Securing assets during a claim in EU countries

Ουγγαρία

1 What are the different types of measures?

Act CXXX of 2016 on the Code of Civil Procedure provides for two types of legal measure to ensure the enforcement of a contested claim: interlocutory injunction and provisional enforcement, which provide protection before a final court decision is made. Precautionary measures as provided for by Act LIII of 1994 on Judicial Enforcement are also available.

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

2.1 The procedure

An interlocutory injunction may be sought during the proceedings and before the application initiating the proceedings is submitted. The court will assess an application for an interlocutory injunction if the preparatory stage of the proceedings can be carried out on the basis of the application initiating the proceedings. The court must decide on an application for an interlocutory injunction as a matter of urgency and must take measures without delay, within no more than eight days. In taking its decision, the court must consider whether the measures would cause greater disadvantage to the opposing party than that which would otherwise be suffered by the party requesting the interlocutory injunction, and must also take into account the possibility of requiring the provision of security. The court allows the opposing party to respond to the application for an interlocutory injunction. The court invites the parties to express their positions regarding the application in the manner it finds most suitable. It may order a hearing of the parties if it finds this necessary for the assessment of the application, in particular when it must decide on the provision of security. Parties failing to meet the deadline set for the hearing may not submit an application for extension. In deciding on the interlocutory injunction, evidence may only be taken if it is not possible to assess the substance of the application without such evidence. The court may also take any necessary evidence during the preparatory stage of the proceedings. The court decides on the application for an interlocutory injunction by way of an order, which may be appealed against separately. The court may itself change the order upon application. The order on the interlocutory injunction is provisionally enforceable. Unless otherwise ordered by the court, the time limit for complying with the order begins on the day following the date of its notification in writing. The order remains in effect until it is set aside by the court by way of an order adopted upon application by any of the parties, after hearing the other party, or in its judgment or other decision closing the proceedings. If the decision on the interlocutory injunction is not set aside by the court in its judgment or other decision closing the proceedings, it will lose effect when the judgment at first instance becomes final. The interlocutory injunction will lapse if the proceedings are terminated or are discontinued following a stay. The court must establish this fact in its order terminating the proceedings or establishing the termination of the proceedings. The effect of the interlocutory injunction is not affected by the interruption or suspension of the proceedings.

An application for an interlocutory injunction may be submitted before the application initiating the proceedings if the applicant demonstrates that the delay caused by submitting the application after initiating proceedings is likely to frustrate the purpose of ordering the interlocutory injunction. An application for an interlocutory injunction must be lodged with the competent court with jurisdiction over the proceedings. If more than one court has territorial jurisdiction over the proceedings, the application may be lodged with any of those courts. The chosen court will have exclusive jurisdiction over the proceedings to be initiated. The general rules of civil procedure apply to mandatory legal representation in the proceedings. The court deals with the application for interlocutory injunction as a matter of priority. In its decision ordering the interlocutory injunction, the court sets a time limit for initiating proceedings, which may not be longer than forty-five days following the notification of the decision. If proceedings are not initiated within the time limit set by the court, or if, within eight days of the expiry of the time limit, the applicant fails to prove to the court ordering the interlocutory injunction that proceedings have been initiated, the interlocutory injunction will lapse, by order of that court, on the day following that on which the time limit for initiating proceedings ends. If proceedings are initiated, an interlocutory injunction ordered before the submission of the application initiating the proceedings will remain effective until it is set aside or, as the case may be, until the judgment at first instance becomes final. If the application initiating proceedings is submitted within the time limit set, but it is rejected by the court, the interlocutory injunction will remain effective until the expiry of the legal effects of initiating proceedings.

The court decides on provisional enforcement in its decision at first instance.

The court must decide on precautionary measures as a matter of urgency - within no more than eight days - and send the order for a precautionary measure without delay to the bailiff, who starts enforcement immediately. An appeal against a court order for a precautionary measure does not have suspensory effect.

A European Account Preservation Order may also be sought as a precautionary measure, even before the creditor initiates proceedings on the substance of the matter. In this case, the proceedings on the substance of the matter must be initiated within a short time.

