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### 8.3. What has changed in the duration of debt enforcement in Portugal?

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#### 1. Motivation

Efficiency of debt enforcement through the judicial system is crucial for the functioning of important markets in the economy, impacting in particular on investment by corporations and consumption smoothing by households. According to the published figures for duration of closed cases, Portugal has compared poorly with other countries, notwithstanding some improvement in recent years (CEPEJ, 2018). At the same time, surveys to firms document that judicial system delays feature prominently among regulatory costs. This situation may also contribute to Portuguese firms being particularly exposed to the risk of late payments by customers (European Payment Report 2017).

Recent decades saw profound changes in the enforcement procedure that impacted the role of the different players involved (Pimenta, 2012 and Pinto, 2013). This process began with the 2003 reform of the Civil Procedure Code that promoted de-jurisdictionalisation of debt enforcement. This reform established enforcement officers, giving them the role to conduct this type of cases even if the judge maintained the controlling power (Gomes, 2007). Reform implementation generated blockages, as the clarification of the intervention of different players and the establishment of instruments for its proper functioning were only gradually accomplished (Lourenço, 2017). Such blockages and the difficulties in striking the right balance between the interests of the parties to the case led to several legislative and procedural changes over the years and the enactment of a new Civil Procedure Code in 2013.

Changes to the law have been accompanied by the creation of instruments to support the activity of enforcement officers, notably electronic platforms where information about the assets held by the debtor can be gathered, and the establishment of PEPEX (*Procedimento Extrajudicial Pré-Executivo*) in 2014. This allowed the holder of

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an enforceable title to obtain more easily information regarding the feasibility of an enforcement case before presenting it.

The frequent legislative changes and considerable investment in the streamlining of procedures regarding debt collection show the high priority given by the Portuguese legislator to its effectiveness. Therefore, it is appropriate to analyse where we are heading as far as duration of cases is concerned - the most important variable from economic agents' viewpoint. This question is, however, difficult to answer on the basis of the duration statistics regularly published referring to cases ended each year. Indeed, given the size of the backlog, this indicator captures the situation of the system over a period extending much before the year it refers to.

The availability of a database with case level information makes it possible to shed new light on this question and, at the same time, study the impact on duration of cases' characteristics. Pereira and Wemans (2018) carry out such an analysis, concluding for a considerable reduction of duration of enforcement cases in the recent years. This Section summarises the main results presented in that paper.

## 2. Data and analytical framework

The data underlying the results in this Section comprise all enforcement cases of civil and commercial debts dealt with in first instance judicial courts in Portugal between 2007 and 2016 (excluded are chiefly cases for recovering debts from judicial fees, fines, penalties and insurance premia). This rich dataset includes, in particular, the cases that started before 2007 and remained unresolved at the beginning of the period under analysis, as well as those pending at the end of 2016. Several characteristics of enforcement cases are available in the database, beyond the dates when these were filed and resolved. Such characteristics include information about the plaintiff (companies vs. individuals and mass litigant status), *comarca* and type of judgeship (whether specialised in enforcement - *juízos de execução* or not) in which the case was resolved or pending. Moreover, there is information about the claim value and enforceable title. The different titles were aggregated into homogeneous categories with a similar treatment by the judicial system: court sentences, injunctions, authenticated documents, private documents, contracts and other titles.

The database has also information about procedural aspects attached to the enforcement case (*apensos*), such as oppositions by the defendant and other creditors (*oposições e embargos de terceiro*) and creditors' claims (*reclamações de créditos*). Finally, there is information about the grounds for case closure, which was aggregated into

four categories, namely, fulfilment of the obligation (including debt payment in instalments), lack of assets, inactivity (or withdrawal) of plaintiff and other types of closure. On the basis of information at the case level, measures of complexity of litigation and congestion were drawn for the *comarca* as a whole.

As far as methodology is concerned, we apply different instruments of duration analysis to the data. At the descriptive level, the results presented in the Section are based on the survival function that depicts the evolution of resolution probability over time since case filing. Additional results are based on the hazard function, which is an alternative way to characterize the duration distribution along with the survival function. The hazard function measures the instantaneous rate of resolution of a pending case, in probabilistic terms, at a given moment after start.

The impact of the different explanatory variables on duration is studied on the basis of the Cox semi-parametric model. The Cox model assumes that the explanatory variables do not change the shape of the hazard function, just shift it multiplicatively by proportional factors - the hazard ratios. This hazard proportionality hypothesis can, however, be partially lifted by estimating hazard functions specific to the cohorts defined by one or more categorical variables. In the results reported below such procedure has been applied by judicial year of filing and *comarca* in which the case was resolved or pending (taking the current territorial configuration of the judicial system as a reference). This allows not to impose proportional hazards in relation to such variables, while ensuring that the coefficients of the other explanatory variables are not affected by their correlation with the characteristics of *comarcas*, nor with common determinants shared by cases starting in a given year.

