Aktīvu aizsardzība, kamēr tiek izskatīta prasība ES valstīs

Var gadīties, ka būsiet ieinteresēts, lai tiesa nosaka steidzamus pasākumus dalībvalstī, kas nav jūsu lietas galvenās tiesvedības valsts, negaidot galīgā sprieduma pieņemšanu.

Var gadīties, ka esat ierosinājis lietu, bet tās izskatīšana ir gausa, un, jūsuprāt, tiek novilcināta. Jūs baidāties, ka parādnieks izmantos ieilgušo procesu un dažādās pārsūdzības iespējas, lai pirms faktiskā sprieduma pieņemšanas izvairītos no kreditoriem. Parādnieks, piemēram, varētu noorganizēt pats savu maksātnespēju vai savus īpašumus nodot citam. Tādā gadījumā jūsu interesēs ir lūgt tiesu pieņemt pagaidu pasākumus.

Ar Eiropas kontu apķīlāšanas rīkojumu (*EAPO*) tiesa vienā ES dalībvalstī var iesaldēt parādnieka līdzekļus bankas kontā citā ES valstī. Procedūru pārrobežu lietās var izmantot tikai tad, ja tiesa, kas veic procedūru, vai kreditora domicils atrodas citā dalībvalstī, kas nav valsts, kurā tiek uzturēts parādnieka konts.

Tiesa pret parādnieka īpašumiem var noteikt pagaidu vai nodrošināšanas pasākumus. Šo pasākumu mērķis ir aizsteigties priekšā galīgajam spriedumam zināmu laika periodu, lai nodrošinātu, ka spriedumu pēc būtības būs iespējams izpildīt.

Tomēr dalībvalstīs šo pasākumu noteikšanas nosacījumos ir diezgan ievērojamas atšķirības.

Lai iegūtu sīkāku informāciju par konkrētu valsti, noklikšķiniet uz tās karodziņa.

Lapa atjaunināta: 12/08/2022

Šo lapu uztur Eiropas Komisija. Informācija šajā tīmekļa vietnē nav uzskatāma par Eiropas Komisijas oficiālo nostāju. Komisija neuzņemas nekādu atbildību vai saistības attiecībā uz informāciju vai datiem, kas ietverti vai izmantoti šajā dokumentā. Autortiesību noteikumus Eiropas tīmekļa vietnēs lūdzu skatīt juridiskajā paziņojumā.

Securing assets during a claim in EU countries - Belgium

1 What are the different types of measures?

The purpose of precautionary measures (*mesures conservatoires*/*bewarende maatregelen*) is to ensure that rights are preserved. In practice, creditors can use these measures to protect themselves against the risk that they will not receive payment from their debtors.

In the event that purely precautionary measures are insufficient, a court can order interim measures (*mesures provisoires*/*voorlopige maatregelen*) with consequences comparable to those of the decision expected in the main proceedings. The final judgment may confirm these interim measures or reverse them.

A court can order interim and precautionary measures in respect of the debtor's assets. For the purpose of recovering debts, the principle applies that a debtor is liable to meet the debt from his or her entire assets, whether movable (money, furniture, jewellery, shares) or immovable (land, buildings, residential dwelling). Creditors can also assert rights held by their debtor in the debtor's place (bank balances, wages).

1.1. Precautionary measures

A. Preventive attachment

In urgent cases, any creditor can ask the court for permission to impose a preventive attachment (*saisie conservatoire*/*bewarend beslag*) on any assets belonging to the debtor that are capable of attachment (Article 1413 of the Judicial Code (*Code judiciaire*/*Gerechtelijk Wetboek*)). The debtor can then no longer freely dispose of the attached assets. This means that the debtor can no longer sell, gift or mortgage such assets. The removal of the power of disposal applies only in favour of the attaching creditor: the debtor remains the owner of the assets and retains the right to make use of them and to draw profit from them.

B. Sequestration

Sequestration (*séquestre*/*sekwester*) is the deposit of disputed assets for safekeeping until the final judgment is given (Article 1955 et seq. of the Civil Code (*Code civil*/*Burgerlijk Wetboek*)). Sequestration can be agreed between the parties (*séquestre conventionnel*/*conventioneel sekwester*) or ordered by the court (*séquestre judiciaire*/*gerechtelijk sekwester*). In contrast to ordinary deposits, sequestrations can also apply to immovable assets (Article 1959 of the Civil Code).

C. Inventory

The purpose of an inventory (*inventaire*/*inventaris* or *boedelbeschrijving*) is to determine the assets forming an estate, joint marital property, or undivided property (Article 1175 of the Judicial Code), at the request of creditors, a spouse or joint heirs. The parties requesting the inventory are entitled to choose a notary who will list the assets in a public document. In the event of disagreement, a notary will be appointed by the justice of the peace (*juge de paix*/*vrederechter*) (Article 1178 of the Judicial Code). The justice of the peace will also have jurisdiction to resolve any disputes.

D. Placing under seal

The consequence of placing assets under seal (*apposition des scellés*/*verzegeling*) is that they become unavailable in practice. Where there is a serious reason for doing so, a creditor, spouse or heir can ask for seals to be placed on assets that form part of an estate, joint marital property or undivided property (Article 1148 of the Judicial Code). The request is made to the justice of the peace. The justice of the peace can order the removal of the seals at the request of the original applicant or of a creditor, a spouse or an heir. Any objection to the removal of the seals has likewise to be brought before the justice of the peace.

1.2. Interim measures

Interim measures are measures that can be revoked or reversed. They can be ordered in interlocutory proceedings (*référé*/*kort geding*) or in the main proceedings in the case.

1.3. Provisional enforcement

A judgment which has been given but is still open to challenge can be enforced on a provisional basis, under strict conditions.

Subject to the exceptions laid down by law, or where the court decides otherwise in a specially reasoned decision, and without prejudice to Article 1414, an objection (*opposition*/*verzet*) lodged against the final judgment in the main proceedings suspends its enforcement.

Subject to the exceptions laid down by law, or where the court decides otherwise through a specially reasoned decision, and without prejudice to Article 1414, the final judgment in the main proceedings is provisionally enforceable, notwithstanding any appeal (*appel*/*hoger beroep*), and without security being required unless the court has ordered that security be provided (Article 1397 of the Judicial Code).

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

2.1 The procedure

A. Preventive attachment

A person who has obtained a judgment in their favour, even in another country, can instruct a bailiff (*huissier de justice*/*gerechtsdeurwaarder*) to place the assets of the judgment debtor under preventive attachment. In the absence of such a judgment, preventive attachment requires a court order.
The application is made to the judge of attachments (*juge des saisies*/*beslagrechter*) and is examined in the same way as an application in interlocutory proceedings (Article 1395 of the Judicial Code). There must be at least two days between the summons and the hearing, but this period can be shortened in urgent cases.
An ex parte application (*requête unilatérale*/*eenzijdig verzoekschrift*) seeking preventive attachment is submitted by a lawyer to the judge of attachments, who can authorise the attachment. The judge of attachments must issue an order within eight days. The order and the notice of attachment must be served by a bailiff on the judgment debtor, to ensure that the debtor is aware of the proceedings brought against him or her.
The order is provisionally enforceable without further formality, but is binding only between the parties. The judge of attachments can at any time vary or set aside the order owing to a change in circumstances. The fee charged by the bailiff is determined by the Royal Decree of 30 November 1976 (published in the official gazette of 8 February 1977).
B. Sequestration
In the case of sequestration by agreement, a valid agreement between the parties is sufficient, and no court order is required. Sequestration can also be ordered by a court.
In either case a depositary (*gardien judiciaire*/*gerechtelijke bewaarder*) will be appointed, either in the agreement or by the court. The depositary must exercise all due care with regard to the assets entrusted to him or her. He or she must return the assets when the sequestration ends. The depositary is entitled to receive a salary determined by law (Article 1962, third paragraph, of the Civil Code).
C. Interim measures
Interim measures have to be requested from the court, either in interlocutory proceedings or in the main proceedings. They can also be ordered by an arbitrator (Article 1696 of the Judicial Code).
The presiding judge of the court of first instance (*tribunal de première instance*/*rechtbank van eerste aanleg*) can order an interim measure in any urgent case that does not by law fall outside the jurisdiction of the courts (Article 584, first paragraph, of the Judicial Code). Such a measure must be purely provisional and cannot have any final and irrevocable effects. The presiding judges of the labour tribunal (*tribunal du travail*/*arbeidsrechtbank*) and commercial court (*tribunal de commerce*/*rechtbank van koophandel*) can also order interim measures in urgent cases that fall within the jurisdiction of their courts.
The order made in the interlocutory proceedings cannot prejudge the judgment on the merits in the main proceedings, which means that it is binding only on the parties. The judge in the main proceedings cannot be bound by such an order in any way; the judge of attachments can order only interim measures.
In divorce proceedings, the presiding judge of the family court (*tribunal de la famille*/*familierechtbank*) can order interim measures relating to the person, maintenance and assets of the spouses and their children (Article 1280, first paragraph, of the Judicial Code).
The bailiff serves notice of the measures that have been ordered on the opposing party, and invites the opposing party to comply with those measures, if necessary under threat of enforcement by the authorities or of a periodic penalty payment. The fee charged by the bailiff is determined by the Royal Decree of 30 November 1976 (published in the official gazette of 8 February 1977).
When ruling at first instance, the justice of the peace can order interim measures for the period of time during which spouses or legal cohabitants whose relationship has broken down continue living together. Such measures may relate, for example, to the family home, the children, or assets of the children. These measures are only provisional and will end when the spouses or legal cohabitants stop living together. They do not determine the long-term arrangements that may follow a divorce. The final arrangements following a divorce must be decided by the court of first instance.
D. Provisional enforcement
A judgment includes an enforcement formula. However, until the judgment is no longer open to any challenge that might suspend it, it cannot be enforced. Subject to the exceptions laid down by law, or where the court decides otherwise through a specially reasoned decision, enforcement is suspended as long as an objection can be lodged, but not by the possibility of an appeal to a superior court or an appeal on points of law to the Court of Cassation (*Cour de cassation*/*Hof van Cassatie*) (Article 1397 of the Judicial Code).
The judge who delivered the judgment can authorise its enforcement on a provisional basis, except in cases in which this is prohibited by law (Article 1399 of the Judicial Code), such as cases concerning personal status.
If provisional enforcement is possible, it is undertaken at the risk of the party seeking it. The judge can require that party to provide security before the judgment is provisionally enforced (Article 1400 of the Judicial Code). This means that the party can have the judgment provisionally enforced, but must lodge a sum of money or a bank guarantee with the Deposits and Consignments Fund (*Caisse des dépôts et consignations*/*Deposito- en Consignatiekas*). This is because the judgment may be varied on appeal and the defendant may be entitled to compensation.

2.2 The main conditions

A. Preventive attachment
Preventive attachment can be ordered only in urgent cases and if the debt is certain, of a fixed amount and due.
Urgency requires that the debtor's solvency be under threat, thereby jeopardising the creditor's rights over the debtor's assets. Preventive attachment cannot be used as a means of applying pressure, but is permitted where, on the basis of objective criteria, the debtor's financial situation is compromised. There must be urgency both when the attachment is ordered and at any time when the court is required to rule on its continuation.
The creditor's claim must be certain, which means that it must appear to be sufficiently justified and beyond reasonable dispute. It must also be of a fixed amount. The amount of the claim must have been determined or at least be capable of being provisionally estimated. If the exact amount of the debt has not yet been determined, it will be estimated by the court. Finally, payment of the debt must be due: in other words, the creditor must be entitled to demand payment. Article 1415 of the Judicial Code qualifies this condition so that claims in respect of regular income in the future (maintenance, rent, interest) and even contingent or potential claims can also be eligible for preventive attachment.
B. Sequestration
A court can order the sequestration of movable assets that have been attached, movable or immovable property whose ownership or possession is in dispute between two or more persons, and goods that a debtor is offering in order to settle a debt (Article 1961 of the Civil Code). In general terms, this rule applies whenever the circumstances of the case justify the use of sequestration as a form of precautionary measure to ensure that the goods remain as they are, without compromising any final solution. Urgency is irrelevant. The court will, however, exercise caution when ordering sequestration, as it is a serious and exceptional measure that can be granted only where there are sufficient and important grounds for it.
C. Interim measures
Interlocutory proceedings seeking interim measures can be brought only if the case is so urgent that unless measures are taken immediately the applicant will suffer a substantial loss or serious disadvantage. Urgency is therefore an essential requirement in interlocutory proceedings.

Interim measures granted in the main proceedings must also be a matter of urgency. That is why these measures are also referred to as ‘urgent provisional measures’ (*mesures provisoires urgentes*/*dringende voorlopige maatregelen*) when they are requested from the justice of the peace.

D. Provisional enforcement

The criterion used by the court when deciding whether to allow or refuse provisional enforcement is the danger to the creditor that the opposing party will unnecessarily delay or prevent enforcement of the judgment. If the opposing party lodges an objection or appeal solely to prevent the judgment from being enforced, that will prompt the court that delivered the judgment to order provisional enforcement. However, this is prohibited in certain cases (see above).

3 Object and nature of such measures?

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

A. Preventive attachment

All types of assets (movable, immovable, intangible) can be subject to preventive attachment. Certain assets cannot, however, be attached, or can be attached only in part. Their ineligibility for attachment stems from the law, the nature of the asset, or the link that exists between the asset and the debtor. Assets that cannot be attached are listed in Article 1408 of the Judicial Code. In short, these are assets indispensable to the debtor, which are needed to continue the debtor’s or the debtor’s children’s studies or vocational training, which are essential for the debtor’s profession, or which are needed for religious worship, as well as food and fuel. Article 1410(2) of the Judicial Code indicates the types of claim that can never be attached, in particular claims to family benefits and the minimum wage.

The debtor’s salary and similar income can be attached only in part. The amounts concerned are determined in Article 1409(1) of the Judicial Code and are adjusted each year by Royal Decree on the basis of the consumer price index. Article 1410(1) of the Judicial Code extends the range of eligibility for partial attachment to include provisional and final maintenance payments, pensions, unemployment benefits, and allowances for incapacity for work and disability.

The assets being attached are listed by the bailiff in an official record, with a view to their possible future sale, unless agreement can be reached with the creditor through the bailiff. It is strictly prohibited to hide assets that have been recorded by a bailiff and such action can result in criminal prosecution.

B. Sequestration

A court can order the sequestration of movable assets of a debtor that have been attached, movable or immovable property whose ownership or possession is in dispute between two or more persons, and goods that a debtor is offering in order to settle a debt (Article 1961 of the Civil Code).

C. Interim measures

Interim measures can be ordered in interlocutory proceedings in cases of any kind. The presiding judge of the court of first instance has jurisdiction in all types of civil dispute under ordinary law. Cases under employment law or commercial law are dealt with by the presiding judge of the labour tribunal or commercial court.

The family court can order interim measures for a period of time during which the parties continue living together. Such measures may relate, for example, to the family home, the children or assets of the children. However, this applies only to married couples (Article 223(1) of the Civil Code) and legal cohabitants (Article 1479(1) of the Civil Code), and not to de facto cohabitants.

D. Provisional enforcement

In principle, all judgments can be provisionally enforced if the court so orders, except where this is prohibited by law (Article 1399 of the Judicial Code).

