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Litigation: Enforcement of Foreign Judgments in Portugal



Table of contents

General framework

- Domestic law
- International conventions
- Competent courts
- Distinction between recognition and enforcement
- Ease of enforcement
- Reform

Conditions for recognition and enforcement

- Enforceable judgments
- Formal requirements
- Substantive requirements
- Limitation period
- Grounds for refusal
- Service of process
- Public policy
- Jurisdiction
- Concurrent proceedings and conflicting judgments

Opposition

- Defences
- Injunctive relief

Recognition and enforcement procedure

- Formal procedure
- Timeframe
- Fees
- Security
- Appeal
- Other costs
- Enforcement against third parties
- Partial recognition and enforcement



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Portugal



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General framework

Domestic law

Which domestic laws and regulations govern the recognition and enforcement of foreign judgments in your jurisdiction?

The Portuguese Code of Civil Procedure mainly regulates the recognition and enforcement of foreign judgments.

Nevertheless, as an EU member state, Portugal is subject to several provisions that take precedence over domestic legislation, including:

- the recast EU Brussels Regulation (1215/2012) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
- the Lugano II Convention 2007, also regarding judgments in civil and commercial matters;
- EU Regulation 4/2009 on decisions and cooperation in matters relating to maintenance obligations; and
- the Agreement between the European Community and the Kingdom of Denmark on Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial Matters 2005 (amended in 2009).

Portugal is also party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

International conventions

Which international conventions and bilateral treaties relating to the recognition and enforcement of judgments apply in your jurisdiction?

Portuguese courts are obliged to apply several international agreements concerning the recognition and enforcement of foreign judgments.

First, EU regulations are mandatory in cases where the judgment has been rendered in an EU member state and must be followed whenever its scope of application is filled. The key regulations are:

- the recast EU Brussels Regulation and the Lugano II Convention, both regarding civil and commercial matters;
- EU Regulation 4/2009 on decisions and cooperation in matters relating to maintenance obligations; and
- the Agreement between the European Community and the Kingdom of Denmark 2005 (amended in 2009).

Second, Portugal has signed the following bilateral treaties:

- the Treaty between Angola and Portugal 1995 regarding legal and judicial cooperation;
- the Treaty between Cape Verde and Portugal 2003 regarding legal and judicial cooperation;
- the Treaty between Guinee-Bissau and Portugal 1988 regarding judicial cooperation;
- the Treaty between Mozambique and Portugal 1990 regarding legal and judicial cooperation;
- the Treaty between Sao Tome and Principe and Portugal 1976, which is a judicial agreement; and
- the Treaty between Macau and Portugal 2001 regarding legal and judicial cooperation.

Portugal is also party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Competent courts

Which courts are competent to hear cases on the recognition and enforcement of foreign judgments?

Judgments issued by another EU member state require no special procedures and are automatically enforceable in Portugal. The court of first instance will judge applications for the refusal of enforcement of such decisions and appeals will be referred to the court of appeal. The Supreme Court can judge further appeals.

The competent authority regarding judgments issued by non-EU member states is the court of appeal of the region in which the defendant is legally domiciled. The court of appeal's decision can be appealed to the Supreme Court. Subsequently, an enforcement application must be presented to the court of first instance; namely, an enforcement court.

Distinction between recognition and enforcement

Is there a legal distinction between the recognition and enforcement of a judgment?

The recognition of a foreign judgment is merely a formal verification; it is not intended to review the merits of the decision, but rather to verify whether the judgment is enforceable in Portugal. The enforcement of a foreign judgment is different and requires separate proceedings, which request the assistance of an executive authority in order to execute the measures necessary to satisfy the plaintiff's claim.

A decision rendered by an EU member state that is enforceable in that state does not require a declaration of enforceability in Portugal, provided that none of the grounds for refusal of recognition under Article 45 of the recast EU Brussels Regulation are fulfilled.

Conversely, in order to enforce a judgment issued by a non-EU member state with which Portugal has no bilateral agreement, previous recognition of the foreign sentence issued by a Portuguese court of appeal must be provided.

Ease of enforcement

In general, how easy is it to secure recognition and enforcement of foreign judgments in your jurisdiction?

The ease of securing recognition and enforcement of a foreign judgment is strongly linked to the applicable regime. Judgments that fall under EU regulations or within a multilateral or bilateral convention are generally straightforward to secure, as either the automatic recognition of decisions (for EU member states) or the reciprocity system (most common in bilateral agreements) tend to guarantee a positive outcome with regard to the recognition and enforcement of the judgment.