### 3. Results

#### 3.1. *Duration of enforcement cases*

Figure 74a shows the median case duration (time period during which half of cases are expected to be resolved), as well as the first and third quartiles, computed from the survival function on a yearly basis. The median duration increased over the initial years, presenting thereafter a decreasing trend, with particularly significant reductions in 2011, 2013 and 2016. There was a particularly steep decline in 2013, in the longer durations, that is likely to reflect several measures taken at that time. These measures include the establishment of special units to reduce case backlog in some courts

and simplification of closure of cases due to inactivity of the plaintiff and lack of seizable assets (the latter, for cases filed before September 2003). In the shorter durations - time needed to resolve 25% of the cases - there has been a constant decrease since 2010, from 25 to only 9 months. This reduction in the length of cases is consistent with the evolution of the number of cases filed net of cases resolved documented in Chapter 8.2. Figure 74a also shows, for comparison, the median of duration of cases resolved each year. In contrast to the evolution described, this indicator has remained stable, around 40 months.

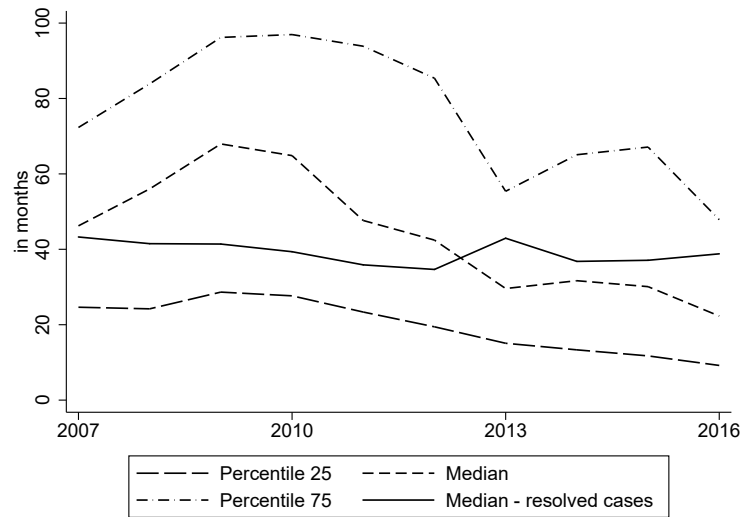
In order to take out from results the impact of the abovementioned changes to the rules governing case closure due to inactivity of the plaintiff, figure 74b repeats the foregoing analysis but considering as resolved only the cases ending with the fulfilment of the obligation or recognition of a lack of sufficient assets. Cases ending by reasons attributable to the plaintiff are treated as censored observations, as the court did not effectively resolve them. This alternative approach confirms a strong decline in average duration after 2010.

### 3.2. *Probabilistic profile of resolution of enforcement cases*

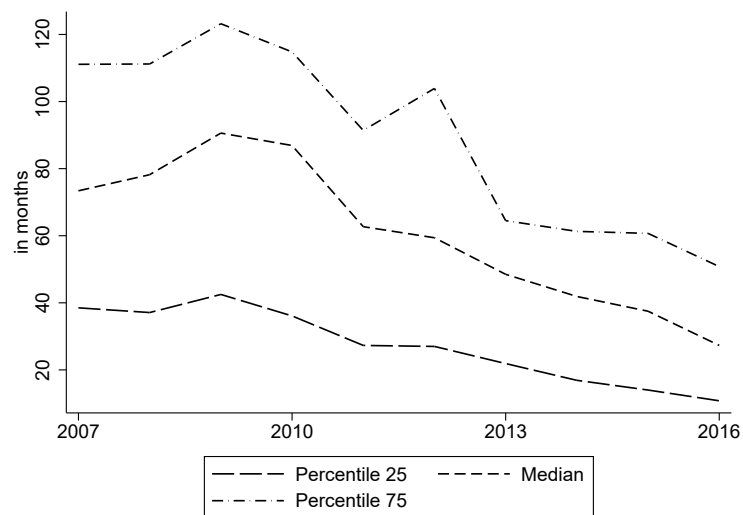
Figures 75a and 75b show the case resolution's probabilistic intensity (hazard function), respectively, for the periods before and after the beginning of 2014 judicial year (the latter approximately corresponding to the current situation).