3.2 What are the effects of such measures?

A. Preventive attachment

The judgment debtor does not lose the rights of ownership or of the attached assets or the rights to use them and draw profit from them (use, rental, income, profits). The effect of preventive attachment is only that the assets cannot be sold or mortgaged. The removal of this power of disposal means that any such transaction that is nevertheless concluded by the judgment debtor will be valid in itself but is not effective against the judgment creditor. The creditor need take no account of such a transaction and can act as if it did not exist.

B. Sequestration

As with ordinary deposits, sequestration means that material possession of an asset is transferred to the depositary. The only measures the depositary can take are measures intended to preserve the assets.

C. Interim measures

Not applicable.

D. Provisional enforcement

Provisional enforcement means that the judgment is enforced despite the possibility that it may be varied on appeal or if an objection is lodged. The applicant bears the risk associated with enforcement (see above).

3.3 What is the validity of such measures?

A. Preventive attachment

Preventive attachment is subject to a time limit, which in principle is three years. The judge of attachments can, however, set a shorter time limit. The attachment can be renewed as long as the initial time limit has not expired. Renewal – which is, in fact, an extension of the existing time limit – is permitted where there are valid reasons for renewing the attachment and the urgency of the situation has not changed.

B. Sequestration

The law does not impose any time limit on sequestration. If there is no longer any risk that the assets cannot be preserved as they are and that a final solution may consequently be compromised, the sequestration is lifted.

C. Interim measures

The law does not impose any time limit on interim measures. The final judgment in the dispute may confirm or reverse such measures.

D. Provisional enforcement

Not applicable.

4 Is there a possibility of appeal against the measure?

A. Preventive attachment

If the judge of attachments refuses authorisation for a preventive attachment, the judgment creditor can challenge the judge’s order within one month of its being served (Article 1419, first paragraph, and Article 1031 of the Judicial Code). The case is handled in the same way as before the first judge; the judgment is delivered by the court in chambers (*en chambre du conseil*/*in raadkamer*). If the attachment is then allowed, and the judgment debtor wishes to prevent the attachment, the judgment debtor must bring an objection as an affected third party (*tierce opposition*/*derdenverzet*) before the court of appeal (*cour d’appel*/*hof van beroep*).

If the judge of attachments grants authorisation for a preventive attachment, the judgment debtor or any other interested party can likewise bring an objection against that order as an affected third party (Article 1419 of the Judicial Code). The objection must be initiated within one month of the date when the order authorising the attachment is served, and will be heard by the judge who issued the order (Article 1125 of the Judicial Code). Unless the judge of attachments grants a stay of enforcement, such an objection does not have suspensive effect.

B. Sequestration

Not applicable in the case of sequestration agreed between the parties.

A sequestration ordered by a court is a court decision open to challenge through the ordinary avenues provided for in the Judicial Code.

C. Interim measures

Any party that considers itself wronged by an order issued in interlocutory proceedings can lodge an objection or appeal. Appeals against orders issued by the presiding judge of the court of first instance or commercial court are heard by the court of appeal. Appeals against orders issued by the presiding judge of the labour tribunal must be lodged with the labour court (*cour du travail*/*arbeidshof*).

The time limit for objection or appeal is one month from the date when the order is served by the bailiff if the proceedings were initiated by summons (*assignation*/*dagvaarding*) or voluntary appearance (*comparution volontaire*/*vrijwillige verschijning*), and one month from the date when the order is served by special registered letter (*pli judiciaire*/*gerechtsbrief*) if the order was issued following an ex parte application.

D. Provisional enforcement

Provisional enforcement is not open to appeal. The appeal court can under no circumstances prohibit or suspend the enforcement of a judgment (Article 1402 of the Judicial Code).

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Securing assets during a claim in EU countries - Bulgaria

1 What are the different types of measures?

The trial is generally characterised by a longer or shorter duration in time. This delay, which results from the different phases and the different instances the trial goes through, may sometimes render the legal protection sought ineffective through delays in the delivery of a judgement or its entry into force. With this in mind, the legislator has provided for a set of measures aimed at ensuring the effectiveness of the judicial protection sought restricting the exercise of certain property rights by the respondent.

Issues related to securing the claim are governed by the provisions of Articles 389-404 of the Civil Procedure Code (CPC).

According to Article 391 of the CPC, securing of a claim is permitted where, without such interim measures, it would be impossible or quite difficult for the plaintiff to implement the rights ensuing from the judgement and when: a) the claim is supported by sound documentary evidence, or b) a guarantee is to be provided in an amount determined by the court as per Articles 180 and 181 of the Obligations and Contracts Act (OCA). A guarantee may be requested at the court's discretion even when there is sound documentary evidence.

A fundamental prerequisite and a mandatory condition for granting interim measures is the risk of the plaintiff's inability to implement his rights ensuing from a judgement that will possibly be delivered with regard to a potentially substantiated claim.

In order to permit the claim to be secured, the court assesses whether the following prerequisites exist: the need of securing the claim, a probable justification of the claim and an interim measure, as specified by the plaintiff, that is appropriate and adequate in terms of the needs of the particular case and the legal protection explicitly sought.

According to Article 397 (1) of the CPC, the law provides for the following interim measures:

seizure of immovable property,

attachment of movable assets and receivables, including attachment of shares in a company,

other adequate measures determined by the court, including impounding of a motor vehicle and stay of enforcement.

The court may also grant several precautionary measures up to the amount of the claim (there being no need to secure more than that amount).

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

2.1 The procedure

Under the provisions of Chapter 34 of the CPC, securing of a claim is permitted:

according to Article 389 of the CPC – for all types of claims – with regard to any state of the case, prior to conclusion of the judicial inquiry during the appellate proceedings,

according to Article 390 of the CPC, all claims can be secured even before bringing the action (securing a future claim).

Application for interim measures regarding a pending case:

This application is submitted by the plaintiff before the court having jurisdiction to deal with the legal dispute. For securing of a claim to be granted, the prerequisites laid down in Article 391 of the CPC must apply: probable justification of the claim, existence of a need of securing the claim, i.e. a risk of the effects of the court's decision granting the claim (if such decision is issued) being frustrated because the defendant has disposed of his or her seizable property, as well as adequacy of the specified measure. In accordance with Article 391(2) and (3) CPC, where there is insufficient evidence to prove the probable justification of the claim, the court may, at its own discretion, also request the payment of a monetary guarantee in an amount determined by it.

Securing of a claim is permitted even while the case is suspended.

Application for securing a future claim:

The application is submitted at the place where the plaintiff has his permanent address or where the property that will serve for securing the claim is located. When there is a request for permitting an interim measure for the "stay of enforcement", the application must be submitted before the court of competent jurisdiction as per the place of enforcement.

When interim measures are granted with regards to a future claim, the court sets out a time limit for submission of the claim, which cannot be longer than one month. The material prerequisites for granting such interim measures are the same as those concerning the granting of interim measures regarding a pending case.

The application should indicate the requested interim measure and the value of the claim. It must be submitted to the relevant regional court or to the relevant district court, depending on the court jurisdiction and competence according to Article 104 of the CPC.

The application may be submitted by the person concerned or by his procedural representative (a lawyer). A copy of it is not required since such a copy is not served on to the opposing party because the interlocutory proceedings are ex parte proceedings: they are pursued without the participation of the other party (whose patrimony will be affected by the measure granted).

The interim measures granted by the court are imposed by means of:
seizure of immovable property – by the Registry Office,
attachment of movable assets and receivables of the debtor – by a state or private bailiff, including by notification, on his part, of third parties such as banks and other credit institutions,
interim measures regarding automobiles – by the relevant Traffic Police services,
the interim measure “stay of enforcement” – a copy of the court’s ruling for the permission granted should be submitted to the relevant bailiff who instituted the enforcement proceedings,
other measures envisaged by law – by the relevant state or private bailiff, chosen by the person.
However, the Bank Insolvency Act (Zakon za bankovata nesastoyatelnost) (ZBN), as a special law, expressly provides for the securing of claims for replenishment of a bank’s insolvency estate. Under Article 53(2) of the ZBN, securing of a claim is to be granted where the motion is supported by sufficient evidence to warrant the assumption that the claim is justified. If the claim is probably unjustified, the general law allows the granting of precautionary measures when a guarantee is provided, whereas the special law regards probable justification as a sine qua non condition for securing of a claim to be granted. Therefore, securing of a claim is to be granted where the arguments and the evidence presented warrant the conclusion that the claim is probably not unjustified. This is understandable, considering that, under Article 403 CPC, the securing party is liable for the damages caused by the precautionary measures to the opposing party. The legislator acknowledges that obligations to indemnify such damages should not arise in the patrimony of an insolvent bank (because this would erode the insolvency estate and would inflict damage on creditors) and, therefore, establishes a requirement that securing of a claim brought should be granted only if sufficient evidence is presented to prove its probable justification.
Under point 2 of Article 629a(1) of the Commerce Act (Targovski zakon) (TZ), the measures referred to in point 4 of Article 630(1) of the TZ may be granted as ex ante precautionary measures in insolvency proceedings if this is necessary in order to preserve the debtor’s property. These measures include imposing an attachment, appointing a provisional receiver, ordering a stay of pending enforcement proceedings, sealing premises, equipment, etc. The rule in question presupposes that the petition under Article 625 of the TZ should be admissible, that it should be supported by written evidence establishing the probable manifestation of the facts underlying the claim and, if it is not supported by such evidence, that the petitioner should furnish security in an amount set by the court to compensate the debtor for the damages caused in case it is not established that the debtor is insolvent or, respectively, overindebted (Article 629a(2) of the TZ) and that there should be an interest in securing (where the debtor squanders, destroys and/or conceals his or her property and thereby endangers creditors’ interests and unless the measures sought are imposed creditors may incur damages as they would find it impossible to satisfy themselves when the debtor’s property is monetised). The law also requires that the precautionary measure sought should be adequate and relevant to the need of securing the claim.
It is inferred from the rule of Article 629a(1) of the TZ that ex ante securing in proceedings for the initiation of insolvency proceedings is granted only if there is a real risk of the debtor disposing of his or her property in order to inflict damage on creditors. Only if this prerequisite exists is the court bound to consider whether the other prerequisites provided for in Article 629a(2) of the TZ also exist.

2.2 The main conditions

The material prerequisites for permitting interim measures (as described above) are set out in Article 391 of the CPC.
Securing of a maintenance claim is permitted even without complying with the requirements of Article 391 of the CPC, in which case the court may take interim measures ex officio.
Partial securing of the claim may also be permitted, but only in relation to the parts supported by sufficient evidence.

3 Object and nature of such measures?

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

In general, any property of the debtor may be subject to interim measures. Securing a pecuniary claim by means of attachment of receivables which are not subject to enforcement is not permitted.
According to Article 393 (1) of the CPC, securing a pecuniary claim against the state, state institutions and healthcare facilities under Article 5 (1) of the Healthcare Facilities Act is not permitted.
The following types of property can be subject to interim measures:
defendant’s receivables from credit institutions on bank accounts opened with them,
movable goods;
immovable property;
automobiles, as regards their impounding,
enforcement activities,
particular assets of the claimed debtor as reviewed in other cases explicitly laid down in law.

3.2 What are the effects of such measures?

Any dispositions of the subject of the precautionary measure, effected by the debtor, are ineffective vis-à-vis the person at whose request the precautionary measures were imposed. As regards immovable property, the invalidity has effect solely in respect of the dispositions performed after the foreclosure is entered into the register – as per Article 452 of the CPC. Apart from this relative ineffectiveness (non-reliance), the dispositions effected are completely effective and produce their legal effects.
Article 453 of the CPC governs the hypotheses of unenforceability, on the part of the creditor and the affiliated creditors, of the rights acquired after the foreclosure is entered into the register and the notification of the attachment has been received.
According to Article 401 of the CPC, the secured creditor can bring an action against a third liable party for the amounts or the assets which the latter refuses to submit voluntarily.
The expenses relating to claim securing proceedings are borne by the person at whose request the interim measures were granted, as provided by Article 514 of the CPC, by reference to Article 401 of the CPC, which regulates interim measures.

3.3 What is the validity of such measures?

Permission for securing a claim is granted based on the principle that with regards to a pending case, the relevant interim measure is imposed prior to conclusion of the case by means of the corresponding judgement which has entered into force.
When interim measures are granted with regards to a future claim, the court sets out a time limit for submission of the claim, which cannot be longer than one month. If no evidence of submitting the claim within the established time limit has been presented, the court cancels the interim measures ex officio – as per Article 390 (3) of the CPC.
In the event of submission of a claim with regards to which interim measures have been granted, as is usually the case, the interim measures remain in force and have effect until the conclusion of the case.

The provisions of Article 402 of the CPC governs the cancellation procedure for granted interim measures. It provides that the interested party must submit an application, a copy of which must be handed over to the person who has requested the granting of interim measures. The latter may submit an objection within three days. The court, sitting in closed session, cancels the interim measures where it is fully satisfied that the reason on account of which they were granted no longer exists or that the defendant has lodged a guarantee, within the prescribed time limit, by depositing the entire amount claimed by the plaintiff (Article 398 (2) of the CPC). The court's ruling for the cancellation of interim measures is subject to appeal by means of a private complaint within one week.

The replacement of the granted interim measures, as provided by Article 398 of the CPC, may be granted in the following two situations:

under paragraph 1 – the court, acting at the request of one of the parties, may, after notifying the other party and taking into account its objections submitted within three days after the notification, permit the replacement of one type of interim measures by another,

under paragraph 2 – in the event of securing a claim estimable in monetary terms, the defendant may at all times replace the permitted security, without the consent of the other party, with a pledge of money or of other securities, as provided by Articles 180 and 181 of the OCA.

In the cases laid down in Article 398 (1) (2) of the CPC, the attachment or seizure is revoked.

The law does not preclude the defendant from bringing a claim against the plaintiff for compensation of the damages that the interim measures have caused to the former, if the claim subject to the granted interim measures is revoked or not submitted within the prescribed time limit, as well as if the case is terminated (Article 403 of the CPC).

4 Is there a possibility of appeal against the measure?

According to Article 396 of the CPC, the court's ruling regarding the securing of a claim may be appealed by means of a private complaint within one week. For the plaintiff, this one-week period starts when the ruling is submitted to them, while for the defendant (the person against whom the interim measures have been granted) it starts from the day on which the notification of the imposed interim measures is submitted to them by the bailiff, by the Registry Office or by the court. A copy of the private complaint must be submitted to the opposite party, which is to reply within one week.

Third parties, too, are recognised to have legal interest in bringing an appeal if their patrimony is affected by the precautionary measure. In the ex parte interlocutory proceedings, the court does not examine whether the defendant holds the rights in respect of which a restriction of his or her power of disposal is requested. For this reason, attachment may be imposed on immovable property which is not owned by the debtor. The actual owner in this case would have standing to appeal the ruling granting the attachment even though that owner is a third party with regard to the proceedings.

Where a ruling refusing to grant a securing of the claim is appealed, a copy of the requesting party's appeal is not served on the respondent because in this phase, too, the proceedings remain ex parte.

If the appellate court has upheld a ruling for granting or refusing interim measures, the ruling is not subject to cassation appeal. If the appellate court has granted interim measures which were refused by the first-instance court, the ruling of the former is subject to appeal by means of a private complaint before the Supreme Court of Cassation if the preconditions under Article 280 of the CPC for allowing such an appeal are met.

