting from non-delivery.
In enforcement proceedings for the performance of an act, there can be two alternative appropriate enforcement measures: either performance of the act by another person at the expense of the party against whom enforcement is sought, when the act is fungible, plus compensation for the delay; or payment of compensation for damages suffered, when the act is non-fungible, to which a penalty payment may be added. When the party seeking enforcement claims compensation for damages suffered, the action is converted into enforcement proceedings for payment of a sum of money.

4.1 What types of assets can be subject to enforcement?

All of the debtor's assets that are seizable may be subject to enforcement.
Enforcement may cover third-party assets when they are tied to the credit guarantee, or when they are the subject matter of an act detrimental to the creditor that the creditor has successfully challenged.
Only objects and entitlements that can be valued in money may be seized. Assets that fall outside legal trade may not be seized.
With respect to the abovementioned rules, the following assets may be subject to enforcement:
Real estate
Movable property
Credits
Securities
Entitlements
Future entitlements
Bank deposits
Allowances or salaries
Indivisible assets
Shares in companies
Business premises.

4.2 What are the effects of enforcement measures?

Effects of seizure
With the exception of cases especially provided for by law, the party seeking enforcement acquires the right, through the seizure, to be paid with priority over any other creditor without a prior security in rem;

Should the assets of the party against whom enforcement is sought have already been impounded, the precedence of the seizure relates to the date on which they were impounded;
Without prejudice to the rules governing registration, any acts of disposal, encumbrance or rental of seized assets may not be relied on against enforcement;
When any claim of the debtor is attached, the extinguishing of the claim for a reason dependent on the will of the party against whom enforcement is sought or his debtor, which occurred after the attachment, may also not be relied on against the enforcement;
The payment in full or assignment, before attachment, of hire and rental charges that are not past due cannot be relied on against the party seeking enforcement in so far as those hire and rental charges relate to periods of time which have not yet elapsed at the date of the attachment;
If the object seized is lost, expropriated or suffers a fall in value, and in any of the cases there is any question of third-party compensation, the party seeking enforcement retains in the claims in question or in the sums of money paid by way of compensation, the right that he or she had in the object.

Effects of sale

An enforced sale transfers to the purchaser the rights of the party against whom enforcement is sought in the item sold;
The assets are transferred free of any liens which encumber them and free of any other rights in rem that were not registered prior to any impounding, seizure or guarantee, with the exception of those constituted at an earlier date which produce effects with respect to third parties regardless of registration;
The third-party rights referred to above which expire are transferred to the proceeds of the sale of the assets concerned.

Effects of payment

Payment extinguishes the enforcement;
Payment may take place by means of a monetary payment, the allocation of assets to the creditor, assignment of income or payment in instalments through an agreement between the party seeking enforcement and the party against whom enforcement is sought.

Effects of delivery of an object

If the party against whom enforcement is sought does not voluntarily deliver the object, as an alternative, the provisions governing seizure apply mutatis mutandis to performance of delivery, with searches and other necessary measures being carried out;
Delivery may involve assets belonging to the State, other public legal persons, concessionaires of public works or services or charitable corporations;
When it is a matter of movables to be determined by counting, weighing or measuring, the enforcement agent has the essential operations carried out in his presence and delivers the quantity due to the party seeking enforcement;
When it is a matter of immovables, the enforcement agent vests ownership in the party seeking enforcement by giving him the documents and keys, if any, and notifies the party against whom enforcement is sought, tenants and anyone in possession to ensure that they respect and recognise the rights of the party seeking enforcement;
When an item is jointly owned with other interested parties, the party seeking enforcement is vested with ownership of his part share;
When the property is the main residence of the party against whom enforcement is sought, should there be serious difficulties in re-housing him or her, the enforcement agent will inform the municipal council and competent welfare bodies thereof in advance;
When the property is the main residence of the party against whom enforcement is sought and he or she has rented it, the enforcement agent suspends delivery when it is shown by doctor’s certificate, which indicates the period for which suspension of enforcement must be maintained, that the measure jeopardises the life of the person on the premises, due to acute illness.