Prior to the 2014 judicial year, the hazard function shows positive duration dependence (Figure 75a), i.e. the instantaneous rate of resolution of pending cases increases over time, except for very long durations, when a very small number of unresolved cases remains. In the subsequent judicial years (Figure 75b), the resolution intensity does not have a marked trend, varying within a much more limited range. In addition, such intensity is higher in this second period, over a span that extends from the start of cases up to about 5 years of duration, the median of resolved cases being reached much earlier.

In the pre-2003 reform regime, the intervention of judges in all enforcement cases would be a reason for an increasing profile of the hazard rate, under the assumption of a prioritization of older cases. Although our analysis starts already in 2007, at the time the system still had a significant number of pending cases, both pre-reform and entered in the changeover to the new regime. It is also to be expected that the profile estimated in figure 75a reflects the adjustment of the system to the new rules, notably with respect to the formation of a body of enforcement officers capable of responding to the volume of



(a) All types of closure

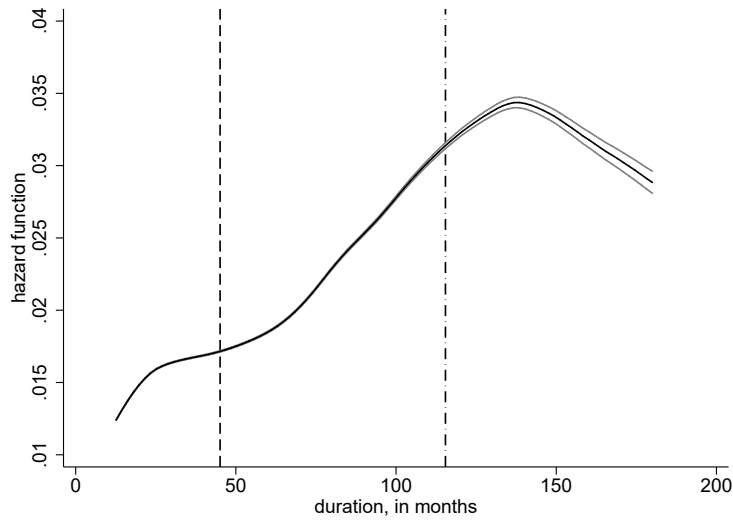


(b) Type of closure: effective resolution

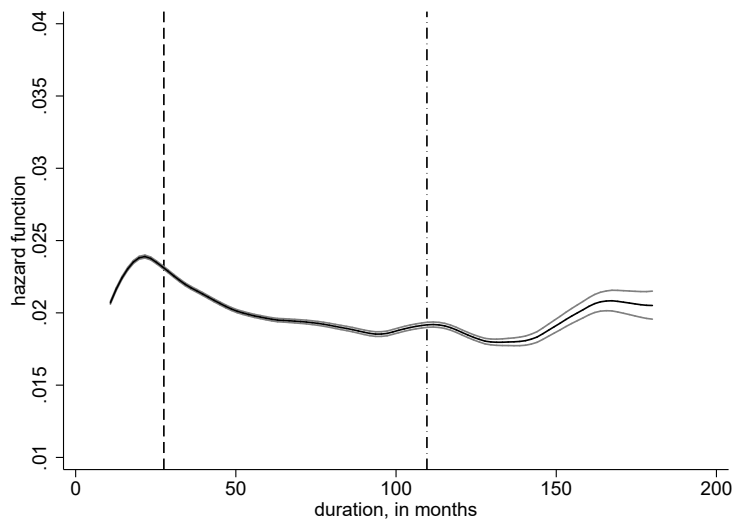
Figure 74: Duration of enforcement cases, 2007-2016

Note: Percentiles taken from survival functions and - panel A - median duration of resolved cases.

incoming cases. In the more recent period, the greater intensity of resolution in the first years of the case and the absence of an upward trend will also reflect the swifter procedures for identification and seizure of debtor's assets, including the impact of the effectiveness of these mechanisms in promoting voluntary compliance at an early stage.



(a) Before the 2014 judicial year



(b) 2014 judicial year and following

Figure 75: Instantaneous rate (probabilistic) of case resolution

Note: Hazard functions and confidence bands at 95%, for durations up to 15 years that cover the time span of the vast majority of cases. The dashed line is the median of case duration and the dashed/dotted line the 90th percentile.