According to the CPC currently in force, both the granted interim measures and the amount of the guarantee determined by the court as a condition for granting interim measures are subject to a right of appeal. However, the appeal before the appellate court may not suspend the interim measures before a ruling on the appeal has been issued by the higher court and a repeal has been ruled.

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Securing assets during a claim in EU countries - Czechia

1 What are the different types of measures?

Interim measures:

Interim measures are used to govern the parties' relations in the interim, i.e. provisionally, or in a situation where there are concerns that the enforcement of a judicial ruling may be undermined.

Generally, interim measures issued prior to the commencement of proceedings on the substance of the case are governed by Article 74 *et seq*. of the Code of Civil Procedure (Act No 99/1963, as amended), while interim measures issued after the commencement of such proceedings are governed by Article 102 of the Code. Special interim measures for certain specific situations are governed by the Act on Special Judicial Proceedings (Act No 292/2013), namely interim measures governing the situation faced by a minor who has not been duly cared for (Section 452 *et seq*.) and interim measures to provide protection against domestic violence (Section 400 *et seq*.). Section 12 of Act No 292/2013 also lays down certain special rules supplementing the general arrangements in place for interim measures, covering those types of proceedings that fall within the scope of that Act.

Securing of evidence:

Evidence is secured if there is concern that evidence-taking in the future will be impossible or severely hampered (e.g. defective performance of a purchase agreement, the object of which comprises perishable goods or the examination of a witness who is seriously ill and in a life-threatening condition).

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

2.1 The procedure

Interim measures:

Article 74(3) of the Code of Civil Procedure (Act No 99/1963, as amended) provides that proceedings to obtain an interim measure are commenced upon application.

However, Section 12 of Act No 292/2013 lays down that an interim measure may be ordered by a court on its own motion if it is also permitted to commence the proceedings in question on its own motion (e.g. proceedings on the care of a minor, incapacitation proceedings, guardianship proceedings, and proceedings concerning a missing person, or death). In these cases, the court orders an interim measure *ex officio*.

The court competent to issue an interim measure is the court with jurisdiction as to the substance; exceptions to this rule can be found in Sections 400 and 453 of Act No 292/2013.

Evidence may be secured:

prior to the commencement of proceedings on the substance of the case, upon application. The competent court is the court that would have jurisdiction as to the substance or the court in whose district the evidence at risk is situated.

during the proceedings, even in the absence of an application.

The parties to the case should be present when evidence is secured, unless any delay in this regard could pose a risk.

Evidence may also be secured by means of notarial deed (*notářský zápis*) or an enforcement officer's record (*exekutorský zápis*), if this process takes place in the presence of a notary or enforcement officer or if a notary or enforcement officer has testified on the situation.

2.2 The main conditions

An interim measure may be ordered:

if provisional arrangements need to be in place to govern the parties' relations;

if there is concern that the enforcement of a judicial ruling will be compromised;

to govern relations on a provisional basis.

The assessment of whether there is any need for provisional arrangements governing the parties' relations depends on the circumstances of the particular case. An interim measure will be ordered only if there is a demonstrable need for provisional arrangements to govern the parties' legal relations. As regards other circumstances relevant to the ordering of such an interim measure, it is sufficient for at least facts critical to the imposition of the obligation under the interim measure to be proven.

Undermining of the enforcement of a ruling

If an interim measure is to be ordered in response to concerns that the enforcement of a ruling could be undermined, the entitled party must be in possession of a decision or other instrument constituting grounds for the enforcement of the ruling. An interim measure may be ordered only until the ruling becomes enforceable, or if there are serious reasons why the entitled party has so far been (temporarily) unable to require that the obligation imposed be met by means of judicial enforcement. At the same time, facts justifying the concern that the enforcement of the ruling would be compromised (mainly on account of the obligor's behaviour) must be substantiated.

An application for an interim measure must contain the particulars laid down by Article 42(4) and Article 75 of the Code of Civil Procedure (Act No 99/1963), including:

information indicating the court to which the application is addressed;

who is submitting the application and what case it concerns, i.e. an account of the facts justifying the interim measure being sought;

the aim pursued by the application, i.e. what interim measure the applicant is seeking;

the date on which it was drawn up, and the signature of the applicant or the applicant's representative;

a description of the fact that provisional arrangements are need to govern the parties' relations, or that there is concern that the enforcement of the judicial ruling will be compromised.

Any instruments to which the applicant refers need to be attached to the application.

By the date on which the application is submitted, the applicant is required to remit a deposit of CZK 10 000 on his own initiative, i.e. without prompting by the court; in cases that concern business-to-business relations deriving from business activities, the deposit is CZK 50 000. Applications are exempt from the requirement to remit a deposit if they concern social welfare issues (e.g. maintenance, employment, or compensation for personal injury). The application is rejected if the deposit requirement is not met.

The deposit serves as security for a claim to compensation for damage or other loss which may be incurred by the parties or by third parties (i.e. persons not party to the interim measure proceedings) if an interim measure is ordered.

Section 12(3) of Act No 292/2013 provides for exemption from the need to remit the deposit prescribed by this law.

Securing of evidence:

Prior to the commencement of proceedings on the substance of the case, evidence may be secured (if so proposed) if there is concern that evidence-taking in the future will be impossible or severely hampered. Evidence is not secured if it clearly carries no weight in the proceedings. The court refuses to accept an application for evidence to be secured if it suspects that the applicant, rather than seeking to protect evidence, has actually submitted the application in a bid to achieve a different goal (e.g. to obtain otherwise non-accessible information on another person's activities).

Besides the general particulars, an application to secure evidence must include a description of the facts that are to be the subject of the evidence-taking. The evidence that is to be secured also needs to be specifically identified.

3 Object and nature of such measures?

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

Interim measures:

Article 76 of the Code of Civil Procedure provides that an interim measure may order a party, for example, to pay maintenance, to lodge a sum of money with the court, to place an item in the custody of the court, not to dispose of certain items or rights, to do something, to refrain from doing something, or to allow something to be done. The measure may relate to any item owned by the party in question.

Under an interim measure, a court may impose an obligation on someone other than a party to the proceedings where this can justifiably be required (e.g. if someone is buying a property in the full understanding that he is purchasing it from an owner who has not duly met payment obligations towards creditors).

Special interim measures under Act No 292/2013:

The special interim measure governing the situation of a child under Section 452 *et seq.* is applied if a minor has not been duly cared for, regardless of whether or not anyone has the right to care for the child, or if the child's life, normal development or other important interests are seriously endangered or have been undermined. The court's interim measure governs the child's situation for the time strictly necessary by placing the child in a suitable environment, as indicated in the court order.

A special interim measure under Section 400 *et seq.* can be imposed on a defendant, requiring him or her to leave a shared household and the immediate surroundings thereof, to stay away from and not to enter the shared household, to refrain from coming into contact with the applicant, or to refrain from the stalking and harassment of the applicant in any way whatsoever. The application must contain a description of facts showing that the co-existence of the applicant and the defendant in the house or flat in which they share a household is intolerable for the applicant because of physical or mental violence perpetrated against the applicant or another person living in the shared household, or a description of facts demonstrating the stalking or harassment of the applicant.

Securing of evidence:

The application should also explain why the applicant is applying for evidence to be secured. All means by which the status of a case is ascertainable, especially the questioning of witnesses, an expert opinion, the reports and observations of authorities and legal persons, etc., can be used as evidence.

One special means of securing of evidence entails the securing of an object of evidence in a case relating to intellectual property rights (Article 78b of the Code of Civil Procedure (Act No 99/1963)). A person who has witnessed a violation of an intellectual property right has *locus standi*. The competent court is the regional court in whose jurisdiction the object has been secured. The following may be secured: the goods in question; materials and tools; documents relating to the goods in question.

3.2 What are the effects of such measures?

Interim measures:

An interim measure is a provisional ruling intended to protect the applicant. It is issued for the protection of a right of the applicant that has been infringed or is at risk. When an interim measure is issued, this does not confer on the applicant rights that have yet to be settled. Nor is it a means of addressing a

preliminary question. Likewise, the simple fact that an interim measure has been issued must not affect the court's decision-making on the substance of the case. Even after an interim measure has been issued, obligors may continue to dispose of their property, but must act in accordance with the measure issued.
Anyone who grossly impedes the course of proceedings, in particular by failing – without good reason – to present himself before the court or by disobeying a court order, may be ordered by the court to pay a fine of up to CZK 50 000. A court may enforce a ruling on an interim measure if the party liable fails to heed that ruling voluntarily. The penalty for obstructing the enforcement of an official decision or an expulsion (from a shared household) is also enshrined in Section 337(2) of Act No 40/2009, the Criminal Code, which establishes the misdemeanour of obstructing the enforcement of an official decision or expulsion.

3.3 What is the validity of such measures?

Interim measures:
Fixed-term interim measure
In an order issuing an interim measure, a court may determine that the measure is to be limited in time, even if this is not sought by the plaintiff (applicant).
Imposition of an obligation to bring an action or to file another application for the initiation of proceedings
A court ordering an interim measure also requires the applicant (plaintiff) to submit an application to the court for the initiation of proceedings (an action) on the substance within a time limit set at the same time as the measure is issued.
An interim measure remains in force until it lapses or is lifted by the court.
An interim measure lapses if the applicant does not apply for the initiation of proceedings within the time limit set by the court; if the application on the substance of the case is not upheld; if the application on the substance of the case is upheld and more than 15 days have passed since the ruling on the case became enforceable; or if the term fixed for the interim measure has expired.
A court lifts an interim measure if the reasons for which it was ordered cease to exist.
Section 400 *et seq.* of Act No 292/2013 provides that an interim measure is to last for a month from the date on which it becomes enforceable (Section 408), and that this term may be extended, depending on the start of proceedings on the substance of the case.
Section 452 *et seq.* of Act No 292/2013 provides that an interim measure is to last for a month from the date on which it becomes enforceable (Section 459), and that this term may be extended.
Securing of evidence:
Evidence is secured within the time specified by the court or as soon as possible. The parties may be present when evidence is secured, but it is not their right to be there if any delay would constitute a risk. After the initiation of proceedings on the substance of the case, the parties have a right to respond to the evidence offered and to all evidence taken. In addition, the parties may be questioned.

4 Is there a possibility of appeal against the measure?

Interim measures:
Decisions on interim measures take the form of court orders. An order imposing an interim measure becomes enforceable upon publication. If it is not published, it becomes enforceable once it has been served on the liable party thereunder. A written copy of an interim measure is served on the parties to the proceedings and on a third party (where an obligation is incumbent on that third party) and, if the measure concerns the obligation not to dispose of immovable property, a copy is also delivered to the competent land registry. An order issuing an interim measure becomes enforceable upon publication or service (Article 76d of the Code of Civil Procedure) and constitutes grounds for the enforcement of a ruling.
Appeals against orders issuing interim measures are admissible. Appeals are filed with the court that issued the contested ruling, but are actually heard by second-instance courts, i.e. by regional courts or high courts. Appeals are filed within 15 days of receipt of a written copy of the ruling.
If an admissible appeal is filed in a timely manner by an entitled party, the ruling does not become final until the appeal court has reached a final decision on the appeal. However, an order issuing an interim measure becomes enforceable (i.e. procedure according to that order is followed) upon expiry of the time limit for performance, which commences on the date of service; alternatively, it becomes enforceable upon service if it imposes no obligation of performance.
A court may decide that an order issuing an interim measure is enforceable only after the court's ruling becomes final, unless this is precluded by the nature of the interim measure or would defeat its purpose.
Sections 409 and 463 of Act No 292/20013 contain provisions on appeals against special interim measures under that law.

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Securing assets during a claim in EU countries - Germany

1 What are the different types of measures?

Measures that aim to secure compulsory enforcement by means of the provisional seizure of a debtor's assets or by means of a provisional ruling on the situation do not in themselves usually satisfy the creditor's claim.
The possible measures are as follows:

1.1 Pre-judgment seizure and personal arrest (*dinglicher und persönlicher Arrest*) (Sections 916 *et seq.* of the Code of Civil Procedure (*Zivilprozessordnung* – ZPO))

Seizure serves to secure compulsory enforcement against the debtor's movable or immovable property for a monetary claim. A distinction must be made between pre-judgment seizure and personal arrest. Pre-judgment seizure takes place if there is reason to fear that, in the absence of this measure, the enforcement of the judgment will be frustrated or substantially obstructed. Personal arrest is ordered if compulsory enforcement is considered to be at risk and taking such action is necessary to secure it. Seizure is ordered, on application, by the competent court. The seizure can be enforced, for example, by means of attachment (*Pfändung*) (movable property), seizure lien (*Arresthypothek*) (immovable property) or arrest (*Haft*) (personal arrest).

1.2 Interim injunction (*einstweilige Verfügung*) (Sections 935 *et seq.* of the Code of Civil Procedure)

The interim injunction serves provisionally to secure a non-monetary claim. It is ordered if there is reason to fear that a change to the current situation will frustrate or substantially obstruct the realisation of the right in question. The interim injunction in the form of securing the future enforcement of non-monetary claims (*Sicherungsverfügung*) (Section 935 of the Code of Civil Procedure) or of temporary court regulation of a legal relationship (*Regelungsverfügung*) (Section 940 of the Code of Civil Procedure) is ordered, on application, by the competent court. The provisions of compulsory enforcement in turn apply in principle for the subsequent enforcement (Section 936 in conjunction with Section 928 of the Code of Civil Procedure).

1.3 Account preservation order under EU law

Sections 946 *et seq*. of the Code of Civil Procedure contain provisions in connection with Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters (OJ L 189 of 27 June 2014, p. 59). The account preservation order is a special form of interim relief.

1.4 Notice of imminent attachment of a debt (*Vorpfändung*) (§ 845 of the Code of Civil Procedure)

Notice of imminent attachment of a debt is used to secure a claim of the debtor against a third-party debtor for the benefit of the creditor. It involves ordering the third-party debtor not to make any payments to the debtor and ordering the debtor to refrain from any disposal over the claim, in particular its collection. Notice to the third-party debtor operates as an attachment (Section 930 of the Code of Civil Procedure) only in so far as the debt is actually attached within one month (Section 845(2) of the Code).

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

2.1 The procedure

Pre-judgment seizure, personal arrest and interim injunctions (points 1.1 and 1.2) are issued by order of the competent court on application by the party seeking justice. The application must contain information on the claim to be secured and the urgency of the order or the risk of frustration of enforcement. Both must be demonstrated to the satisfaction of the court, for example by means of an affidavit.

The application can be made in writing or recorded orally with the registry for the files of the court. The competent court is the court having jurisdiction for an action on the substance of the case or the local court (*Amtsgericht*), in the district of which the object to be secured, the object of the litigation or the person to be detained is located. In the case of an oral hearing, the court ruling is in the form of a judgment and otherwise in the form of an order.

Representation by a lawyer in interim proceedings is necessary only in the case of an oral hearing before the regional court (*Landgericht*).

The account preservation order (point 1.3) is governed by Regulation (EU) No 655/2014. Sections 946 *et seq*. of the Code of Civil Procedure contain the necessary provisions on lodging the application and the procedure, enforcement of the order and any legal remedies.