Effects of performance of an act

If the party seeking enforcement opts for performance of the act by another person, he or she requests that an expert be appointed to assess the cost thereof;
Once the assessment has been concluded, the assets necessary to pay the amount established are seized, following the other terms of the enforcement proceedings for payment of a sum of money;
If the debtor is required not to perform any act and then does so, the creditor will have the right to demand that the works, if there are completed works, be demolished at the expense of the person required not to do them;
This entitlement ceases, and only compensation is payable under general terms, if the harm suffered by the debtor due to the demolition is considerably higher than the harm suffered by the creditor.

4.3 What is the validity of such measures?

Sale, payment, delivery of an object and performance of an act are enforcement measures which, once carried out, do not have a validity period. The same applies to seizure, although with the specificity indicated below in relation to the seizure of assets subject to registration.
With regard to the seizure of immovable property subject to registration, the registration of the seizure is compulsory and must be brought about by the enforcement agent. In certain cases expressly provided for by law, the registration of the seizure must be drawn up as provisional. When this happens, the provisional registration expires if it is not converted into permanent registration or renewed within the applicable time limit. Therefore, in the event of the seizure of assets subject to registration, the registration of which is provisional, the enforcement agent must ensure that provisional registration is converted into permanent registration, if this becomes possible in the meantime, or is renewed for the time necessary.
Finally, enforcement proceedings that have been launched may come to an end at the stage of due diligence to locate the debtor’s assets, without reaching payment, if the due diligence proves to be unfruitful on expiry of the time limits provided for in the law of civil procedure, depending on the cases and the applicable form of the proceedings.
The legal provisions on which this scheme is based are those mentioned in the reply to question No 1.

5 Is there a possibility of appeal against the decision granting such a measure?

In a broad sense, the word ‘appeal’ (*recurso*) covers objection to enforcement, objection to seizure and appeal in the strict sense.

Objection to enforcement

The person against whom enforcement is sought may challenge enforcement by raising objections to enforcement within 20 days from the date of the summons.
Without prejudice to the provisions of international and EU law, which are binding upon Portugal and take precedence, under national legislation, the grounds for objection to enforcement vary depending on whether the enforcement is based on a judgment (more restricted); an arbitration decision (a little broader); or a different enforcement instrument (even broader).
When enforcement is based on a judgment, objections may be based only on the following grounds:
the instrument does not exist or is unenforceable;
the file or the certified copy are forged or inaccurate and this influences the terms of the enforcement,
absence of a procedural requirement on which the regularity of the enforcement proceedings depends, without prejudice to its being met;
the defendant’s failure to participate in the declaration process, if any of the situations referred to in Article 696(e) of the Civil Code comes to light (summons not served or summons is null and void; lack of awareness of the summons on grounds that cannot be attributed to the defendant; absence of objections owing to force majeure);