In the absence of an applicable convention, Portuguese domestic law provides that the verification of various cumulative requirements (eg, the absence of doubt regarding the authenticity of the document and that the decision is no longer appealable according to the law of the rendered state) must be demonstrated before the Portuguese courts, which are often unfamiliar with the relevant foreign law. In these cases, the proceedings will be slower and more complex.

Reform

Are any reforms to the framework on recognition and enforcement of judgments envisioned or underway?

There are no current proposals to reform the framework on recognition and enforcement of judgments. However, given that the recast EU Brussels Regulation and the Lugano Convention (previously equivalent to the EU Brussels Regulation) have identical provisions with regard to the same judgments matters, an amendment to the convention is expected.

Conditions for recognition and enforcement

Enforceable judgments

Which types of judgment (eg, monetary judgments, mandatory or prohibitory orders) are enforceable in your jurisdiction and which (if any) are explicitly excluded from recognition and enforcement (eg, default judgments, judgments granting punitive damages)?

In principle, judgments from foreign judicial bodies resolving private law disputes cannot be enforced in Portugal without being revisited and confirmed, unless they are pursuant to treaties, conventions or the relevant EU regulations.

Each treaty or convention describes the conditions for a judgment to be enforceable on the parties to the treaty.

The recast EU Brussels Regulation (1215/2012) applies to civil and commercial matters, regardless of the nature of the court or tribunal – except in relation to:

- revenue, customs or administrative matters;
- the status or legal capacity of natural persons;
- rights in property arising out of:
 - o a matrimonial relationship;
 - o wills; or

o succession;

- bankruptcy;
- proceedings relating to the winding up of insolvent companies or other legal persons;
- judicial arrangements, compositions and analogous proceedings;
- social security; and
- arbitration.

How are foreign judgments subject to appeal treated?

EU judgments subject to appeal are recognised and enforced only if they are enforceable under the law of the member state of origin. The court or authority before which a judgment issued in another member state is invoked may suspend the proceedings only if the judgment is challenged in the member state of origin.

Non-EU judgments will be recognised in Portugal only if they are no longer appealable.

Formal requirements

What are the formal and documentary requirements for recognition and enforcement of foreign judgments?

An EU member state judgment will be recognised if the party that wishes to invoke it produces:

- a copy of the judgment, which satisfies the conditions necessary to establish its authenticity; and
- a certificate using the form set out in Annex I of the recast EU Brussels Regulation.

The party will be asked to provide a certified translation of the certificate and possibly of the judgment.

If the judgment is enforceable in the original EU member state, it will be enforceable in Portugal without the need for any declaration of enforceability.

An enforceable judgment carries with it, by operation of law, the power to proceed to any protective measures which exist under the law of the EU member state addressed.

Non-EU judgments are subject to different rules. The party that wishes to invoke a non-EU member state judgment must produce a copy of the judgment, which satisfies the conditions necessary to establish its authenticity. In addition, the following requirements must be met:

- There is no doubt concerning the authenticity of the copy of the judgment.
- The decision is no longer appealable in the non-EU member state of origin.
- There is no lack of competence of the foreign court or, if the decision addresses Portuguese courts, no exclusive competence matters.
- There is no *lis pendens* or *res judicata* exception.
- There has been no violation of the due process of law (eg, the right of defence, the right to be heard or the right to contradict).

Substantive requirements

What substantive requirements (if any) apply to the recognition and enforcement of foreign judgments? Are enforcing courts in your jurisdiction permitted to review the foreign judgment on the merits?

An EU member state judgment that is enforceable in the member state of origin will be recognised and enforced in any other member state, with no requirements imposed. A judgment issued in an EU member state will not be reviewed as to its substance in Portugal, unless it affects Portuguese public policy.

Non-EU member state judgments may be reviewed with regard to their accordance to Portuguese public policy.

Limitation period

What is the limitation period for enforcement of a foreign judgment?

EU law provides no specific deadlines on this matter. Similarly, Portuguese domestic legislation does not establish a limitation period for the submission of an enforcement application.

However, a foreign judgment can be enforced in Portugal only if it is also enforceable under the law of the member state of origin. If the decision is no longer enforceable in accordance with the law of the country in which the judgment was issued, then it is no longer enforceable in Portugal either.

Grounds for refusal

On what grounds can recognition and enforcement be refused?

