

Начало>Парични искиове>Налагане на мерки по обезпечение на искиове в държавите от ЕС Securing assets during a claim in EU countries

Финландия

1 What are the different types of measures?

In Finland creditors or other claimants in civil or commercial proceedings can obtain precautionary measures in their favour. The purpose of precautionary measures is to ensure that any ruling given later on the merits of the case can be enforced. Provisions concerning the ordering of precautionary measures are set out in Chapter 7 of the Code of Judicial Procedure (*oikeudenkäymiskaari*) and provisions on the enforcement of judgments in Chapter 8 of the Enforcement Code (*ulosottokaari*). There are three types of precautionary measures of this kind:

seizure to secure a debt owed,

seizure to secure ownership or another so-called prior right, and

other precautionary measures (general precautionary measures).

These precautionary measures, which are available in civil matters of any kind, are described below. There are also precautionary measures that are available in certain kinds of disputes under special legislation. Examples include precautionary measures to secure evidence in civil matters concerning industrial rights and copyrights. In criminal matters the Coercive Measures Act (*pakkokeinolaki*) may be applied; coercive measures provided for in the Act include seizure, restraint on disposal and sequestration.

There is a distinction between precautionary measures and preliminary (interim) enforcement of judgments in civil matters. The latter refers to the enforcement of a judgment before it has become final and can no longer be appealed. A judgment in a civil matter which is not yet final is generally directly enforceable by law, but enforcement cannot usually be carried out in full. For example, under a non-final judgment given by a court of first instance on debts due, the debtor's property can be distrained if the debtor fails to lodge security on the debt. On the other hand, distrained property can only be disposed of and the proceeds settled on the creditor if the creditor lodges security for the same. By contrast, default judgments are immediately fully enforceable.

2 What are the conditions under which such measures may be issued?

2.1 The procedure

Decisions to order the aforementioned kinds of precautionary measures are taken by general courts, with district courts (*käräjäoikeus*) acting as courts of first instance. Court-ordered precautionary measures are enforced by bailiffs. Applications for precautionary measures are made to the court where legal proceedings on the merits of the case are pending. If proceedings have not yet been initiated, an application for precautionary measures must be made to the district court to which an action for the proceedings on the merits of the case should also be brought.

The court cannot finally approve an application for precautionary measures without giving the defendant an opportunity to be heard. The court can, however, grant an applicant's request for interim precautionary measures without giving the other party a hearing if the purpose of the precautionary measure could otherwise be defeated. In practice, precautionary measures can be obtained very quickly. Interim decisions are valid until a decision is made to the contrary. Where an applicant already has grounds for enforcement but enforcement proceedings cannot be initiated immediately, a bailiff can, under certain conditions, grant temporary precautionary measures directly. Only court-ordered precautionary measures will be discussed below.

2.2 The main conditions

The requirements for ordering a seizure to secure a debt owed or a prior right are as follows:

The applicant must make it sufficiently apparent that he or she has a distrainable debt due from the defendant or a prior right to given property; and There must be a danger that the defendant will act in such a way as to jeopardise the debt owed to the applicant or the applicant's right.

Correspondingly, other precautionary measures require *prima facie* evidence of another right and a danger that the defendant may infringe that right. Before precautionary measures can be enforced, the applicant must lodge security with the bailiff.

3 Object and nature of such measures?

3.1 What types of assets can be subject to such measures?

Property of all kinds can be the subject of precautionary measures. If the purpose of seizure is to secure a debt owed, the court orders movable or immovable property belonging to the defendant to be seized to the value of the debt owed to the applicant. The bailiff then decides which items of the defendant's property are to be seized. If the purpose of seizure is to secure a prior right, the court orders specific property which is the subject of the right to be seized and the bailiff enforces the order against that property.

By way of other precautionary measures, the court can

prohibit the defendant, under the threat of a penalty, from doing something or from entering into something;

order the defendant, under threat of a penalty, to do something;

authorise the applicant to do something or have something done;

order the defendant's property to be placed in the possession or custody of an agent; or

order some other precautionary measure required in order to secure the applicant's rights.

3.2 What are the effects of such measures?

When an order to seize property is implemented, the debtor forfeits his control over the property. Handling property which is the subject of a seizure order is a criminal offence. Where funds in a debtor's bank account have been made the subject of a seizure order, the bank cannot release the funds to anyone other than the bailiff. However, a seizure order does not afford the person who applied for the order any preferential right to the seized funds in relation to the debtor's other creditors.

The effects of other precautionary measures depend on the nature of the measures.

3.3 What is the validity of such measures?

Within one month of a decision ordering precautionary measures being given, the applicant must bring an action on the merits of the case before a court or institute or another procedure that can result in an enforceable decision, such as arbitration. If he or she fails to do so, the precautionary measures will be withdrawn. Precautionary measures can also be withdrawn if for some other reason the grounds on which they were ordered no longer exist. When a court gives a ruling on the merits of the case it must at the same time make an order on the precautionary measures.

Liability for costs incurred as a result of precautionary measures primarily lies with the applicant. If precautionary measures prove to have been unfounded, the applicant is liable for damage caused to the defendant as a result of the measures, regardless of whether he or she was negligent. To cover for that eventuality the applicant must lodge security prior to the enforcement of the precautionary measures. On the other hand, the defendant can generally prevent precautionary measures from being enforced by lodging security.

4 Is there a possibility of appeal against the measure?

Decisions of courts to order precautionary measures can be appealed to a higher court, i.e. a Court of Appeal (*hovioikeus*) or the Supreme Court (*korkein oikeus*). Filing an appeal does not prevent the enforcement of the order unless the appellate court suspends that ruling. However, there is no possibility of appeal against a decision on interim precautionary measures.

Appeals against measures or decisions taken by a bailiff concerning the enforcement of precautionary measures are handled by district courts. The right of appeal also applies to third parties who feel that their property has been seized as a result of the debtor's debt.

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