The notice of imminent attachment of a debt (point 1.4) is not issued by the court. On the strength of an enforceable legal document, the creditor can appoint a bailiff to serve notice on the third-party debtor and the main debtor, indicating that the attachment of the debt or another pecuniary right is imminent (Section 845(1) of the Code of Civil Procedure). Notice to the third-party debtor operates as an attachment under Section 930 of the Code of Civil Procedure only in so far as the debt is actually attached within one month (Section 845(2) of the Code).

The Court Fees Act (*Gerichtskostengesetz*, GKG) provides for 150% of the fee to be payable in proceedings applying for seizure or arrest or an interim injunction. The amount of the fee is determined by the value in dispute. The court estimates the value in dispute on a casebycase basis, according to the applicant’s interest in the realisation of the debtor’s assets. A fee table for sums in dispute up to €500 000 is shown below:

Court Fees Act (GKG) Annex 2 (relating to Section 34(1), third sentence)

Sum in dispute up to €…	Fee €…	Sum in dispute up to €…	Fee €…
500	38.00	**50 000**	601.00
1 000	58.00	**65 000**	733.00
1 500	78.00	**80 000**	865.00
2 000	98.00	**95 000**	997.00
3 000	119.00	**110 000**	1 129.00
4 000	140.00	**125 000**	1 261.00
5 000	161.00	**140 000**	1 393.00
6 000	182.00	**155 000**	1 525.00
7 000	203.00	**170 000**	1 657.00
8 000	224.00	**185 000**	1 789.00
9 000	245.00	**200 000**	1 921.00
10 000	266.00	**230 000**	2 119.00
13 000	295.00	**260 000**	2 317.00
16 000	324.00	**290 000**	2 515.00
19 000	353.00	**320 000**	2 713.00
22 000	382.00	**350 000**	2 911.00
25 000	411.00	**380 000**	3 109.00
30 000	449.00	**410 000**	3 307.00
35 000	487.00	**440 000**	3 505.00
40 000	525.00	**470 000**	3 703.00
45 000	563.00	**500 000**	3 901.00

If the application is the subject of oral proceedings, and if the case is not ended by withdrawal of the application for protection before the conclusion of the oral proceedings, or by an acknowledgement of debt, a waiver or a settlement (in these cases the fee is reduced by 50%), a higher fee is payable, equal to 300%. The costs are borne in the first place by the party against whom the court awards costs in its ruling – additionally, the applicant, as the instigator of the case, is also liable for costs as overall debtor.

The bailiff charges a fee of €3.30 for each service of an imminent attachment of a debt on a debtor or a third-party debtor named in the notice. In addition, there are postal charges and expenses chargeable for any certifications that may be necessary. The fee for service in person by the bailiff is €11, in which case the bailiff’s travel expenses are also payable. Depending on the distance travelled to the addressee’s premises, these will be between €3.25 and €16.25. The bailiff’s fee for preparing the enforcement notice himself or herself on behalf of the creditor (Section 845(1), second sentence, of the Code) is €17.60, for performing an official act.

Execution of the court order is reserved primarily to the bailiff and is conducted through the instruments of State (enforcement). It takes place in accordance with the regulations currently in force for the enforcement of court judgments.

Digression: The enforcement of a provisionally enforceable judgment is not essentially different from the enforcement of a final decision. However, the law lays down different methods of enforcement depending on the nature of the claim.

If payment of a fixed sum of money is due, the creditor frequently uses a bailiff to enforce the court's ruling. A fee of €28.60 is chargeable for enforcement by the bailiff against movable property. If the bailiff's working time is greater than three hours, a further charge of €22.00 is payable for each additional hour or part of an hour. In addition, any necessary expenses incurred by the bailiff will also be charged. A payment order can also give the creditor the right to apply for judicial attachment of the debtor's receivables (e.g. the entitlement to payment of wages) (Section 829 of the Code of Civil Procedure). A fee of €22.00 is levied for proceedings concerning the application itself, and incidental expenses (especially the costs of serving a court order) are charged separately.
If execution is to be levied against immovable property of the debtor, a mortgage may be registered to secure the debt, or the property may be subjected to forced sale by auction or to forced administration. The Act on costs for non-contentious jurisdiction for courts and notaries (Court and Notary Costs Act, GNotKG) (*Gesetz über Kosten der freiwilligen Gerichtsbarkeit für Gerichte und Notare* (*Gerichts- und Notarkostengesetz*, GNotKG)) provides that a full fee commensurate with the value of the debt to be secured is payable for registering a mortgage to secure the debt in the Land Register. A fee table for sums up to €3 million is shown below:
Act on costs for non-contentious jurisdiction for courts and notaries (Court and Notary Costs Act, GNotKG)
Annex 2 (relating to Section 34(3))

Trans-action value up to €…	Fee **Table A** €…	Fee **Table B** €…	Transaction value up to €…	Fee **Table A** €…	Fee **Table B** €…	Transaction value up to €…	Fee **Table A** €…	Fee **Table B** €…
500	38.00	15.00	**200 000**	1 921.00	435.00	**1 550 000**	8 059.00	2 615.00
1 000	58.00	19.00	**230 000**	2 119.00	485.00	**1 600 000**	8 257.00	2 695.00
1 500	78.00	23.00	**260 000**	2 317.00	535.00	**1 650 000**	8 455.00	2 775.00
2 000	98.00	27.00	**290 000**	2 515.00	585.00	**1 700 000**	8 653.00	2 855.00
3 000	119.00	33.00	**320 000**	2 713.00	635.00	**1 750 000**	8 851.00	2 935.00
4 000	140.00	39.00	**350 000**	2 911.00	685.00	**1 800 000**	9 049.00	3 015.00
5 000	161.00	45.00	**380 000**	3 109.00	735.00	**1 850 000**	9 247.00	3 095.00
6 000	182.00	51.00	**410 000**	3 307.00	785.00	**1 900 000**	9 445.00	3 175.00
7 000	203.00	57.00	**440 000**	3 505.00	835.00	**1 950 000**	9 643.00	3 255.00
8 000	224.00	63.00	**470 000**	3 703.00	885.00	**2 000 000**	9 841.00	3 335.00
9 000	245.00	69.00	**500 000**	3 901.00	935.00	**2 050 000**	10 039.00	3 415.00
10 000	266.00	75.00	**550 000**	4 099.00	1 015.00	**2 100 000**	10 237.00	3 495.00
13 000	295.00	83.00	**600 000**	4 297.00	1 095.00	**2 150 000**	10 435.00	3 575.00
16 000	324.00	91.00	**650 000**	4 495.00	1 175.00	**2 200 000**	10 633.00	3 655.00
19 000	353.00	99.00	**700 000**	4 693.00	1 255.00	**2 250 000**	10 831.00	3 735.00
22 000	382.00	107.00	**750 000**	4 891.00	1 335.00	**2 300 000**	11 029.00	3 815.00
25 000	411.00	115.00	**800 000**	5 089.00	1 415.00	**2 350 000**	11 227.00	3 895.00
30 000	449.00	125.00	**850 000**	5 287.00	1 495.00	**2 400 000**	11 425.00	3 975.00
35 000	487.00	135.00	**900 000**	5 485.00	1 575.00	**2 450 000**	11 623.00	4 055.00
40 000	525.00	145.00	**950 000**	5 683.00	1 655.00	**2 500 000**	11 821.00	4 135.00
45 000	563.00	155.00	**1 000 000**	5 881.00	1 735.00	**2 550 000**	12 019.00	4 215.00
50 000	601.00	165.00	**1 050 000**	6 079.00	1 815.00	**2 600 000**	12 217.00	4 295.00
65 000	733.00	192.00	**1 100 000**	6 277.00	1 895.00	**2 650 000**	12 415.00	4 375.00
80 000	865.00	219.00	**1 150 000**	6 475.00	1 975.00	**2 700 000**	12 613.00	4 455.00
95 000	997.00	246.00	**1 200 000**	6 673.00	2 055.00	**2 750 000**	12 811.00	4 535.00
110 000	1 129.00	273.00	**1 250 000**	6 871.00	2 135.00	**2 800 000**	13 009.00	4 615.00
125 000	1 261.00	300.00	**1 300 000**	7 069.00	2 215.00	**2 850 000**	13 207.00	4 695.00
140 000	1 393.00	327.00	**1 350 000**	7 267.00	2 295.00	**2 900 000**	13 405.00	4 775.00
155 000	1 525.00	354.00	**1 400 000**	7 465.00	2 375.00	**2 950 000**	13 603.00	4 855.00
170 000	1 657.00	381.00	**1 450 000**	7 663.00	2 455.00	**3 000 000**	13 801.00	4 935.00
185 000	1 789.00	408.00	**1 500 000**	7 861.00	2 535.00			

A fee of €110.00 is chargeable for an application for an order imposing forced sale by auction or forced administration of real estate.
Where the judgment holds that the debtor must deliver up movable property, the bailiff will enforce the court's decision upon application by the creditor. A charge of €28.60 is payable for the official act involved. Where the judgment holds that the debtor must deliver up immovable property or a dwelling, work in connection with vacating the property attracts a charge of €150.00. In addition, the bailiff's incidental expenses are chargeable, in particular those for the work of third parties (e.g. removal costs, locksmith's charges, etc.). Again, if the bailiff's working time is more than three hours, a further charge of €22.00 is payable for each additional hour or part of an hour.

2.2 The main conditions

The issue of an order for seizure of property or arrest of a person presupposes that there is a debt and that there are grounds for seizure or arrest. In the case of seizure of all the debtor's assets that are capable of being seized, grounds for the seizure exist if it is feared that the debtor will, by dishonest actions, either frustrate or substantially obstruct the future execution of a court decision by, for example, removing or concealing assets. Personal arrest, i.e. arrest of the debtor himself or herself, is also intended to prevent the debtor from removing any of the available assets that might be seized under the enforcement. However, personal arrest may be ordered only if the required level of security cannot be achieved by means of seizure of property.
An interim injunction (in any form) is meant to prevent the current situation from changing and thereby frustrating or substantially obstructing the realisation of a party's rights or a legal relationship. The object of an injunction may be claims requiring the (provisional) delivery of objects or (provisional) acquiescing to or taking a particular action (Sections 935, 938 and 940 of the Code of Civil Procedure). The rules applying to interim injunctions are essentially the same as those applying to seizure and arrest (Section 936). In exceptional circumstances, the court may also order that a provisional payment be made. The claim

and the grounds for a writ of seizure to be issued are to be demonstrated to the satisfaction of the court, for example by means of an affidavit or the submission of documents (Section 920(2) of the Code of Civil Procedure). In this respect, it is a matter of the court being able to assess the claim and the urgency as 'extremely likely' from the presentation. The same applies for the order of an injunction (Section 936 ZPO).
A prior hearing of the parties is possible, but not required in proceedings for seizure or arrest (Section 922 of the Code of Civil Procedure). There must be a subsequent hearing if the debtor, on whom the seizure or arrest must be served no later than one week after the enforcement, opposes the order of a seizure or arrest (Section 924). A hearing is generally required in interim injunction proceedings; it may be dispensed with only in urgent cases or if the application is rejected (Section 937(2)). There are no time limits for a hearing of the parties.

3 Object and nature of such measures?

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

The precautionary measures can extend to all assets that are subject to enforcement.

3.2 What are the effects of such measures?

Seizure has the effect of detaining the assets; both the main debtor and third party debtors lose their rights of disposal over the seized assets.
The seizure is safeguarded by Section 136 of the Criminal Code (*Strafgesetzbuch* StGB), which concerns the destruction of objects under seizure. In addition, breaches can also give rise to claims for damages under civil law.
The following applies to interim injunctions: The bailiff carries out the order to remove property in accordance with Section 883 of the Code of Civil Procedure. The court can enforce the requirement or prohibition of certain acts under Section 887 (authorisation by the court for the creditor to undertake reasonable action) or under Sections 888 and 890 (imposition of penalty payments/detention or fines/custody to prevent unreasonable actions or omissions and acquiescence).

3.3 What is the validity of such measures?

A seizure or arrest order or an interim injunction must be enforced within one month of the date on which the ruling was pronounced or served. If a foreign court order imposing measures to secure assets can be enforced in Germany without a prior declaration of enforceability, the time limit is two months (Section 929(2) of the Code of Civil Procedure).
The measures are valid for as long as grounds justifying the security or precautionary measures persist. It also ends if a decision is given in the main action.

4 Is there a possibility of appeal against the measure?

As already described, a court can order seizure or arrest and an interim injunction by means of a final judgment (*Urteil*) (following a hearing) or by an order (*Beschluss*) (Sections 922 and 936 of the Code of Civil Procedure).
The parties can appeal against a judgment if the value of the subject matter of the appeal is greater than €600.
The following applies if an order is issued:
The debtor can lodge an appeal against a seizure or arrest order or an interim injunction order (Section 924 of the Code). An oral hearing is then called with a view to arriving at a final judgment on the legitimacy of the measure. An appeal may be lodged in turn against the judgment under the circumstances described.
If the application is dismissed by order, the creditor can lodge an immediate objection (*sofortige Beschwerde*) within two weeks of service. The same applies if an order is made for seizure or arrest or if an interim injunction is issued, but in that case the creditor must give security.
In addition, the debtor can apply for the seizure or arrest or interim injunction to be set aside if the creditor has failed to assert their claim within the prescribed time limit (Section 926 of the Code of Civil Procedure) or because circumstances have changed (Section 927).
For Regulation (EU) No 655/2014, Section 953 *et seq.* of the Code of Civil Procedure contain remedies against judgments in connection with an account preservation order.
Finally, Section 945 of the Code of Civil Procedure provides for an obligation for the party that obtained an interim order to compensate for damages, if the order of a seizure or an interim injunction proves to have been unfounded from the outset or if the measure directed is repealed pursuant to Section 926(2) or Section 942(3) of the Code.

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Securing assets during a claim in EU countries - Estonia

1 What are the different types of measures?

The measures for securing an action are:
establishing a judicial mortgage on an immovable, ship or aircraft belonging to the defendant;
seizing the defendant's property which is in the possession of the defendant or another person and, on the basis thereof, making a notation concerning prohibition in the land register by which the prohibition on disposal is made visible, or making an entry in another property register by which the prohibition on disposal is made visible;
prohibiting the defendant from performing certain transactions or acts, including by imposing a restraining order;
prohibiting other persons from transferring property to the defendant or performing other obligations with regard to the defendant, which may also include an obligation to transfer property to a bailiff or to pay money into a bank account prescribed for that purpose;
obliging the defendant to deposit an object with the bailiff;
suspending the enforcement proceedings, permitting the continuation of the enforcement proceedings only against a security, or revoking the enforcement action if the enforcement instrument has been contested by an action being filed, or if a third party has filed an action for the release of property from seizure or for compulsory enforcement to be declared inadmissible for another reason;
prohibiting the defendant from leaving their place of residence, taking the defendant into custody and imposing detention on the defendant;
obliging the defendant and, above all, an insurer to make payments to the extent of the minimum amount likely to become payable in the course of proceedings pertaining to criminal damage or an insurance contract;
obliging the defendant to terminate the application of an unfair standard term or obliging the person recommending application of the term to terminate or withdraw the recommendation of the term in an action for termination of the application of an unfair standard term or an action for termination and withdrawal of the recommendation of the term by the person recommending application of the term;
any other measure considered necessary by the court.
In order to secure an action based on the infringement of copyright or related rights or industrial property rights, the court may, amongst other measures, seize goods in cases where there are suspicions that intellectual property rights may have been infringed or impose an obligation to hand over such goods to

prevent them from being put on the market or distributed. If the seizure of the defendant's bank account or other assets is sought to secure an action based on infringement of copyright or related rights or industrial property rights for commercial purposes, the court may impose an obligation to hand over banking, financial or commercial documents or to allow them to be inspected.
In order to secure an action based on the unlawful acquisition, use or disclosure of business secrets, the court may, amongst other measures, seize goods where there are suspicions that the design, characteristics, functioning, production or marketing of the goods benefits significantly from business secrets acquired, used or disclosed unlawfully, or impose an obligation to hand over such goods to prevent them from being put on the market or distributed.
In a matrimonial matter, maintenance matter or other family matter, the court may also regulate the following for the duration of the proceedings:
parental rights in respect of a common child;
communication of a parent with a child;
surrender of a child to the other parent;
compliance with maintenance obligations arising in law and, amongst other measures, obliging the defendant to provide financial support or security during the proceedings;
use of any items from the shared household and use of the common housing of the spouses;
surrender or use of any items intended for personal use by a spouse or child;
other matters relating to the marriage or family which need to be settled rapidly due to the circumstances.