Recognition and enforcement of an EU judgment can be refused on the following grounds:

- Such recognition is manifestly contrary to Portuguese public policy.
- The judgment was issued in default of appearance, where the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable it to arrange for its defence – unless the defendant failed to commence appeal proceedings when it was possible to do so.
- The judgment is irreconcilable with a judgment issued between the same parties in Portugal.
- The judgment is irreconcilable with an earlier judgment issued in another EU member state or in a third state involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in Portugal.
- The judgment conflicts with:

o jurisdiction matters relating to insurance, consumer contracts or individual employment contracts, where the defendant was:

the insured or beneficiary;
the injured party;
a consumer; or
an employee; and

o exclusive jurisdiction under the recast EU Brussels Regulation.

A non-EU member state judgment can be refused on the following grounds:

- There is doubt concerning the authenticity of the copy of the judgment.
- The decision is appealable in the non-EU member state of origin.
- There is a lack of competence of the foreign court or, if the decision addresses Portuguese courts, there are exclusive competence matters.
- The *lis pendens* or *res judicata* exception can be invoked.
- The due process of law was violated (eg, the right of defence, to be heard or to contradict).
- The decision is incompatible with Portuguese public policy.

Service of process

To what extent does the enforcing court review the service of process in the original foreign proceedings?

To enforce a foreign judgment, Portuguese courts are required to review some aspects of the service of process in the original foreign proceeding, in order to guarantee that the due process of law was followed.

For example, the defendant must have been correctly summoned in order to ensure its right to an adversarial proceeding, which is a fundamental principle of Portuguese law, alongside the principle of equality of the parties before the court.

An EU member state judgment will be automatically recognised in Portugal because the aforementioned principles are also standards under EU law; therefore, all EU member states must respect them.

Public policy

What public policy issues are considered in the court's decision to grant recognition and enforcement? Is there any notable case law in this regard?

Under the Civil Code, a foreign law will not apply if it violates the fundamental principles of the international public policy of the Portuguese state. This means that a compatibility test must be performed to determine whether the recognition and enforcement of a foreign judgment is incompatible with the concept of justice in the forum country. This will happen, for example, when the decision was not issued by an independent court or when the result of its application contravenes the fundamental rights set out by the Constitution. However, assessment of the solution must be made on a case-by-case basis.

The fundamental rights, freedoms and principles set out in the EU Charter of Fundamental Rights 2000 (adapted in 2007) have the same legal value in an EU member state as the treaties to which it is a party. Therefore, those provisions are integrated with Portuguese public policy. EU courts have held that the principle of non-discrimination and the free movement of people and capital, as well as the freedom of establishment, cannot be dismissed.

There is no recent notable case law regarding this matter. However, some principles have been consistently appointed in this regard, including:

- the pacta sunt servanda principle;
- the good-faith principle;
- the proportionality principle;
- the prohibition of the abuse of rights;
- the non-discrimination principle; and
- measures to protect weaker parties.

Jurisdiction

What is the extent of the enforcing court's power to review the personal and subject-matter jurisdiction of the foreign court that issued the judgment?

The enforcing court's powers to review the jurisdiction of a foreign judgment are strongly linked to the originating country.

According to Article 52 of the recast EU Brussels Regulation, under no circumstances may a judgment issued in an EU member state be reviewed as to its substance in the member state addressed. However, enforcement can be refused if the decision:

- is under exclusive jurisdiction according to the recast EU Brussels Regulation and the Lugano Convention; or
- was issued in breach of provisions regarding consumers, employees or insured persons, provided that those persons are the defendants.

Judgments from non-EU member states with which Portugal has no agreement will not be enforceable unless the court of appeal recognises their legitimacy. Nevertheless, in a recognition pleading, there will be no merit judgment, except to evaluate the decision's compatibility with Portuguese public policy.

Concurrent proceedings and conflicting judgments

How do the courts in your jurisdiction address applications for recognition and enforcement where there are concurrent proceedings (foreign or domestic) or conflicting judgments involving the same parties/dispute?

With regard to EU member states, the recast EU Brussels Regulation and the Lugano Convention establish that on the application of any interested party, the recognition of a judgment will be refused if the judgment is irreconcilable in the member state addressed or if it is irreconcilable with an earlier judgment given in another member state or in a third state involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the member state addressed.

With regard to other states, judgments will not be recognised or enforced if the same matter is or was being discussed in Portuguese courts by the same parties before the foreign decision was issued.

Opposition

Defences

What defences are available to the losing party to a foreign judgment that is sought to be recognised and enforced in your jurisdiction?