uncertainty, unenforceability or non-liquidity of the obligation to be enforced, which were not addressed in the initial stage of the enforcement proceedings;
case judged prior to the judgment being enforced;
any factor extinguishing or modifying the obligation, provided that it is subsequent to the closure of discussion in the declaration process and documentary evidence can be provided; the time-barring of the right or obligation may be proven by any means;
a counterclaim against the person seeking enforcement with the aim of obtaining offsetting of claims;
when a judgment approving an admission or settlement is involved, any ground of nullity or voidability of these acts.
When enforcement is based on an arbitration decision, in addition to the grounds for objecting to the enforcement set out above, it is also possible to rely on the grounds on which judicial annulment of the same decision can be based, without prejudice to the provisions of the
Voluntary Arbitration Law (*Lei da Arbitragem Voluntária*).
When enforcement is not based on a judgment or on an application for an order to which an enforcement order has been joined, in addition to the grounds for objection to enforcement based on a judgment already listed, any other grounds that may be relied on as a defence in the declaration process.
Objection to seizure
The party against whom enforcement is sought, his or her spouse and third parties may object to the seizure of certain assets in the following cases.
When assets belonging to the party against whom enforcement is sought are seized, that party may object to the seizure on any of the following grounds:
inadmissibility of the seizure of the assets actually seized or of the extent to which the seizure was conducted;
immediate seizure of assets which only subsidiarily satisfy the debt being enforced;
seizure of assets which, since they do not, under the terms of substantive law, satisfy the debt being enforced, ought not to have been affected by the measure.
If the seizure or any judicially ordered confiscation or delivery of assets breaches the right of ownership or any other right incompatible with the implementation or scope of the measure, vested in someone who is not a party to the case, the injured party may assert this by bringing a third-party action of replevin.
A spouse who is in the position of a third party may, without the authorisation of the other spouse, defend his or her rights in respect of his or her own assets or joint assets that have been unduly affected by the seizure.
The legal provisions on which this scheme is based are those mentioned in the reply to question No 1.
Appeals
Ordinary appeal proceedings can be made to an appellate court (*de apelação*) (lodged against judgments delivered by a court of first instance) or on a point of law (*de revista*) (lodged before the Supreme Court of Justice). Ordinary appeals against judgments delivered in enforcement proceedings are governed by the provisions applicable to the declaration process.
As a rule, an ordinary appeal is admissible only when the case has a value above the amount for which the court whose judgment has been appealed against has jurisdiction and the contested judgments are unfavourable to the appellant by an amount also exceeding half of the amount for which that court has jurisdiction. In Portugal, the amount for which the Appeal Court has jurisdiction is €30 000.00 and the amount for which the court of first instance has jurisdiction is €5 000.00.
Enforcement proceedings provide for certain interlocutory declarations which may or may not take place, depending on the case – e.g. challenges to enforcement through actions of replevin brought by the party against whom enforcement is sought, objection to seizure by the party against whom enforcement is sought or by third parties, verification and ranking of claims when there are creditors with a security in rem over the assets seized who are claiming payment of their respective claims from the proceeds of the seized assets. An appeal also lies from the decisions made on those interlocutory declarations on the terms set out above.
In particular, in enforcement proceedings, appeals will lie from the following:
a decision assessing the disqualification of a judge;
a decision assessing the exclusive jurisdiction of a court;
a decision ordering a stay of proceedings;
an order accepting or rejecting any articulated pleading (*articulado*) or evidence;
a decision imposing a fine or other procedural penalty;
a decision ordering cancellation of any registration;
a decision made after final judgment;
decisions which it would be absolutely pointless to challenge by an appeal against the final judgment;
decisions suspending, extinguishing or annulling enforcement;
decisions ruling on the annulment of sale;
decisions ruling on the exercise of the right of priority or redemption;
a refusal, even partial, to examine the enforcement application;
an order dismissing the enforcement application.
An appeal on a point of law lies from:
appeal court rulings delivered on appeal in settlement proceedings which are not dependent on a simple arithmetic calculation, on verification and ranking of claims or on challenges brought against enforcement;
this is without prejudice to cases in which appeal to the Supreme Court of Justice is always admissible.
The rules governing appeals in enforcement cases are laid down in Articles 852 to 854 of the Code of Civil Procedure, which can be consulted at this link:
Code of Civil Procedure.

6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?

Yes, constraints relating to protection of the debtor do exist. Some are constraints on seizure, others are constraints on enforcement arising from time limits.
Constraints on seizure relating to debtor protection consist in absolute or total immunity from seizure, relative immunity from seizure and partial immunity from seizure of certain assets of the debtor. There are two other constraints: one linked to protection of the joint assets of a couple when the enforcement proceedings are brought against only one of the spouses; and another stemming from the principle of proportionality, according to which only the assets necessary to satisfy the debt and the expenses generated by enforcement should be seized.
The passage of time may constitute a limit on enforcement in the case of prescription or limitation. Once the time limits concerned have elapsed, the right that it is sought to enforce is extinguished.
How these constraints linked to protection of the debtor and to time-limits operate is explained below.
Assets with absolute and total immunity from seizure
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;
burial grounds;
instruments and objects which are essential for the disabled and for treating the sick.