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

2.1 The procedure

Petitions for securing an action are ruled upon by the court no later than on the working day following the date of submission of the petition. The court may rule on the petition for securing an action at a later date should it wish to hear the defendant beforehand.
The defendant and other participants in the proceedings are not notified of the hearing of a petition for securing an action. If it is clearly reasonable and, above all, if provisional regulation of the disputed legal relationship is requested by the petition, the court may first hear the defendant.
The court may also secure an action based on a petition before the action is filed. The petition should set out the reasons for the action not being filed immediately. The petition is to be filed with the appropriate court pursuant to the provisions concerning jurisdiction. If the court secures an action before the action is filed, the court will set a term during which the petitioner must file the action. The term should not be longer than one month. If the action is not filed in time, the court will cancel the securing of the action.
If necessary, a court may impose a measure for securing an action if the property in question lies within its territorial jurisdiction, even if the action has been filed or should have been filed with another Estonian court, a foreign court or an arbitration board. With respect to property that has been entered in a public register, a measure for securing an action may also be applied by the court whose jurisdiction covers the location of the register and, in the case of a ship, by the court whose jurisdiction covers the location of the home port of the ship.
The court may make the securing of an action or continuation of the securing of an action dependent on the provision of security in order to compensate for any possible damage caused to the opposing party and to a third party.
The court secures an action involving a monetary claim only in the case where security is provided in the amount of at least 5 percent of the amount of the claim, but not less than EUR 32 and not more than EUR 32 000. If detention of a defendant or prohibition of a defendant from leaving their place of residence is sought in order to secure an action, the amount of the security provided will be no less than EUR 3 200 and no more than EUR 32 000.
If the prerequisites for requesting security have been fulfilled, the court may still refuse to request the security in full or in part or order its payment in instalments if the plaintiff cannot be reasonably expected to provide the security for economic or other reasons and failure to secure the action may result in grave consequences for the plaintiff, or if requesting the security would be unfair on the plaintiff for any other reason.

2.2 The main conditions

The court may secure an action at the request of the plaintiff if there is reason to believe that failure to do so may render enforcement of a court judgment difficult or impossible. If it is clear that the enforcement of a court judgment is to take place outside the European Union and that enforcement is not guaranteed on the basis of an international agreement, it is presumed that failure to secure the action may render enforcement of the court judgment difficult or impossible.
In order to secure an action whose object is not a monetary claim against the defendant, the court may provisionally regulate a disputed legal relationship and, above all, the manner of use of an item, if this is necessary to prevent significant damage or arbitrary action or for another reason. This may be done regardless of whether there is reason to believe that failure to secure the action may render enforcement of the court judgment difficult or impossible. In a matrimonial matter, maintenance matter or other family matter, the court may also apply measures on its own initiative.
An action which includes a future or contingent claim, or an establishment action may also be secured. A contingent claim is not secured if the condition is presumed not to occur during the proceedings.
A court may also apply a measure for securing an action in connection with court proceedings or arbitration proceedings conducted abroad.
A measure for securing an action may also be applied where a plaintiff seeks to secure several claims against the same defendant.
A measure for securing an action is to be chosen so that the measure, when applied, would burden the defendant only in so far as this can be considered reasonable taking account of the legitimate interests of the plaintiff and the circumstances. The value of the action should be taken into account when securing an action involving a monetary claim. A court may apply several measures concurrently to secure an action.
Detention or prohibition of a person from leaving their place of residence in order to secure an action may be applied only if this is necessary to ensure compliance with a court judgement and where other measures for securing an action would clearly be insufficient to secure the claim, above all if there is reason to believe that the person is likely to leave for a foreign state or take his or her assets to a foreign state. Detention of a person is arranged by the police on the basis of a court ruling.
Detention or prohibition of a person from leaving their place of residence may be used for securing a proprietary claim only if the value of the action exceeds EUR 32 000.
If the court imposes detention or prohibits a person from leaving their place of residence by a ruling on securing an action involving a monetary claim or a ruling on securing an action, the court determines the sum of money that is to be paid into the bank account intended for such purposes, or for which a bank guarantee needs to be supplied. Once the money is paid or the guarantee supplied, enforcement of the ruling on securing the action is terminated. In such cases, and on the basis of the defendant's application, the court will cancel the measure for securing the action and replace it with a sum of money or a bank guarantee.
Provisional legal protection can be applied in proceedings on petition only in cases where this is provided for by law. Provided that provisional legal protection can be applied pursuant to the law in a matter on petition, this can be done if it is necessary for the preservation or temporary regulation of an

existing situation or status unless otherwise provided for by law. Unless otherwise provided for by law, the provisions concerning securing an action apply to provisional legal protection. If proceedings can be initiated only on the basis of a petition, the court may apply provisional legal protection and annul or amend the ruling on provisional legal protection only on the basis of a petition unless otherwise provided for by law.

3 Object and nature of such measures?

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

Depending on the nature and aim of a measure, measures can be applied to both movable property and immovable property, including money, as well as to ships and aircraft.

3.2 What are the effects of such measures?

Seizure of property

In the case of seizure of property, the defendant may not dispose of the property. In addition to the seizure of other movable property, except a ship entered in the ship register or an aircraft entered in the civil aircraft register, the right of security upon seizure is created.

When immovable property or registered movable property or another object is seized, a notation concerning the prohibition on disposal of the property is to be entered in the land register or another register to the benefit of the plaintiff on the basis of the plaintiff's petition and the ruling on securing the action. At the request of the plaintiff, the court forwards the ruling for the purpose of entering the notation concerning the prohibition in the register independently.

Based on an application by the plaintiff or defendant, the court may order the sale of a seized object and the proceeds raised from the sale to be deposited in the bank account intended for such purposes if the value of the object may decrease significantly or storage of the object would involve unreasonable costs.

Seizure of property is arranged by a bailiff. The bailiff takes the seized object under his or her supervision on the basis of an application from the person who petitioned for the securing of the action. In such cases, the bailiff prohibits the use of the object in part or in full and may give orders in respect of the object, including to organise the storage of the object.

Judicial mortgage

Unless otherwise provided for by law, a judicial mortgage established on an immovable, a ship entered in the ship register or an aircraft entered in the civil aircraft register gives the person who requested the securing of the action the same rights with regard to the other rights encumbering the object as those given to a mortgagee by a mortgage or maritime mortgage, or those given to a pledgee by a registered security.

The sum of the mortgage is the amount of the secured claim which is entered in the land register, ship register or civil aircraft register. If the principal claim remains under EUR 640, a judicial mortgage will not be established, provided that it is possible to apply other measures for securing the action which are less detrimental to the defendant.

A judicial mortgage is entered in the land register, ship register or civil aircraft register to the benefit of the plaintiff on the basis of the plaintiff's petition and the ruling on the securing of the action. At the request of the plaintiff, the court forwards the ruling for the purpose of entering the judicial mortgage in the register independently. The mortgage is created when it is entered in the register.

On establishment of a judicial mortgage on a ship or aircraft, the bailiff takes the ship or aircraft under his or her supervision on the basis of an application from the person who requested the securing of the action. In such cases, the bailiff prohibits the use of the ship in part or in full and may give other orders in respect of the ship.

Prohibition on leaving the place of residence

A prohibition on leaving the place of residence obliges the person in question not to leave his or her place of residence for longer than twenty-four hours without the permission of the court. In order to apply a prohibition on leaving the place of residence, the court summons the defendant if the defendant is a natural person, or a member of the managing body of the defendant if the defendant is a legal entity, and obtains his or her signature to that effect.

3.3 What is the validity of such measures?

If the court imposes detention or prohibits a person from leaving their place of residence by means of a ruling on securing an action involving a monetary claim or a ruling on securing an action, the court determines the sum of money that is to be paid into the bank account intended for such purposes, or for which a bank guarantee needs to be supplied. Once the money is paid or the guarantee supplied, the enforcement of the ruling on securing the action is terminated.

At the request of a party, a court may, by means of a ruling, substitute one measure for securing an action with another.

If a judicial mortgage is established on several immovables, ships or aircraft, the court indicates in the ruling on securing the action a sum of money for each encumbered object that is to be paid into the bank account intended for such purposes or for which a bank guarantee needs to be supplied. Once the money is paid or the guarantee supplied, the securing of the action is cancelled. If the securing of an action is cancelled or a measure for securing the action is substituted, the owner of the immovable property, ship or aircraft becomes the owner of the mortgage. At the request of the owner, the judicial mortgage is deleted from the land register, ship register or civil aircraft register on the basis of a ruling cancelling the securing of the action.

If the circumstances change and, above all, the cause for securing an action ceases to exist or security is offered, or due to another reason provided for by law, the court may cancel the securing of an action at the request of a party. Non-monetary securing of an action may be cancelled or amended by substituting it with a monetary payment only with the consent of the plaintiff or for a good reason.

The court cancels the securing of an action by means of a court judgment if the action is not satisfied, or by means of a ruling if the action is not admitted or the proceedings in the matter are terminated. The court also cancels the securing of an action if the decision to secure the action was taken by another court, unless otherwise provided for by the law.

In a matrimonial matter, maintenance matter or other family matter, the court may amend or annul a ruling on securing an action on its own initiative.

4 Is there a possibility of appeal against the measure?

A party may file an appeal against a ruling by which a county court or circuit court secures an action, substitutes one measure for securing an action with another or cancels the securing of an action. A ruling made by a circuit court concerning an appeal against a ruling of a county court is subject to appeal to the Supreme Court (*Riigikohus*) only if the value of the secured action exceeds EUR 100 000 or if a person has been detained or prohibited from leaving their place of residence as a securing measure.

Rulings on provisional legal protection may be appealed. Circuit court rulings on such appeals may not be appealed to the Supreme Court, unless otherwise provided by law.

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Securing assets during a claim in EU countries - Ireland

1 What are the different types of measures?

The different types of interim measures available in the Irish courts are injunctions. An injunction is a court order directing a party to an action to do or to refrain from doing a particular thing. Breach of an injunction is a contempt of court and a person who breaches such an order may be committed to prison. An injunction is either :

(i) permanent,

(ii) for a specified period of time, or

(iii) granted on a temporary basis pending the trial of the action.

If the plaintiff is of the view that the defendant may remove or destroy essential items or documents, they he or she may apply *ex parte* to the court for an 'Anton Piller' order, which is a form of injunction that requires a defendant to permit a plaintiff to enter his or her premises to inspect documents or other items and to remove anything that belongs to the plaintiff. If a plaintiff is concerned that a defendant may dispose of any or all of his or her assets and may not be in a position to satisfy the plaintiff's claim if ultimately successful at the trial, then the plaintiff can apply to court for a 'Mareva injunction' or a freezing order, which prevents the defendant from dealing with his or her assets during the term of the order. Generally, a Mareva injunction prevents a defendant who is not within the jurisdiction but who has assets within the jurisdiction from removing those assets pending trial.

Where the plaintiff's claim is for a sum of money, he or she can ask the court to make an order directing the making of an interim payment by the defendant of a portion or all of the sum claimed into court. Conversely, a defendant, who is concerned that if the plaintiff loses his or her claim he or she may not be able to pay the defendant's legal costs of successfully defending the proceedings, may ask the court to order the plaintiff to provide security for the costs of the proceedings by paying a sum of money into court. If a 'security for costs' order is made in favour of a defendant, then the plaintiff will not be able to proceed with their claim unless they pay the sum of money into court as directed by the court order.

The High Court also has jurisdiction to make interim orders in support of proceedings in another jurisdiction if it is expedient to do so. It may grant a 'worldwide freezing injunction' which applies to assets in other jurisdictions if there is a fear or an apprehension that the defendant may seek to dissipate his or her assets to escape a judgment against him or her.

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

2.1 The procedure

Most injunction applications may be made either in the Circuit Court or in the High Court. However, certain forms of interim relief may only be obtained in the High Court, such as freezing orders, Anton Piller orders and orders in respect of foreign proceedings.

The party seeking the interim order must file an application supported by an affidavit. The applicant must make full disclosure of all relevant facts, particularly if the application is made without notice to the other side. A draft order should also be exhibited in the affidavit, setting out exactly what is required of the court. More information on the necessary court forms is available on the Courts Service website.

If an applicant for an injunction succeeds in obtaining the order sought, she or he will usually have to give what is called 'an undertaking as to damages' in the event that he or she is ultimately unsuccessful at trial so that the other party against whom the injunction was made can recover the costs incurred as a result of the order.

Applications for injunctions may be made *ex parte* or without notice to the other side if there are good reasons for proceeding in that manner. Such applications may also be made prior to the institution of the proceedings if there is a certain urgency about the plaintiff's situation. [For interlocutory or interim relief in the Commercial Court, see Ord. 63A, r. 6(3) of the Rules of the Superior Courts 1986].

2.2 The main conditions

The courts have a discretion in determining whether to grant an interlocutory injunction or not and will grant such an order when it is just and convenient to do so. [Ord. 50 r. 6(1) of the Rules of the Superior Courts 1986]. In considering whether it is appropriate to grant an interlocutory injunction, the court should determine:

(i) Whether there is a fair bona fide issue to be determined.

(ii) Whether an award of damages or compensation would be an adequate remedy if the applicant was refused the injunction and then went on to succeed at the trial.

(iii) Where the balance of convenience lies in making its determination.

The first requirement is that the applicant must show that there is a fair issue to be tried. This is a relatively low hurdle to be cleared by the applicant but in recent years this limb of the test has been harder to satisfy where the relief the applicant is seeking at the interlocutory stage is an injunction to compel the other party to do something. In such a case it is now clear from the authorities that the applicant must show that he has a strong case that he is likely to succeed at the hearing.

3 Object and nature of such measures?

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

Injunctions may be sought for a multitude of reasons including to prevent a party from developing or using land in breach of planning conditions or covenants, to allow property to be searched and for items to be removed, to compel an employer to continue to pay an employee or to prevent an employer from hiring any new employees pending the outcome of a dispute. If a freezing order or a 'Mareva' type order is made, then the party to whom the order is directed cannot deal with their assets in any manner that would be incompatible with the court order. For example, he or she may only be allowed to withdraw set amounts of cash from a bank account and may not reduce the value of their assets below a certain amount until such time as the proceedings have been concluded in full.

