

1 What are the different types of measures?

Under Luxembourg law there are a variety of measures available to preserve the rights of the parties pending the conclusion of a full court action that will finally settle their claims

These can be divided into two categories:

measures ordered by the court without an adversarial hearing: in such cases the court receives an ex parte application for an interim order from one of the parties, and gives its decision on the basis of the information provided by that party; and

measures ordered by the court following an adversarial hearing: in such cases the court gives its decision only after there has been a public hearing (or sometimes a hearing in chambers (*en chambre du conseil*)) at which the parties can make their views known; the hearing is convened by a summons (*assignation*, served by a bailiff) or by the registrar, depending on the procedure required by law.

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

In all urgent cases, a judge sitting in summary proceedings (*juge des référés*) may order any interim measures to which there is no compelling objection or which are justified by the existence of a dispute.

The judge may also rule on any difficulties in relation to the enforcement of his or her own orders.

The presiding judge or his or her replacement may always order precautionary or remedial measures that are necessary to prevent imminent damage or to put an end to a manifestly unlawful disturbance.

2.1 The procedure

The application is made through a summons (*assignation*) to appear at a hearing held for the purpose at the normal date and time for such hearings.

If the case is urgent, however, the presiding judge or his or her replacement may allow a party to be summoned to attend a hearing at a stated time even during weekends, public holidays or days that are not normally working days, either in court or at the judge's own home, which is open to the public for the occasion.

In all urgent cases, a judge sitting in summary proceedings may order any interim measures to which there is no compelling objection or which are justified by the existence of a dispute. The judge may also rule on difficulties in relation to the enforcement of a judgment or another enforceable order. When the summary proceedings concern difficulties in relation to the enforcement of an order or judgment, the court with jurisdiction is the court of the place at which the measure is to be enforced.

The presiding judge or his or her replacement may always order interim or remedial measures that are necessary to prevent imminent damage or to put an end to a manifestly unlawful disturbance. To prevent evidence from being lost, the court may order any measure of inquiry that may be necessary, including the hearing of witnesses.

There are many specific legal provisions providing for interim or precautionary measures in specific matters (for instance property leases, undivided ownership, joint property, succession, matrimonial property regimes, etc.). The specific rules on jurisdiction are normally set out in the wording of the law that empowers the court to take such a measure. There is no general rule of jurisdiction, apart from the fact that jurisdiction to take interim measures normally lies with the presiding judge of the court called upon to hear the substance of the dispute.

Where no specific procedure is provided for, a party wishing a measure to be ordered must apply to whichever judge has jurisdiction to hear urgent applications. Depending on the amount at stake, this will be the justice of the peace (*juge de paix* – up to €10 000) or the summary proceedings judge (*juge des référés*) at the district court (*tribunal d'arrondissement*). They have general jurisdiction to order precautionary or remedial measures either to prevent imminent damage or to put an end to a manifestly unlawful disturbance.

In general, it is not mandatory to be represented by a lawyer.

2.2 The main conditions

The court can usually adopt interim measures only if, in the court's view, there is a real need or the matter is urgent.

Where a creditor applies for authorisation to seize assets, the court must check whether, on the basis of the documents and explanations that it has received, the claim is well founded at least in principle.

3 Object and nature of such measures?

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

Interim measures can relate to a person's entire movable assets. Only certain goods considered essential for daily existence are exempt from seizure.

Luxembourg law allows the seizure of wages and salaries and of alternative incomes (pensions, independent incomes etc.). A portion of income corresponding to what is considered to be essential for subsistence is always exempt.

The creditor cannot seize immovable assets. Such seizures require a final court decision.

3.2 What are the effects of such measures?

In most cases, the court that orders the measure will specify its effects. It can set a time limit for its order, or confine the order to specific assets or acts.

Where a court authorises seizures in response to an ex parte application from one of the parties, the law prescribes time limits within which an application for validation (*demande de validation*) must be made to the court. If validation is not applied for in that time, the seizure is automatically void.

3.3 What is the validity of such measures?

The law empowers the courts to take interim measures in order temporarily to regulate a dispute between the parties while awaiting a final solution at the end of a trial on the substance.

According to a definition given by the Court of Justice of the European Union, such measures 'are intended to preserve a factual or legal situation so as to safeguard rights the recognition of which is sought elsewhere from the court having jurisdiction as to the substance of the matter'.

Interim measures may also be taken to prevent a situation from worsening.

In practice, such measures enable creditors to protect themselves against the risk of not being paid by using one of two techniques: either debtors are prevented from disposing of their assets, or charges are registered on the assets so that if they do change hands the debt can be recovered from subsequent acquirers.

4 Is there a possibility of appeal against the measure?

When an interim measure is taken by a court following an adversarial hearing, it is open to appeal. But the time allowed for an appeal is only 15 days following service of the decision.

There is no appeal against decisions taken in response to an ex parte application. A party who believes the measure was mistaken can apply to the court for a new precautionary measure suspending the effects of the measure that was ordered in response to the earlier ex parte application.

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