

Startside>Pengekrav>Sikring af aktiver under en kravprocedure i et EU-land Securing assets during a claim in EU countries

Italien

1 What are the different types of measures?

The Italian legal system provides for interim measures which may also be anticipatory in nature and which are, in principle, precautionary. Interim measures may be taken 'before' the case is brought (*ante causam* measures) or during the proceedings. They may also be sought when the dispute is initiated. The general rules governing interim proceedings are set out in Sections 669-*bis et seq.* of the Code of Civil Procedure. There are various types of interim measures: (a) 'protective' measures are designed to preserve the state of affairs during the proceedings or to protect assets. Protective attachment is one example of a measure that falls under this category. In essence, protective interim measures aim to ensure that the duration of the proceedings does not render the application of the enforcement order subsequently obtained essentially worthless, owing to the fact, for example, that the asset being claimed has since been lost or destroyed; (b) 'anticipatory' measures are those which anticipate, before the outcome of the proceedings, the effects of the final order. Anticipatory interim measures therefore aim to ensure that the person holding the right does not remain in a state of dissatisfaction, which otherwise would result in damages that could not subsequently be compensated.

Interim measures are, in general, 'typical' and are also provided for by special laws, such as those, for example, relating to family matters, maintenance, patents, etc. However, it is also possible to seek 'atypical' interim measures: these are known as urgent measures, and are governed by Section 700 of the Code of Civil Procedure. This provision ensures that those who are justified in fearing that the time required to enforce their rights in the ordinary way could potentially cause them imminent and irreparable harm may request that the court implement urgent measures, which would appear, according to the circumstances, more capable of provisionally ensuring the effects of the decision on the merits.

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

Issue of an interim measure is subject to two requirements:

(A) *Periculum in mora*, i.e. the well-founded fear that, pending issue of a ruling on the merits, the right which the interim measure seeks to safeguard may be irreparably harmed;

(B) *Fumus boni juris*, i.e. a credible case for the claim.

2.1 The procedure

The procedural rules are set out in Sections 669-*bis et seq.* of the Code of Civil Procedure. The request is submitted by way of an application being lodged with the office of the clerk of the court having jurisdiction. Before the main proceedings are brought, the request is submitted to the trial court. When there are main proceedings pending, the request must be submitted to the court ruling on that action. Having heard the parties and omitting any formality which is not essential for an adversarial procedure, the court moves on to examine, in the way it deems most appropriate, the requirements necessary for the purposes of the requested measure, before accepting or rejecting the request by means of an order. If the summoning of the opposing party could prejudice the execution of the measure, the court may issue a reasoned decision in the form of an order incorporating, where necessary, summary information. In such a case, by means of the same order, the court shall fix a date to hear the parties, no later than fifteen days later, and award the applicant a peremptory time period of no greater than eight days within which to carry out the notification of the application and the order. At the hearing, the court may, by means of an order, confirm, amend or revoke the measures contained in the initial order.

The court may resolve the proceedings by issuing an order rejecting, partially granting or completely granting the request. If the request is granted, and was submitted before the start of the main proceedings, the order granting that request must set a peremptory time limit of no more than sixty days for initiating the main proceedings: this rule does not apply to anticipatory and urgent measures as set out in Section 700 of the Code of Civil Procedure.

2.2 The main conditions

Issue of an interim measure is subject to the two abovementioned requirements: *periculum in mora* and *fumus boni juris*.

3 Object and nature of such measures

These have the nature of provisional measures pending a judgment in the main proceedings. However, while this is always true for protective measures, which require that proceedings be pending in the main dispute, it is only partly true in the case of anticipatory measures, which remain effective whether or not there is a trial pending, although they have not got the same force as a final judgment determining the issues involved.

The content of the interim measures varies according to the type of danger they are designed to avert. For instance, attachment applies to the debtor's assets. The order to reinstate an unfairly dismissed worker, on the other hand, is an obligation to perform an action.

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

According to the need to be met, the measures may apply to movable or immovable property, but also to intellectual property and copyrighted works.

3.2 What are the effects of such measures?

Protective measures are designed to preserve the legal and factual situation existing at the time of the application, so as to ensure that the time needed to complete the main proceedings will not harm the claimant's rights. Anticipatory measures, on the other hand, are designed to anticipate the effects of the final judgment in the main proceedings.

3.3 What is the validity of such measures?

Interim measures remain in effect until delivery of the judgment in the main proceedings, which will replace them. Protective measures, for which the initiation of the main proceedings is required (for example authorisation for judicial attachment under Section 670 of the Code of Civil Procedure, or for protective attachment under Section 671 of the Code of Civil Procedure), also lose their effect if the main proceedings are not initiated, or continued within the time limits laid down by the law or by the court, or where a security required by the court has not been lodged. Anticipatory measures, including atypical ones (those whose content is determined not by law but by the court, pursuant to Section 700 of the Code of Civil Procedure), even where they cannot become part of the final ruling, continue in effect even where the main proceedings are not initiated or are initiated but subsequently discontinued.

4 Is there a possibility of appeal against the measure?

Decisions on interim measures, whether granting or rejecting the application, may be appealed (Section 669-*terdecies*), on the grounds that they are flawed, or by submitting to the appeal court additional circumstances and grounds not included in the initial application.

Related links

► *The Italian Constitution* (EN)

http://www.educational.rai.it/materiali/pdf_articoli/22122.pdf

► *Italian Laws and Codes* (IT)

<http://www.normattiva.it/>

► Italian Code of Civil Procedure (IT)

<http://www.altalex.com/documents/codici-altalex/2015/01/02/codice-di-procedura-civile>

► The Code of Administrative Trial (EN)

https://www.giustizia-amministrativa.it/cdsintra/wcm/idc/groups/public/documents/document/mday/mzk3/~edisp/nsiga_4276977.pdf

► Code de justice administrative (FR)

https://www.giustizia-amministrativa.it/cdsintra/wcm/idc/groups/public/documents/document/mday/njiz/~edisp/nsiga_4506451.pdf

► Italienische Verwaltungsprozessordnung (DE)

https://www.giustizia-amministrativa.it/cdsintra/wcm/idc/groups/public/documents/document/mday/nda5/~edisp/nsiga_4289867.pdf

► Italy's judicial system (EN)

https://www.csm.it/web/csm-international-corner/consiglio-superiore-della-magistratura/sistema-giudiziario-italiano?show=true&title=&show_breadcrumb=

► Tax Procedural Code (IT)

<http://def.finanze.it/DocTribFrontend/getAttoNormativoDetail.do?id=%7bECD81E71-D37B-4722-AA36-116B5BCB2232%7d>

► Ministry of Justice (IT)

<http://www.giustizia.it/>

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