Assets relatively immune from seizure

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 work tools of the party against whom enforcement is sought and objects essential for the exercise of their profession or vocational training are also exempt from seizure, unless: the party in question indicates that they may be seized; or if the enforcement is for payment of their purchase price or the cost of their repair; or if they are seized as tangible assets of business premises.
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.

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.
For the purposes of calculating the net part of the abovementioned payments, only contributions which are legally required are considered.
This immunity from seizure has an upper limit of an amount equivalent to three national minimum wages at the time of each seizure and a lower limit, when the debtor has no other income, of an amount equivalent to one national minimum wage.
The abovementioned limits do not apply when the claim being enforced is for maintenance, in which case an amount equivalent to a full non-contributory pension is immune from seizure.
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. (This immunity from seizure and the abovementioned partial immunity from seizure are not cumulative)
After weighing up the amount and the nature of the claim being enforced as well as the needs of the party against whom enforcement is sought and his or her family, the court may, exceptionally and at the request of the party against whom enforcement is sought, reduce, for a period it deems reasonable, the part of his or her income which may be seized and even exempt it totally for a period of not more than one year.

Immunity from seizure of sums of money or bank deposits

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.

Limits on seizure of joint assets in enforcement proceedings brought against one of the spouses

When the joint assets of a married couple are seized in enforcement proceedings brought against only one of the spouses because the party against whom enforcement is sought is not thought to have sufficient assets, the spouse of the debtor is served notice to apply, within 20 days, for separation of assets or to append a certificate confirming that an action is pending in which separation has already been applied for, otherwise enforcement will continue against the joint assets.
Once the application for separation has been joined or the certificate has been attached, enforcement is suspended until the partition takes place. If, as a result of the partition, the seized assets do not fall to the party against whom enforcement is sought, other assets that have fallen to him or her may be seized and the previous seizure stands until the new seizure takes place.
The general rules on the property which may be seized and the limits on seizures are laid down in Articles 735 to 747 of the Code of Civil Procedure

Limits on seizure imposed by proportionality

Seizure is limited to the assets necessary for the payment of the debt being enforced and the foreseeable costs of the enforcement, which are presumed to be, for the purpose of carrying out the seizure and without prejudice to later settlement, 20%, 10% and 5% of the value of the enforcement, depending on whether that value is within the value for which the District Court has jurisdiction, exceeds that value but does not exceed four times the value for which the Court of Appeal has jurisdiction, or is greater than this last-mentioned value. The value for which the District Court has jurisdiction is €5 000.00 and that for which the Court of Appeal has jurisdiction is €30 000.00 (in 2021, when this factsheet was revised) The two values are set out in Article 44 of Law No 62 /2013 of 26 August 2013, which can be consulted via this link.

Limits on enforcement arising from a limitation period

As a rule, judicial protection (whose existence or establishment depends on the will of the parties) is subject to a time-bar when not exercised during the period of time established by law.
The court may not of its own motion supply a time-bar. For a time-bar to be effective, it must be invoked, judicially or extra-judicially, by the person whom it benefits, his or her representative or, if the person lacks capacity, by the Public Prosecutor.
When the limitation period has expired, the beneficiary (the debtor) may refuse to make the payment or may challenge, in any manner, the exercise of the time-barred right. Should enforcement proceedings have been brought against the person concerned, the debtor against whom enforcement is sought may object to enforcement through an action of replevin in which he or she relies on the time barring. The time limit for objections to enforcement is 20 days from the summons.
However, a debtor may not seek recovery (return) of an instalment payment he or she made willingly to comply with a time-barred obligation, even when it was made without knowledge of the time-bar. This rule applies to all forms of satisfaction of the time-barred right, as well as to its recognition or the provision of guarantees.
The time-bar may be relied on against the party seeking enforcement by the debtor’s creditors and by third parties with a legitimate interest in having it declared, even when the debtor has waived it. If, however, the debtor waives limitation, it can be invoked by the creditors only if the conditions laid down in civil law for avoidance action (*impugnação 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.
The normal limitation period is 20 years but short-term time-bars do exist.
The following have a five-year limitation period:
life annuities and ground rents;
hire and rental charges payable by the tenant, even when paid only once;
long-lease rents;