3.2 What are the effects of such measures?

If a party breaches an interim order, that person may be treated as being in contempt of court and that person may be committed to prison, fined or have their assets sequestered. The front page of the order should contain a 'penal order', notifying the recipient of the possible consequences of a breach of the terms of the injunction. Similarly if a third party knowingly assists a defendant in disposing of assets the subject of a freezing order, then that person may also be guilty of a contempt of court. As a result, copies of any freezing orders made by the court will usually be served on any interested third parties, such as bank managers, accountants and solicitors engaged by or in the service of the party to whom the order is directed.

Any contract made in breach of an injunction is illegal and will be unenforceable by a party with knowledge of the existence of the order. However, ownership may still be transferred under an illegal contract, and therefore once any such contract is performed, it is generally not possible to recover the transferred asset and the plaintiff's only remedy in such a situation will be an award of compensation.

3.3 What is the validity of such measures?

Normally, an injunction is valid until the conclusion of the trial (an interlocutory injunction). If an interim injunction is made without notice to the other party, then it will usually only last for a limited period of time after which another court order will then be required.

4 Is there a possibility of appeal against the measure?

Yes. The defendant or any party affected by the making of an interim injunction may apply to court at any time to have the injunction varied or discharged. The party wishing to challenge the injunction must give notice of their application to the other side's solicitor. The Court may discharge an injunction where

the defendant can show that it should not have been granted in the first place, where there has been some significant change in circumstances since the making of the order or where it is just and equitable to do so. As was mentioned above, a court may require a party seeking an injunction to pay what is known as “an undertaking as to damages” into court so that if they are ultimately unsuccessful at the trial, the party against whom the injunction was made will have some protection as regards any costs incurred as a result of the order.

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Securing assets during a claim in EU countries - Greece

1 What are the different types of measures?

Interim and precautionary measures, more generally termed ‘provisional remedies’ (*asfalistiká métra*), are measures ordered by a court where full proceedings on the substance of the case are pending or about to open and there is a claim that needs judicial protection in the meantime. Interim judicial protection of this kind is intended to ensure that it will in fact be possible to satisfy the claim that is about to be assessed on its merits. The measures that can be ordered are: the lodging of security (*engyodosía*); registration of a notice of mortgage on the debtor’s property (*engrafí prosimeíosis ypothíkis*); precautionary attachment (*syntiritikí katáschesi*); judicial sequestration (*dikastikí mesengýisi*); the provisional award of claims (*prosoriní epidíkasi apaitíseon*); an injunction regulating matters on a provisional basis (*prosoriní rýthmisi katástasis*); the sealing (*sfrágisi*), unsealing (*aposfrágisi*), inventorying (*apografí*) and public deposit (*dimósia katáthesi*) of property; and measures to safeguard possession (*asfalistiká métra nomís*).

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

2.1 The procedure

Measures of this kind must always be ordered by a court of law.

General jurisdiction to order such measures lies with the single-member court of first instance (*monomelés protodikeío*). However, the singlemember court of first instance can lose this general jurisdiction to the district civil court (*eirinodikeío*) in cases of provisional regulation of rights of possession or use, and in cases where under the general provisions of the Code of Civil Procedure the district civil court has jurisdiction to hear the main claim. The district civil court has exclusive jurisdiction in cases where a notice of mortgage is to be registered or withdrawn by agreement between the parties. Provisional remedies may also be ordered by the multi-member court of first instance (*polymelés protodikeío*) if it is hearing the main action; in such cases its jurisdiction is concurrent with that of the singlemember court of first instance. The court with territorial jurisdiction is usually the court that has territorial jurisdiction to hear the main action, but provisional remedies may also be ordered by the court nearest to the location where they are to be implemented. The court decision ordering these measures is served on the party liable to perform them and is enforced by a bailiff (*dikastikós epimelitís*). If enforcement is prevented, the bailiff may request assistance from the police. Costs are difficult to determine, as lawyers’ and bailiffs’ fees vary. An indicative cost would be approximately EUR 250.00.

2.2 The main conditions

The court will order provisional remedies measures if:

(a) there is an urgent need or imminent danger, in order to protect or preserve a legitimate interest or to regulate a situation, and

(b) there are reasonable grounds for believing that the right in respect of which the provisional remedy is sought does indeed exist.

Preliminary evidence must be presented showing that there are reasonable grounds for the measure: full proof is not needed, and it is enough that there is incomplete proof that provides a lesser degree of certainty as to the facts that need to be established; the court can grant protection once it considers that the facts alleged are probable. The court will grant protection only where there is an urgent need or an imminent danger that the debtor may be separated from the attachable property belonging to him or her in such a way that it will be impossible to enforce the claim at a later stage if the creditor is awarded an enforceable title at the conclusion of the main proceedings.

3 Object and nature of such measures?

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

Any of the debtor’s assets of any kind can be made subject to such measures, whether they are in his or her own possession or in the possession of a third party, as long as they are transferable under the rules of private law and are not legally exempt from enforcement. In particular, such measures may be imposed on immovable property, and on movable property that is not considered to be non-attachable, including ships, aircraft, road vehicles, bank deposits and dematerialised shares.

3.2 What are the effects of such measures?

Once an interim court order is granted in respect of the assets, e.g. an order for precautionary attachment or an order for registration of notice of a mortgage on immovable property, the debtor is prevented from transferring the assets to third parties. Failure to comply with the order carries a minimum penalty of six months’ imprisonment under Section 232A of the Criminal Code.

Legislative Decree (*nomothetikó diátagma*) No 1059/1971 introduced a confidentiality obligation in respect of bank deposits, and provided for a minimum penalty of six months’ imprisonment for directors, managers or employees of banks found to be in violation of that obligation. This is not an obstacle to precautionary attachment, as the court order imposing attachment need not specify which deposits or dematerialised shares are to be attached. The order prevents the banks from transferring the assets, but it does not infringe the confidentiality obligation, because the banks are not asked to disclose the existence of any deposits. Any other third parties in possession of property that is attached are required to declare whether the claims or rights being attached actually exist, and whether any other attachment has taken place over the property held in their possession, and if so up to what value.

3.3 What is the validity of such measures?

According to the law, these measures are valid:

(a) until a final judgment has been given in the main proceedings against the party who applied for the order, and the judgment is no longer open to appeal;

(b) until a final judgment has been given for the party who applied for the order, and that judgment has been enforced;

(c) until a settlement is reached between the parties to the main proceedings;

(d) for 30 days after the date the proceedings were discontinued or otherwise struck out by the court;

(e) until the order imposing the measure is revoked or revised either by the court that originally made the order, in reliance upon new evidence, or by the court hearing the main claim, which need not rely upon new evidence; or

(f) if the order specifies a period within which the applicant is to bring the main claim before a court, and the applicant fails to do so within that period.

If either party fails to appear at the hearing on the application, although duly summoned in good time, the hearing will take place in the absence of that party. But the court will hear the case as if all parties were present, because failure to appear in proceedings for provisional remedies is not deemed to constitute an admission of the facts alleged in the application. The court may re-enter a case for hearing only if the defaulting party asks it to revoke or revise its ruling and relies on new evidence that would have led the court to a different conclusion had the court been aware of it.

4 Is there a possibility of appeal against the measure?

Orders for provisional remedies are not ordinarily open to appeal, the only exception being those imposing a provisional regulation of rights of possession and use, which, according to the explicit wording of the law, may be appealed before the competent multi-member court of first instance within 10 days of service. The public prosecutor at the Supreme Court (*Áreios Págos*) may lodge an appeal on points of law against any court order, for reasons of public interest. The Supreme Court then considers the case and either upholds or quashes the contested order. That ruling has merely provisional effect. As already mentioned, either party to the proceedings may ask the court that made the order to revoke or revise its ruling. Any third party who was not summoned and who did not attend the proceedings may also file a request to that effect, as long as they have a legitimate interest.

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Securing assets during a claim in EU countries - Spain

1 What are the different types of measures?

Civil procedural law (basically, the Law on Civil Procedure (Ley de Enjuiciamiento Civil) - LEC) is the primary source for precautionary measures; however, other measures are set out in special substantive laws.

Among the measures provided for in the LEC (Article 727) are the following:

Precautionary attachment [el embargo preventive de bienes], aimed at ensuring the enforcement of judgments ordering the delivery of amounts of money or yields, rents and fungible goods that can be estimated in cash by applying fixed prices.

Judicial administration or court-ordered receivership of productive assets [la intervención o la administración de bienes productivos], when a judgment is sought ordering their delivery under the title of owner, usufructuary or any other title involving a legitimate interest in maintaining or improving productivity or when guaranteeing the latter is of paramount importance for the effectiveness of the judgment to be passed in due time.

The **impounding of a movable asset [el depósito de cosa mueble]**, when the claim seeks an order to deliver the said asset and the latter is in the possession of the defendant.

The drawing up of inventories of assets [la formación de inventarios de bienes], in accordance with the conditions specified by the court.

The provisional filing of claims [la anotación preventive de demanda], when it concerns assets or rights subject to registration in public registries.

Other registry entries [otras anotaciones registrales], in cases where the public nature of the registry may help to achieve a satisfactory outcome.

A court order to provisionally cease an activity [la orden judicial de cesar provisionalmente en una actividad]; an order to temporarily abstain from behaving in a certain way; or a temporary ban preventing the interruption or withdrawal of a service that was being provided.

Seizure and confiscation of revenue [la intervención y depósito de ingresos] obtained through an activity considered illicit and whose prohibition or cessation is requested in the claim, as well as the consignment or deposit of the amounts claimed as compensation for intellectual property.

The temporary confiscation of original copies of the works or objects [el depósito temporal de ejemplares de las obras u objetos] allegedly produced contrary to the rules on intellectual and industrial property, as well as the deposit of the material employed for their production.

The suspension of contested corporate decisions [la suspención de acuerdos sociales], when the claimant or claimants represent at least 1 or 5 per cent of the share capital, depending on whether or not the defendant company had issued securities that, at the time of the contest, were admitted to trading on an official secondary market.

Together with these, the last paragraph of Article 727 of the LEC allows the judge to agree other measures not included among the above, meaning the list is not exhaustive (for example, those laid down in Article 762 of the LEC):

Any **other measures** expressly established by law for the protection of certain rights or deemed necessary to ensure the effectiveness of the judicial protection that may be granted in the judgment that may be handed down at the trial.

Outside this general system, there are other legal provisions on the matter of interim protection, among which are the following:

Proceedings on the **legal capacity of persons**: Article 762 of the LEC permits the court to officially adopt the measures it considers necessary for the protection of the person presumed to lack capacity or of their estate.

Proceedings concerning **parenthood, paternity and maternity**: Article 768 of the LEC provides protection measures for the person and assets under the authority of whoever may appear to be a parent and the granting of provisional alimony to the claimant, including without a prior hearing in urgent cases.

Protection of the **estate of a deceased person**: it may be necessary to secure the estate's assets and the deceased's documents or to verify the deceased's relatives, among other measures (Articles 790 to 796 LEC).

Specific precautionary measures may also be found in special rules including, but not limited to, the following:

Law on Intellectual Property (Royal Legislative Decree 1/1996 of 12 April 1996), Articles 138 and 141 (seizure and confiscation of income arising from the illicit activity in question, suspension of reproduction, distribution and public communication activity, confiscation of the items produced, seizure of equipment, apparatus and physical media, etc.).

Trademark Law (Law 17/2001 of 7 December 2001), Article 61b (preventive filing of the claim in the Trademark Register)

Patent Law (Law 24/2015 of 24 July 2015), Article 11 (suspension of the procedure for granting a patent) and Articles 117 and 127 et seq. (cessation of acts liable to infringe the rights of the applicant, seizure and retention of the goods alleged to infringe the rights of the patent holder, guarantee of compensation for damages and the ensuing registry entries).

Bankruptcy Law (Royal Legislative Decree 1/2020 of 5 May 2020, approving the recast text of the Bankruptcy Law). Article 133 (attachment of assets and rights of administrators or liquidators, in law and in fact, and general directors of the insolvent legal person or partners, where applicable), Article 18 (Ensuring non-disposal of debtor's assets, *inter alia*).

Maritime Navigation Law (Law 14/2014 of 24 July 2014), Article 43 and Article 470 et seq. (arrest of seagoing ships).

Commonhold Property Law (Law 49/1960 of 21 July 1960), Article 7 (cessation of prohibited activity) and Article 28 (suspension of agreements adopted by owners' associations).

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

2.1 The procedure

The measures are granted by the judge or court with jurisdiction over the subject or the territory. This will be the judge or court hearing the case, or if proceedings have not been started, the judge or court whose duty it would be to hear the case.

Precautionary measures may be applied for before a claim is lodged, provided that their nature does not make it impossible to grant them (as in the case for the provisional filing of a claim), and provided that the law does not require application together with the claim (as with the cessation of prohibited activities, or the suspension of community agreements in cases of litigation concerning commonhold property). Due to their exceptional nature (usually just the claim itself

would be dealt with), it must be a case of simultaneous necessity and urgency. They can be adopted without the opposing party to the proceedings being heard (without prejudice to their right to object to the measures once they have been granted); however, they expire if the corresponding claim has not been filed within twenty days of their being granted.

As indicated above, however, it is more usual to apply for the measures at the same time as filing the claim. In this case, the judge or court orders the preparation of a separate file for the precautionary measure to be handled at the same time as the main case, in which evidence can be offered and produced to demonstrate that the conditions for obtaining interim protection have been met. The general rule is that the parties are called to a hearing at the court before precautionary measures are adopted. Statements are made and any evidence relevant to the matter of whether or not to adopt precautionary measures can be produced; where appropriate, the guarantee to be required from the party requesting the precautionary measure is considered, in case the application is dismissed. Notwithstanding this, the party applying for the measure may request its adoption without the other party being heard, if they show evidence that there are urgent grounds or that the hearing could compromise the success of the measure - for example, if there is the risk of concealment or waste of the debtor's estate. In this case, the injured party may object once the measure has been adopted.

Measures may also be applied for after the claim or during an appeal, although such an application must be supported with facts or circumstances that justify its timing.

In cases where the intervention of a lawyer and public prosecutor is needed, their involvement is required in order to apply for the adoption of precautionary measures. In the case of urgent measures prior to the claim, legal representation is not necessary (Articles 23 and 31 LEC).

2.2 The main conditions

In order for a court to grant any of the measures listed above, the following must apply:

Risks arising from the course of time, or *periculum in mora*: this is constituted by the risk of harm the claimant could suffer through delay in the proceedings, which could frustrate the enforcement of that which is granted in the judgment or decision concluding the proceedings. The party applying for the measure must believe that if the measures applied for are not adopted, situations that would hinder or impede the effectiveness of the protection that might be granted in an affirmative judgment could occur during the pendency of the proceedings. In any event, it is not appropriate to grant the measure if the situation causing the risk has been borne by the applicant for a long time, unless they show evidence to explain why they have not applied for the measure before.