2.2 The main conditions

The court may, upon application, order an interlocutory injunction in order to prevent any change to the current situation if it would be impossible to restore the original situation subsequently, or to prevent the frustration of the subsequent exercise of the applicant’s rights, or to ward off any imminent disadvantage to the applicant, or for any other reason deserving special consideration. The interlocutory injunction may impose an obligation to perform an act which the applicant would be entitled to demand by virtue of the right to be enforced in the proceedings. In cases where the above conditions are met, the application for an interlocutory injunction may be submitted before the application initiating the proceedings if the applicant demonstrates that the delay caused by submitting the application after initiating proceedings is likely to frustrate the purpose of ordering the interlocutory injunction. The application for an interlocutory injunction must contain reference to the fulfilment of the condition giving rise to the order for an interlocutory injunction and must present and substantiate the facts supporting the fulfilment of that condition. The applicant must be specific about the content of the measures sought. If the application for an interlocutory injunction is submitted before the application initiating the proceedings, the applicant must also provide the data necessary to determine the court with jurisdiction for the proceedings to be initiated. The right to be enforced in the proceedings must also be specified. The court will make the interlocutory injunction subject to the provision of security if the opposing party demonstrates the likelihood of suffering disadvantage resulting from the measures sought such as to give rise to a claim for damages or a restitution award against the applicant if the opposing party wins the case. When deciding on the provision of security, the court must take into account the degree of likelihood of the facts supporting the application. If the disadvantage is not significant, the court should not order the provision of security. The court will order the provision of security in two cases. One is where the opposing party so requests and is able to demonstrate the likelihood of suffering a disadvantage which corresponds to the security requested. The other is where it is offered by

the applicant and accepted by the opposing party. In the first case, the amount of security corresponds to the likely disadvantage indicated by the opposing party. In the second case, it is the amount offered by the applicant and accepted by the opposing party. If the applicant offers a specific amount as security, the court invites the opposing party to accept it in a separate statement as a matter of urgency. The acceptance of the amount of security does not constitute recognition of the facts which were presented as the grounds for ordering an interlocutory injunction. The provision of security involves depositing with the court in particular money, securities, money substitutes or, in the case of a bank guarantee, a declaration of guarantee. A judgment must be declared enforceable regardless of an appeal if it imposes any of the following obligations: the provision of maintenance payment, annuity or other periodic service for the same purpose; the cessation of trespassing; the payment of a claim accepted by the defendant; the payment of money on the basis of an obligation undertaken in a public deed or a private deed of full probative value if the underlying circumstances are proven by such documents; and other non-monetary obligations where delayed enforcement would cause the plaintiff disproportionately serious harm or harm that is difficult to determine and the plaintiff has provided adequate security. The court may decide not to grant provisional enforcement if the burden imposed on the party by enforcement would be disproportionately greater than the burden imposed on the other party by not granting provisional enforcement. A request to this end must be submitted by the defendant before the hearing is closed. The court may declare the judgment partially enforceable insofar as possible in the circumstances. In exceptional and duly justified cases, the court may refuse to declare the judgment provisionally enforceable with respect to the elements that had already lost relevance by the time the judgment was delivered. Provisional enforcement does not cover the costs of the proceedings, unpaid procedural fees and costs advanced by the state.

If the document implementing a decision on the enforcement of a claim cannot be issued but the party applying for enforcement demonstrates a plausible risk that the claim may not be satisfied later, the court may secure the funds claimed or block certain items of property at the request of that party in the form of a precautionary measure. The court may put a precautionary measure in place, for example, if the claim relies on a decision on the basis of which the enforcement document could be issued but the decision has not yet become final or is not provisionally enforceable, or it is final but the time limit set for its enforcement has not yet expired. Precautionary measures may also be put in place in relation to claims brought before a domestic court via an application under the legislation applicable to matrimonial property or the protection of patents, utility models, topographies of semiconductor products, plant varieties, trademarks, geographical indications and designs, or supplementary protection certificates, or the protection of copyright, or under Sections 4 and 6 of Act LVII of 1996 on the prohibition of unfair and restrictive market practices, in compliance with the criteria laid down in the applicable laws, or via any other applications, substantiating the origin, value and expiry of the claim by means of a public instrument or private instrument with full probative force submitted at the same time.