interest stipulated by contract or law, including gross interest, and company dividends;
capital amortisation rates payable with interest;
maintenance payments due;
any other periodically renewable payments.
The law lays down presumed time-bars (based on the presumption of compliance) in the following cases:
claims of establishments providing accommodation, food or beverages for the accommodation food or beverages they supply become time-barred after six months, without prejudice to the two-year limitation period indicated below;
claims of establishments providing accommodation or accommodation and food or beverages to students become time-barred after two years, as do claims of establishments providing instruction, education, assistance or treatment, in relation to the services provided
claims of traders for the objects sold to a person who is not a trader or objects not intended for his or her business become time-barred after two years, as do claims of those professionally engaged in an industry, for the supply of goods or products, execution of work or management of the affairs of another party, including expenditure incurred, unless the respective service is intended for the industrial activity of the debtor;
claims for services provided in the exercise of liberal professions and for the reimbursement of corresponding expenditure become time-barred after two years.
When a limitation period described in civil law as a presumed limitation period is involved, the following rules apply:
the presumption of compliance through the elapsing of the time-limit may be rebutted only by acknowledgement by the original debtor or the person to whom the claim has been transferred through succession;
extrajudicial acknowledgement is valid only when it is in writing;
a claim is considered to have been acknowledged if the debtor refuses to testify or take an oath before the court, or performs any legal acts that are incompatible with the presumption of compliance
Time barring of rights recognised in a judgment or enforcement order operate as follows:
when the law establishes a shorter limitation period, even if only presumptive, for a right than the ordinary one, the right is subject to the latter limitation period, if it survives a judgment which has obtained the force of res judicata recognising the right, or a different enforcement instrument
however, when the judgment or a different instrument refers to instalments not yet due, the limitation period continues to be, in relation to such instalments, the shorter one.
The Civil Code lays down rules on the start of the limitation period, its suspension and interruption. When there are grounds for suspension (e.g. minors, military service, force majeure, fault of the debtor), the limitation period does not start or run. When a limitation period is interrupted, the time elapsed is totally cancelled and a new limitation period starts to run.
A creditor interested in interrupting a limitation period may do so by making use of or relying on one of the following acts:
summons or judicial notification of any act which expresses, directly or indirectly, the intention to exercise the right, no matter which type of proceedings the act pertains to, and even if the court does not have jurisdiction.
If the summons or notification is not carried out within five days after being requested, for a reason not attributable to the applicant, the limitation period will be interrupted when five days have elapsed.
The annulment of the summons or notification does not prevent the interruption provided for in the previous paragraphs.
For the purposes of this Article, any other judicial means by which knowledge is given of the act to the person against whom the right may be exercised is considered equivalent to a summons or notification.
an arbitration agreement which interrupts the limitation period relating to the right which being asserted;
recognition of the right before the holder concerned by the person against whom the right may be exercised;
tacit recognition will only be relevant when it results from events that unequivocally express such recognition.
Interruption of a limitation period has the following effects (unless the law specifically provides otherwise):
all time previously elapsed is not considered;
a new limitation period starts to run from the interrupting act;
the new time-bar is subject to the original limitation period.

Limits on enforcement arising from the expiry date

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 carrying out, within the legal or contractual deadline, the act to which the law or contract gives preventive effect. The mere bringing of the action for a declaration or enforcement prevents expiry, without its being necessary to serve a summons on the debtor. When a time limit is set in a contract or legal provision relating to judicial protection, recognition of such protection by the person against whom it must be exercised also prevents expiry.
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. If it refers to judicial protection on the basis of which an enforcement proceeding is brought, expiry must be invoked by the person whom it benefits (in principle, the debtor/party against whom the enforcement is sought).
The definition and effects of the time limitation period and expiry date are provided for by Articles 309 to 340 of the Civil Code, which can be consulted via this link.

Warning:
The EJN-Civil Contact Point, the courts, and other bodies and authorities are not bound by the information set out 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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