Appearance of good law or a *prima facie* case: The applicant must provide to the court reasons that lead it to make a preliminary judgment on the appropriateness in law of the claim. The requirement entails that the applicant must submit the particulars, arguments and documentary evidence on which the court can base, without prejudging the merits of the case (since in Spain, precautionary measures are adopted by the same court that will then judge the case), a provisional and circumstantial judgment in favour of the basis of the claim, Article 728(2) LEC. In addition to documentary evidence, other kinds of evidence (witnesses, experts, statements of the parties) are admissible.

Guarantee: unless expressly decided otherwise, the applicant for the measure must deposit a guarantee sufficient to compensate, in a speedy and effective manner, the damages that the adoption of the precautionary measure may cause to the assets of the defendant. The court must determine the amount taking into account: the nature and contents of the claim; b) its assessment of the basis of the application for the measure; and c) the reasons for its suitability or adequacy with regard to the quantification of the damage the measures could cause.

Proportionality: this requirement is not explicitly set out in the LEC, but we generally consider it to supplement the others, since the court would only grant measures that are strictly necessary to achieve the purpose of securing the proceedings served by the interim protection. It arises from the principles of the Rule of Law, and of minimal intervention in the sphere of liberty of the individual. Through the Constitution, these principles govern the entire legal system.

Complementarity: Precautionary measures follow the nature of the main procedure to which they are attached.

Variability: Precautionary measures may be amended if facts or circumstances are invoked and proven that could not have been taken into account at the time they were granted, or within the period for objecting to them.

3 Object and nature of such measures?

In adopting a precautionary measure, the intention is to meet or cover the possibility that, during a current or future case, the defendant may be obliged either to not carry out certain actions with their assets, or to carry out others. It is an attempt to hinder the defendant from carrying out actions aimed at preventing access to their assets and rights, causing or allowing damage to those assets, or removing certain assets from the reach of the law by creating insolvencies, in order to prevent any possible judgment from being enforced.

In Spanish legislation, precautionary measures can only be adopted by the courts. They cannot be adopted by arbitrators or mediators; there is not a specific, fixed number of them; they are enacting in nature (they can only be adopted through the application of one party); they relate to property, since they affect the assets and rights of the defendant; their purpose is to ensure the enforceability of a possible affirmative judgment; they are instrumental in the decision to be handed down in the main proceedings.

They can be adopted in regard to both material and immaterial assets. They are not solely economic in nature; precautionary measures can be adopted to limit personal rights.

They enable the adoption of orders and prohibitions, so they may contain things to be done or not done.

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

Precautionary measures may be handed down concerning concrete and specific assets, and concerning everything that can be quantified in monetary terms, such as the products, rents and yields that are obtained from things.

An attachment on these goods may be applied for, to obtain a right to recovery arising from a generic obligation in which the things owed are not individualised but substituted by a specific, assessable amount of money by means of simple mathematical operations.

Specific movable goods are deposited with a suitable custodian designated by the judge.

There is also the possibility of seizing, consigning and confiscating sums of money. There is a distinction between seizure and confiscation income arising from illegal activities, and doing so with income arising from permitted activities, such as those arising from intellectual property.

Another group of measures that might be adopted are acts the court may grant with regard to a claim given notice of in an application which does not affect a specific asset.

Thus, there is the possibility of the intervention or court-ordered receivership of productive assets, when a judgment is sought ordering their delivery under the title of owner, usufructuary or any other title involving a legitimate interest.

The drawing up of inventories of assets, in accordance with the conditions specified by the court, can also be applied for.

The precautionary filing of a claim is permitted when this refers to assets or rights subject to inscription in public registries, or other registry entries in cases where the public nature of the registry may help to achieve a satisfactory outcome.

Finally, a court order to provisionally cease an activity, to temporarily abstain from behaving in a certain way, or a temporary ban suspending or stopping the provision of a service that was being provided, may be ordered.
The last group of things that may be affected by the measures are materials and objects attached to an exclusive regime (in reality this is a court receivership or an intervention in the assets used in the production of industrial and intellectual property rights).
The corporate decisions of any kind of commercial company may also be suspended.
Finally, in Spanish legislation there is the possibility of adopting a series of unspecified measures for the protection of certain rights established by law or deemed necessary to ensure the effectiveness of judicial protection. What these might affect is not specified, and they may be of any kind provided that they are necessary.

3.2 What are the effects of such measures?

Precautionary attachment of quantifiable goods, money, income, products is used to ensure a balance so that the defendant can meet the costs of any possible order obtained, especially in cases where compliance with the judgment would not occur voluntarily.
The depositing of movable property may only be granted when the application is for delivery of a specific item which is in the possession of the defendant.
When judicial administration or receivership is granted, the intention is to secure particularly productive assets in order to prevent poor management allowing their productive yields to diminish or disappear.
Placing capital goods under the care of administrators involves judicial control but does not deprive the defendant of management; receivership on the other hand, entails a further step with the receiver replacing the defendant's management.
An application for the drawing up of inventories may be granted in any kind of proceeding, whatever its purpose, with the sole requirement that the inventory is necessary to ensure that an affirmative judgment can be obtained. The judge must clearly establish the details it must contain and the manner in which they should be achieved.
The effects of precautionary filing of the claim extend to the procedural sphere connected to the proceeding in which they are granted. The procedure seeks to suspend the protection provided by the public nature of the registries and the confidence this could give in the holder of the asset or right, while third parties cannot argue ignorance in respect of the effect on them of the filing. This precautionary filing may be granted in all kinds of proceedings, providing protection in any public registry, such as property and commercial registries.
Temporary limits on the conduct of the defendant: the regulation of these is developed in separate special laws. They should therefore be adopted in accordance with the provisions of the relevant laws. Their effects extend to the granting of an order to provisionally cease an activity carried out by the defendant: an order to temporarily abstain from behaving in a certain way, or a temporary ban preventing the withdrawal or interruption of a service that was being provided.
Seizure, consignment and confiscation of sums of money: this is clearly a protective measure and constitutes a precautionary attachment since it ensures the fulfilment of a claim with specific economic content. This measure enables the granting of seizure and confiscation of income arising from illicit activity. They cannot be adopted separately, so it is necessary to grant both seizure and confiscation. If only one or the other is intended, the generic measures described above should be used. This measure can also be adopted for the consignment or confiscation of sums of money claimed as remuneration for intellectual property, the rights of authors to receive sums of money for their work, consisting of a proportional share of the incomes generated by the different public expressions that are recognised by the Law on Intellectual Property.
Deposit of materials or objects attached to an exclusive regime: this is a precautionary measure which has its origins in the area of the protection of rights to exclusive exploitation, which the special laws on industrial and intellectual property grant to rights holders. It is court receivership specifically for the object to which the order applies, the objects or material necessary for production.
Suspension of corporate decisions: the provisions of this measure depend on the necessary requirements for applying for the measure: 1% of the share capital if the company has issued shares that, at the time of the claim are admitted to trading on an official secondary market; or 5% of the share capital if this is not the case. It can be applied to all types of commercial company.

3.3 What is the validity of such measures?

The precautionary measures are normally adopted after a hearing of the defendant. If the applicant so requests, and provides evidence of grounds for urgency, they may be granted by the judge without further formalities, providing grounds within a period of five (5) days for not hearing the defendant. Once adopted they may be amended if facts or circumstances are invoked and evidenced that could not have been taken into account at the time they were granted, or within the period for objecting to their being granted.
If the judgment dismisses the applicant's claim, the judge must immediately order the lifting of the measure, unless an application is made against this, taking into account the circumstances of the case and following an increase in the security.
If the case is partly upheld, after hearing the objecting party the judge must decide whether to lift or maintain the measure.
If the dismissal of the claim is confirmed, once a final decision is handed down, the court will lift the measures on its own authority and the party affected by them may commence a claim for damage caused (this also applies in the case of abandonment of the action or withdrawal from the proceedings by the claimant).
Another case where precautionary measures may be amended is when the measure is applied for before the claim and adopted without a hearing of the defendant. In this case, if the applicant does not comply with the legally established period of twenty (20) days to file the claim and this expires, the measure must be lifted immediately and the defendant compensated for the damage, with the applicant being charged the accrued costs of the proceeding.
Similarly, the measure cannot be maintained if the case is suspended for a period greater than six (6) months, for a reason attributable to the applicant.
If interim enforcement of a judgment is ordered, any precautionary measures granted that are related to that enforcement must be lifted and replaced by the enforcement measures, in such a way that the measures first adopted as precautionary ones change their nature.
Finally, the defendant may request that the court substitute the precautionary measure with enough security to guarantee effective fulfilment of the judgment. The judge who has adopted the measure has jurisdiction over this and can fix the security to be issued either in cash or as a guarantee.

4 Is there a possibility of appeal against the measure?

The procedural rules provide for the possibility of appealing to a higher court.
There is therefore recourse to appeal against the order granting the measures, although lodging an appeal does not suspend the measures. An order made refusing the measures can also be appealed against.
However, together with this possibility of appeal, in every case the applicant may repeat their application if circumstances change from those at the time of the original application.
There is no right of appeal against an order granting precautionary measures without a prior hearing of the defendant, since the correct procedure in this case is objection, which is made before the judge who adopted the precautionary measure. The defendant may lodge an appeal, which has no suspensory effect, against an order dismissing that objection. The applicant for the precautionary measures has the same right to lodge an appeal if the defendant's objection is upheld, either wholly or in part.

In contrast to the above, there is no right of appeal when a security is granted or denied.
The preparation and substantiation of the appeal is simply governed by the general rules (Article 458). If there are several appellants, their time limits are calculated individually.
As mentioned above, in the procedure for adopting precautionary measures, lodging an appeal has no suspensory effect: the judge will continue granting any orders considered necessary for the precautionary measure to be adopted.
Decisions refusing the measures take priority at the appeal court; dates for deliberation, voting and delivery of judgment must be given as early as possible.

COSTS OF THE PRECAUTIONARY MEASURE

Generally speaking, the costs are governed by the rule that the successful party may recover its costs and are covered by the party opposing the party whose claim (upholding or dismissal of the measures) is contained in the decision. Article 736 LEC, in particular, orders the applicant to pay costs in the event of refusal (the 'loser pays' principle) but there is no similar provision (that the respondent be ordered to pay the costs) if the measures are granted. In this case, there are different views in the legal literature and case-law in relation to costs.

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Securing assets during a claim in EU countries - France

1 What are the different types of measures?

The judge hearing applications for interim measures (urgent procedures, interim payments, evictions, prohibition of certain actions subject to penalties, preservation of evidence) is entitled to order such measures at any time as a matter of urgency.
There is no restrictive list of interim measures; all urgent interim measures can be applied for before the courts, as long as there is no compelling objection or they are justified by the existence of a dispute (interim payment, eviction of squatters, expert's report or notice of damages, etc.). Moreover, the court may urgently order all interim measures that are deemed necessary either to prevent imminent damage (*inter alia*, site protection measures) or to put an end to a manifestly unlawful disturbance.
There is a special regime for precautionary measures (preventive attachments and judicial liens), which allow the creditor, usually with the authorisation of the court, to deny the debtor access to all or part of their assets, or to apply a special right to security on these assets in order to secure the payment of a debt not yet recognised by a judgment, but the recovery of which appears threatened.
These precautionary measures may take one of the following two forms:
preventive attachments, allowing for the precautionary seizure of tangible assets (furniture, vehicles, etc.), intangible assets (a sum of money, rights in a company, stocks and shares, etc.) or other claims (bank accounts, lease payments, etc.);
judicial liens on real estate, goodwill, partner shares, or securities (temporary registration of mortgage, pledging of shares or securities).

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

2.1 The procedure

Interim measures: the application must be brought before the court by a summons (served by a bailiff (*huissier de justice*). This involves an urgent, adversarial procedure. Under certain conditions, interim measures may be ordered on application, without any prior adversarial debate.
Precautionary measures: in principle, prior authorisation by the court is required. However, the creditor is exempted from such authorisation when they can call upon an enforceable title or a court decision that is not yet enforceable. The same applies in the case of default of payment of an accepted bill of exchange, promissory note, cheque or unpaid rent for the rental of real estate (in the case of a written contract).
For interim measures, the court with jurisdiction is determined on the basis of the nature of the request. Ordinary jurisdiction is exercised by the president of the court (*Tribunal judiciaire*). However, the local court (*Tribunal de proximité*), and the presidents of the Commercial Court (*Tribunal de commerce*), Employment Tribunal (*Conseil des prud'hommes*) and the Agricultural Rent Tribunal (*Tribunal paritaire des baux ruraux*) may also rule on interim measures within the scope of their jurisdiction.
In the case of precautionary measures, jurisdiction lies with the judge presiding over the court of the place of enforcement or the president of the Commercial Court, where the application, brought prior to any legal proceedings, seeks the preservation of a debt under the jurisdiction of the Commercial Court.
The court with jurisdiction is the one at the debtor's place of residence, when their domicile is in France. Otherwise, the court with jurisdiction is that of the place of enforcement.
In principle, representation by lawyer is compulsory before the judge hearing an application for interim measures and the judge responsible for enforcement, except in the case of certain applications, in particular where they relate to an amount of less than EUR 10 000. Precautionary seizures must be carried out by a bailiff. This is not necessary for the registration of judicial liens. However, given the legal complexity of registering a lien, creditors are always assisted by a legal professional.
The cost of precautionary measures rests ultimately with the debtor, even if the creditor may be required to make advance payments. The costs of execution are subject to a tariff, which fixes the remuneration payable to bailiffs for each act of enforcement and precautionary measure.
Pursuant to Decree No 96-1080 of 12 December 1996, the remuneration scale for bailiffs includes a lump sum, expressed cumulatively or alternatively depending on the case in question, in fixed or proportional charges, as well as an administrative fee, where appropriate.
With regard to precautionary measures, proportional recovery charges calculated based on the recovered amounts, will only be due if the bailiffs are ordered to recover the amounts due. Furthermore, the list of charges annexed to the aforementioned decree excludes the possibility of any additional, freely negotiated remuneration, with the exception of the precautionary seizure of rights in a company, and of stocks and shares.

2.2 The main conditions

The court does not carry out the precautionary measure, it only authorises it. The measure is carried out by the bailiff at the request of the beneficiary of the authorisation.
If the prior authorisation of the judge is required, the claim must be 'based on principle'.
In the case of precautionary measures, there is no express condition of urgency.
The creditor must show that there are 'circumstances likely to threaten the recovery' of the debt (for example, the bad faith of the debtor hiding their assets, the existence of several creditors, etc.).

3 Object and nature of such measures?

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

All of the debtor's property that the law does not declare 'unatttachable' (such as the assets necessary for day-to-day life or to practise a profession) may be the subject of precautionary seizure. The same applies to debts; however, wages cannot constitute the subject of precautionary measures (even if they can be seized under a court decision or other enforceable title, in accordance with the procedure for wage attachment).

3.2 What are the effects of such measures?

Assets seized as a precautionary measure are made unavailable. The debtor still has possession of the assets and remains responsible for them but cannot dispose of them. If the debtor misappropriates the assets under attachment, they commit an offence punishable by a fine or imprisonment.

Seized amounts of money are held in an escrow account.

The assets covered by a judicial lien may be sold by the debtor, but the creditor has a right to be informed and to be paid from the sales price of the assets in question.