A European Account Preservation Order may be sought as a precautionary measure using the form set out in the Commission Implementing Regulation.

3 Object and nature of such measures?

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

In the case of an interlocutory injunction, the court orders the actions sought in a claim or in an application for an interlocutory injunction to be carried out. This may involve any claims or property specified in the application. Failure to comply with the order of the court on a voluntary basis entails enforcement. From this point on, property that is exempt from enforcement measures is identified on the basis of the enforcement legislation.

Provisional enforcement means enforcement of the provisions of a non-final judgment delivered by a court of first instance. Any property of the defendant may be subject to enforcement unless it is granted an exemption under the legislation on enforcement.

Within the framework of a precautionary measure, certain items of property may be blocked or funds secured by order of the court. In the case of a court order securing funds for a claim, the bailiff will hand over the order to the debtor on-site, at the same time ordering him or her to pay the relevant amount without delay directly to the bailiff. If the debtor does not comply, the bailiff may seize any asset of the debtor and freeze his or her account; however, wages and benefits of the debtor may only be frozen if he or she has no other property that may be subject to enforcement to cover the funds claimed. Orders to block certain objects may extend to any movable property or property having a value.

In proceedings for issuing a European Account Preservation Order, a request to obtain account information may be submitted, on the basis of which the competent authority will try to obtain the data of the debtor’s accounts from the payment service providers managing those accounts.

3.2 What are the effects of such measures?

In the case of an interlocutory injunction and provisional enforcement, the debtor must comply with the order of the court. Based on the order, enforcement proceedings against the debtor may be started.

There are two types of precautionary measure with different effects. In the case of measures to secure funds for a claim, the debtor must hand over a specific amount to the bailiff. If he or she fails to do so, the bailiff will execute the measure by seizing the property or freezing the debtor's account in a value equal to the funds claimed. Funds collected from the debtor or during the proceedings may not be made available to the party applying for enforcement. Instead, they will be kept on a deposit account by the enforcement authority. When an object is blocked, it is seized in principle, meaning that the debtor may continue to use it but is not free to dispose of it. Objects may in addition be kept under official detention. In this case, they are physically locked away by the bailiff or managed by a receiver.

3.3 What is the validity of such measures?

A court order for an interlocutory injunction remains effective until it is set aside or, as the case may be, until the judgment at first instance becomes final. The interlocutory injunction will lapse if the proceedings are terminated or are discontinued following a stay. The court must establish this fact in its order terminating the proceedings or establishing the termination of the proceedings. The effect of the interlocutory injunction is not affected by the interruption or suspension of the proceedings.

Provisional enforcement means enforcement of the obligation laid down in a court judgment before it becomes final, irrespective of appeals. This measure, therefore, has no limit in time.

Precautionary measures remain in effect until an order for enforcement of the claim is issued or the court decides to terminate the precautionary measure.

4 Is there a possibility of appeal against the measure?

There is the possibility of submitting a separate appeal against the order for an interlocutory injunction. The general rules apply to submitting such appeals. The time limit for submitting an appeal is 15 days. The appeal must be lodged at the court that took the decision. If the appeal is well-founded, the court will set aside its order for the interlocutory injunction. Otherwise, upon application, or of its own motion if the claimant reduces the claim, the court may itself change the order.

The court is obliged to order provisional enforcement in the cases specified by law. A party may request the court not to order provisional enforcement in cases where it would impose a disproportionately severe burden on that party. The request must be lodged with the court hearing the case.

The order for a precautionary measure may be appealed against before the court hearing the case. This, however, has no suspensory effect on its enforcement. The parties may submit an appeal within 15 days of the announcement of the order.

Application for a remedy against a European Account Preservation Order or its enforcement must be lodged with the court hearing the case. The general rules apply to appeal against a decision on a remedy.

Last update: 15/01/2024
The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJN nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.