Possible defences regarding judgments rendered by an EU member state are set out in the recast EU Brussels Regulation (1215/2012). Under the regulation, recognition and enforcement will be refused if any of the following conditions are met:

- Such recognition is manifestly contrary to Portuguese public policy.
- The judgment was issued in default of appearance, where the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable it to arrange for its defence – unless the defendant failed to commence appeal proceedings when it was possible to do so.
- The judgment is irreconcilable with a judgment issued between the same parties in Portugal.
- The judgment is irreconcilable with an earlier judgment issued in another EU member state or in a third state involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in Portugal.
- The judgment conflicts with:

o jurisdiction matters relating to insurance, consumer contracts or individual employment contracts, where the defendant was:

the insured or beneficiary;
the injured party;
a consumer; or
an employee; and

o exclusive jurisdiction under the recast EU Brussels Regulation.

Recognition and enforcement of a non-EU member state judgment will be refused if a party can prove any of the following conditions:

- There is doubt concerning the authenticity of the copy of the judgment.
- The decision is appealable in the non-EU member state of origin.
- There is a lack of competence of the foreign court or, if the decision addresses Portuguese courts, there are exclusive competence matters;
- The *lis pendens* or *res judicata* exception can still be invoked.
- The due process of law was violated (eg, the right of defence, the right to be heard or the right to contradict).
- The decision is incompatible with Portuguese public policy.

Injunctive relief

What injunctive relief is available to defendants (eg, anti-suit injunctions)?

Under the recast EU Brussels Regulation, if an EU decision is challenged in the member state of origin or if the grounds for recognition are contested, the judge before whom the recognition proceedings are pending may suspend the proceedings.

The topic of anti-suit injunctions is the subject of some controversy in Portugal. The Arbitration Law prohibits only anti-arbitration injunctions; therefore, some practitioners argue that anti-suit injunctions are allowed. However, the EU Supreme Court considers such actions to be contrary to EU Law.

Recognition and enforcement procedure

Formal procedure

What is the formal procedure for seeking recognition and enforcement of a foreign judgment?

EU member state judgments that are enforceable in the original member states are enforceable in Portugal and no further declaration of enforceability is required. To check whether a judgment is enforceable in the original court, the

losing party must present a copy of the judgment and a certificate issued in accordance with the recast EU Brussels Regulation, attesting that the decision is enforceable and stipulating the proceedings costs to be recovered.

The losing party can oppose the enforcement on the grounds set forth in the recast EU Brussels Regulation.

Portuguese domestic law provides no formal procedure for the recognition or enforcement of a non-EU member state court judgment.

Timeframe

What is the typical timeframe for the proceedings to grant recognition and enforcement?

The typical timeframe largely depends on the specific court of appeal before which enforcement is sought. It usually takes from three to nine months to obtain a declaration of enforceability.

Fees

What fees apply to applications for recognition and enforcement of foreign judgments?

Recognition of a foreign judgment is a common legal action, which means that the Portuguese Proceedings Costs Regulation will determine the applicable fees. Judicial fees depend on the value of the claim and can vary from €102 to €1,632.

If the value of the claim exceeds €275,000, the remnant of the judicial fee amount will be considered at the final bill; for each €25,000 over €275,000, an extra €306 will be charged. However, in exceptional cases, the judge may consider that, given the complexity of the case and the conduct of the parties, a payment remission is justified. This is usually the case in a recognition proceeding.

Regarding enforcement proceedings, the Portuguese Proceedings Costs Regulation is also applicable and judicial fees vary from €25.50 to €408.

Security

Must the applicant for recognition and enforcement provide security for costs?

The applicant need not provide security for the costs of the proceedings in the event of recognition or enforcement being refused.

Appeal

Are decisions on recognition and enforcement subject to appeal?

Decisions on recognition and enforcement are subject to appeal, provided that the general requirements to lodge an appeal are met.

Other costs

How does the enforcing court address other costs issues arising in relation to the foreign judgment (eg, calculation of interest, exchange rates)?

The calculation of interest depends on the substantive law of the foreign state that issued the judgment. The exchange rate to be applied is usually set by the applicable law.

Enforcement against third parties

To what extent can the courts enforce a foreign judgment against third parties?

Foreign judgments can be enforced against third parties on the same basis as domestic judgments. Similarly, third parties can oppose such enforcement.

Nevertheless, only the parties to the action will be affected by res judicata.

Partial recognition and enforcement



Can the courts grant partial recognition and enforcement of foreign judgments?

When considering an application for recognition or enforcement, the courts will consider only the formal aspects of the proceeding, and will not re-examine the merits of the case. Generally, this means that the courts cannot grant partial recognition or enforcement. However, an exception will be made in regard to the judgment's compatibility with Portuguese public policy. As a result, if isolated aspects of the decision violate public policy, the court can grant partial recognition refusing to recognise and enforce that part only.

Nevertheless, no Portuguese court decision has been known to partially recognise a foreign judgement.