### 3.3. Determinants of duration of enforcement cases

Figure 76 presents the impact of the above mentioned explanatory variables on duration in terms of shifts in the hazard function: for instance, a 0.10 shift to the left (right) from 1 entails a decrease (increase) by 10% in the rate of case resolution. Lawsuits initiated by

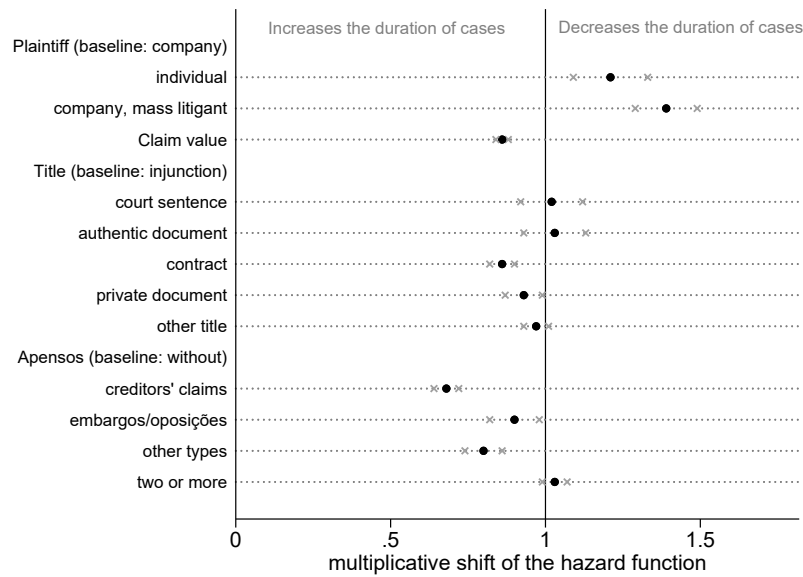


Figure 76: Impacts of explanatory variables on duration

Notes: Multiplicative shift in the intensity of case resolution brought about by a change in regressors, for binary variables vis-à-vis the omitted group (in brackets), for the log of claim value equal to one standard-error at the median (corresponding, in the case of an increase, approximately to a change for 2 500 to 12 500 euros in the claim value). Point estimates and 95% confidence intervals of hazard ratios estimated by the Cox regression.

mass-litigants within those filed by companies tend to proceed more rapidly, and the same holds for cases brought by individuals relative to firms, but with a less marked difference. The first result may stem from mass litigants' benefiting from experience and scale effects. The second result is difficult to explain, as firms can be expected to be generally more familiar with debt enforcement. This may reflect differences in the characteristics of cases filed by individuals vis-a-vis firms omitted in the model.

A higher claim value tends to lengthen enforcement cases, reflecting the specificities of the litigation associated with higher debts, such as an enhanced complexity and a greater opposition on the debtor side. Regarding the impact of the different enforceable titles on duration, measured vis-a-vis injunctions, cases based on private documents and contracts tend to be more time-consuming. Such a result could reflect the less swift enforcement procedure applicable to some of these titles relative to injunctions, in particular where the former assume a value above a certain threshold. However, an alternative specification interacting the title with an indicator for a claim value above the threshold that determined the application of different procedural rules does not back this hypothesis.

*Apensos* attached to the case have a negative impact on the speed of enforcement proceedings, particularly when they are initiated by other creditors with secured claims over the seized asset (creditors' claims). Additional estimates considering separately the periods before and after the 2014 judicial year indicate an impact comparatively larger in the second period. In this second period, there is a greater share of cases entered under the post-2003 regime that, in general, does not require an intervention of the judge. Whenever the case has *apensos* attached to it, such an intervention must occur and brings about an increased duration. In contrast, in the pre-2003 regime the judge had always to intervene.

Another estimated specification included proxies for congestion and complexity of litigation by *comarca* (now imposing the same hazard function throughout all *comarcas*). The coefficients have the expected signs, with a positive change in each of these covariates bringing about a longer duration of cases. The impacts are substantial, in general even higher than those of case characteristics, confirming that duration also depends heavily on the overall litigation directed to the *comarca*. Another interesting aspect is that the impacts of these variables on duration greatly decreased when the estimation was confined to the 2014 judicial year and thereafter.

There is still evidence of a shorter case duration in the more recent period, holding constant changes in the observable characteristics of enforcement cases through a regression analysis.

#### 4. Final remarks

The documented decrease of duration of enforcement cases in the recent years has certainly been influenced by the very significant set of reforms in this area implemented over time, although it cannot be ascribed to a specific policy measure. In addition, it has reflected the impact of other factors, notably changes to the unobservable characteristics of cases and factors outside the judicial system, such as changes in the cyclical position of the economy. Identifying the contribution of each of these factors is beyond the scope of this Section. The production of empirical evidence about the reforms to judicial debt collection may contribute to pave the way for reforms in other areas of the judicial system.



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