Assets seized as a precautionary measure are placed under the responsibility of the debtor who is made their 'custodian'. Such seizure is not enforceable against third parties. As opposed to this, judicial liens, the existence of which must be publicised (commercial or property), are enforceable against all parties.

The banker (and any third-party debtor) who receives a request for precautionary seizure in respect of one of their clients has an obligation to immediately disclose to the bailiff all of their obligations to the debtor (i.e. all the accounts opened in the name of the debtor and all amounts held in the debtor's accounts). If the banker refuses to provide this information without a legitimate reason, they may be ordered to pay the debt in the place of the debtor.

3.3 What is the validity of such measures?

The precautionary measure must be acted upon within three months of the order issued by the authorising court. Otherwise, the authorisation becomes invalid.

If the creditor has not yet initiated a procedure for the recognition of its claim, it must be done in the month in which the measure is taken. Otherwise, the measure becomes invalid.

The precautionary measure must be served upon the debtor within eight days at the latest. The debtor has the right to appeal to the court of enforcement to challenge the measure or the authorisation. In addition, the court has the right to set the date of the hearing in advance, at which time the parties will be called to discuss the measure. In principle, a challenge by the debtor is admissible as long as the precautionary seizure has not been executed after the creditor obtained a court decision regarding its claim.

4 Is there a possibility of appeal against the measure?

The order may be challenged by the debtor at the same time as the measure itself.

The court of enforcement, with the jurisdiction to grant the authorisation for precautionary measures, can hear challenges to the order as well. Its decisions are subject to appeal in the court of appeal.

Insofar as the debtor becomes aware of the authorisation of the measure at the same time as the measure itself, challenging the order is subject to the same rules as challenging the measure, i.e. it is admissible only as long as the measure has not been put into effect.

The appeal does not stop the effect of the precautionary measure, which is enforced as long as the court has not ordered release from it or found it to be invalid

Orders for interim measures may be challenged through an appeal if the measures were the result of adversarial proceedings, or through an interim withdrawal if they were the result of non-adversarial proceedings.

Related links

The Legifrance website

The website of the Ministry of Justice (*Ministère de la Justice*)

The website of the French National Chamber of Bailiffs (*Chambre Nationale des Huissiers de Justice*)

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Securing assets during a claim in EU countries - Croatia

1 What are the different types of measures?

The Enforcement Act (*Ovršni zakon*) (*Narodne novine* (NN; Official Gazette of the Republic of Croatia) Nos 112/12, 25/13, 93/14, 55/16, 73/17 and 131/20; hereinafter: OZ) prescribes the following measures in the third section entitled: Securing (*Osiguranje*):

- securing by compulsory establishment of right of lien on real estate – title 28
- judicial and notarial securing by lien on the basis of an agreement between the parties – title 29,
- judicial and notarial securing by transfer of ownership of objects and transfer of rights – title 30,
- securing by preliminary enforcement – title 31,
- securing by preliminary measures – title 32,
- interim measures – title 33.

In accordance with the OZ, only measures defined as such by that or another Act may be ordered as precautionary measures. Precautionary measures are not permitted on objects and rights which, under the OZ, may not be subject to enforcement, unless otherwise provided for by that Act.

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

2.1 The procedure

As a (long-term) measure for the compulsory securing of claims, the OZ permits securing by establishment of right of lien on real estate and movables (e.g. pecuniary claims (i.e. claims on money), part of income – salary, pension, etc., bank account, securities and shares) and securing by transfer of ownership of objects and transfer of rights. Securing by establishment of right of lien (right of lien means holding a party's assets until a claim against them is settled) can be voluntary or compulsory, while securing by transfer of ownership of objects and transfer of rights can only be voluntary, in proceedings before a court or a notary public.

Other measures regulated by the OZ are securing by preliminary enforcement, securing by preliminary measures and interim measures. Only a court may make these measures compulsory, either at the request of a party or *ex officio* (i.e. on its own initiative).

Municipal courts (*općinski sudovi*) are competent to order and implement securing, unless this has been entrusted to some other court under law, while commercial courts (*trgovački sudovi*) are competent to order and implement securing in cases in which they are competent to order enforcement.

The jurisdiction to order and implement securing *ex officio* lies with the court with jurisdiction to decide on the applicant's motion, unless otherwise provided for by law.
The jurisdiction to decide on motions to secure pecuniary claims by compulsory establishment of rights of lien on real estate lies with the court that keeps the relevant land registry, i.e. the one in which the entry based on the enforceable document determining the pecuniary claim has to be made. The purpose of ordering this measure is to secure the pecuniary claim by establishment of right of lien on real estate by the entry. The effect of the entry of a lien is such that enforcement on this real estate can also be carried out against third parties who subsequently acquire this real estate.
The court may order judicial securing of a pecuniary claim by establishment of a lien on the basis of an agreement between the parties at the joint request of the applicant and the defendant for certain objects in order to secure the pecuniary claim. The court with territorial jurisdiction to adjudicate on motions to secure the applicant's pecuniary claims on the defendant's objects and rights and for the implementation of securing is determined by appropriate application of the provisions of the OZ that address the territorial jurisdiction of courts in enforcement proceedings for the collection of pecuniary claims (on individual types of objects of enforcement). The court minutes register the agreement of the parties on the existence of a claim and the time of its maturity, and their agreement that this claim is to be secured by establishment of right of lien. The signed agreement has the force of a court settlement.
Notarial securing of a pecuniary claim by establishment of a lien on the basis of an agreement between the parties is possible through an agreement between a creditor and a debtor. That agreement may be in the form of a notarial document or a legalised private document, which also contains a statement by the debtor that a lien may be created on some item of theirs.
Judicial securing by transfer of ownership of objects and transfer of rights is possible based on an agreement between the parties on the transfer of ownership (of some of the defendant's objects to the applicant for the purpose of securing an applicant's specific pecuniary claim) or the transfer of some of the defendant's rights (to the applicant for the same purpose), which is entered in the minutes of the hearing. Future claims may also be secured. The agreement has the effect of a court settlement. The court with territorial jurisdiction to adjudicate on motions to secure pecuniary claims by the transfer of ownership of objects and transfer of rights is determined by the appropriate application of the provisions of the OZ on a court's territorial jurisdiction in enforcement proceedings with respect to pecuniary claims on individual types of objects of enforcement.
Notarial securing by transfer of ownership of objects and transfer of rights, i.e. transfer of shares, stakes or a participating interest, is possible based on an agreement between the creditor and the debtor, made in the form of a notarial document or a legalised private document. The rules on the registered office and territory of notaries public determine whether a notary public is authorised to undertake individual actions of securing.
The territorial jurisdiction to adjudicate on motions for preliminary enforcement and to implement such enforcement lies with the court that would have had jurisdiction for enforcement on the basis of an enforcement instrument. Securing by preliminary enforcement is ordered and implemented by a court. On the basis of a judgment reached in civil proceedings, the court orders preliminary enforcement to secure a non-pecuniary claim that cannot be secured by preliminary entry in the public register if the enforcement creditor demonstrates that there is a probable risk, due to the deferral of enforcement until the judgment becomes legally effective, of enforcement being made impossible or significantly more difficult and if the enforcement creditor provides security for the damage that the enforcement debtor might incur due to such enforcement.
The territorial jurisdiction to adjudicate on motions to secure by preliminary measures and to implement such measures lies with the court which would have jurisdiction for enforcement on the basis of the enforcement instrument under which the securing was proposed. The test for whether preliminary measures may be ordered is if the applicant demonstrates that there is a probable risk that without these measures the fulfilment of the claim would be impossible or significantly more difficult. In certain cases, the court may condition the preliminary measure on the provision of security for damages that the defendant might incur by its ordering. A reasoned ruling ordering a preliminary measure must include an indication of the value of the claim being secured, including interest and expenses, the measure used to secure the claim and the time for which it is being ordered (no longer than 50 days after the conditions for enforcement have been met).
Before instituting civil proceedings or any other judicial proceedings on a claim that is being secured, the territorial jurisdiction to adjudicate on motions to secure by interim measures lies with the court that would otherwise have had jurisdiction to adjudicate on motions to enforce. The territorial jurisdiction to implement interim measures lies with the court that would otherwise have had jurisdiction to implement the enforcement. After instituting proceedings, the jurisdiction to adjudicate on motions to secure by interim measures lies with the court before which the proceedings were instituted. Where justified by the circumstances of an individual case, a motion may also be filed with the court with territorial jurisdiction to carry out enforcement. The court which would have jurisdiction to adjudicate on an enforcement application on the basis of an enforcement instrument produced in administrative proceedings also has jurisdiction to adjudicate on motions to order interim measures after the termination of such proceedings. Interim measures are ordered by the court on the basis of an application proposed before the institution of, or during the course of, judicial or administrative proceedings and after these proceedings terminate until enforcement is carried out. Rulings on ordering interim measures have the authority of a writ of execution. The types of interim measures depend on whether the interim measure secures a pecuniary or non-pecuniary claim. The court may order several interim measures, if necessary, depending on the circumstances of the case.
Encumbrance, rights or prohibitions on movables, shares, stakes or participating interests are entered, on the basis of a court ruling, a notarial document or a legalised private document, in the Register of creditors' claims subject to court and notarial securing (Register of liens) (*Upisnik založnih prava*) kept at the Financial Agency, which is a unique database of encumbrances, rights or prohibitions, while the entry of liens or changes in property rights to real estate is registered by entries in land registries.

2.2 The main conditions

When ordering securing by compulsory establishment of right of lien on real estate, the court rules on a motion to secure pecuniary claims on the basis of the enforcement instrument pursuant to which the pecuniary claim was established. There are no special requirements for ordering securing, and the court, based on the motion, orders securing and enters the applicant's right of lien on the real estate in the land register, indicating the enforceability of the claim. If the defendant is not entered in the land register as the owner of the real estate, the applicant is obliged to submit, together with the motion, a document that is suitable for the entry of the defendant's right of ownership.
The applicant and the defendant may, for the purpose of providing security for an applicant's pecuniary claim by obtaining a lien on certain objects of security, consensually ask the court to order and implement, to the applicant's benefit, for example, the registration of a lien on the defendant's real estate, movables, pecuniary claim and other objects and rights, or they may reach such an agreement in the form of a notarial document or a legalised private document, including a statement of agreement by the debtor that a lien may be created on some item of theirs. The signed judicial record, notarial document or legalised private document has the authority of a court settlement against the person who has granted their agreement that a lien be created on their object or right. With a view to collecting a secured claim, these documents may be used to directly propose enforcement against a third party with respect to the item on which a lien was obtained for the purpose of securing a claim.
Parties may jointly ask the court to enter into the minutes of the hearing their agreement on the transfer of ownership of one of the defendant's objects to the applicant for the purpose of securing the applicant's particular pecuniary claim, or to transfer a specific right from the defendant to the applicant for that purpose. Future claims may also be secured. Such an agreement may be signed as a notarial document or as a legalised private document. The agreement

should contain a provision stating when the secured claim will mature or how this will be determined. The defendant may also be a person against whom the applicant does not have a claim that is being secured, i.e. a third party who consents to this way of securing a claim. The agreement may also apply to securing non-pecuniary claims; however, in this event, the agreement must specify the pecuniary value of the claim. The claim should be specified or definable. A statement of consent by the defendant allowing the applicant, pursuant to the minutes, to seek enforcement against them directly for the surrender of the object of security after the secured claim's maturity may be added to an agreement. Minutes containing such a statement constitute an enforcement instrument. When ownership of real estate entered in the land register is transferred by the agreement, this agreement should contain the defendant's statement of consent that the transfer can be directly executed in the land register on the basis of the agreement and that the entry in the land register will transfer the ownership of the real estate to the applicant, with a note that the transfer has been carried out for the purpose of securing a specific claim of the applicant. Except where provided otherwise, the defendant is authorised to continue to use the object whose ownership has been transferred to the applicant, i.e. to exercise the right transferred to the applicant, while the applicant is authorised to sell the property or right transferred to him upon the maturity of his claim, or to encumber the real estate with a mortgage.

Securing by a preliminary measure may be ordered to secure pecuniary claims based on a decision of a court or administrative body that has not yet become legally effective, a settlement made before a court or administrative body, if the claim determined therein has not yet matured, or a notarial decision or notarial document, if the claim determined therein has not yet matured. On the basis of these documents, the court will order a preliminary measure if the applicant demonstrates as probable the risk that the recovery of the claim would be made impossible or significantly more difficult if it is not secured. The risk is considered probable if the ordering of a preliminary measure has been proposed on the basis of a payment order or writ of execution on the basis of an authentic document issued pursuant to a public document or a document legalised by a notary public, bill of exchange or cheque, against which an objection has been raised in due time; a judgment reached in criminal proceedings on a property law claim against which a retrial is possible; a decision that has to be enforced abroad; a judgment on the basis of an admission against which an appeal has been lodged; a settlement concluded before a court or administrative authority, if the claim determined in it has not yet matured, which is being challenged in the manner provided for by the law; a notarial decision or document, if the claim determined in it has not yet matured, which is being challenged in the manner provided for by the law. The court will reject the motion to secure by a preliminary measure, i.e. revoke a specific preliminary measure and suspend proceedings, if the defendant demonstrates as probable that there is no risk or that it has ceased.

Securing by an interim measure may be proposed before, or during the course of, judicial or administrative proceedings and after these proceedings terminate until execution is carried out. In a motion to order an interim measure the applicant must put forward a request in which they indicate precisely the claim that they want to secure, determine the type of measure that they are seeking and its duration and, when necessary, the means of securing by which the interim measure is to be compulsorily enforced, as well as the object of security. The motion must contain an indication of the facts on which the request for ordering an interim measure is founded and contain evidence that corroborates these statements. The applicant is obliged to attach this evidence to the motion, if possible. An interim measure may be ordered to secure non-matured and conditional claims, but it is not permitted if the conditions have been met for ordering a preliminary measure by which the same effect of securing can be achieved. An interim measure to secure a pecuniary claim may be ordered if the applicant demonstrates as probable the existence of the claim and the risk that without such a measure the defendant would prevent, or make significantly more difficult, the collection of the claim by alienating their property, concealing it or disposing of it in some other way. An applicant does not have to prove a risk if they show it is probable that the defendant would sustain only insignificant damage by the proposed measure; it is considered that the risk has been demonstrated if the claim has to be enforced abroad. For the purpose of securing a non-pecuniary claim an interim measure may be ordered if the applicant demonstrates that the existence of their claim is probable, and if they demonstrate as probable the risk that the defendant would, without this measure, prevent or make significantly more difficult the enforcement of the claim, in particular by altering the current situation, or if they demonstrate that the measure is probably necessary to prevent violence or the occurrence of irreparable damage. Furthermore, an applicant does not have to prove that there is a risk if they show that it is probable that the defendant would sustain only insignificant damage by the proposed measure; it is considered that the risk has been demonstrated if the claim has to be enforced abroad. The court may order an interim measure following the applicant's proposal even when they have not demonstrated as probable the existence of a claim and the risk, if they have previously, within a time limit set by the court, provided security for damage that the defendant might incur by the ordering and implementation of an interim measure. If the applicant does not provide the security deposit within the set time limit, the court rejects the motion to secure. The court may, in view of the circumstances of a case, order several interim measures, if this is necessary; if in a given case it is possible to order several interim measures, the court orders the one which is most appropriate for achieving the purpose of the securing (and if they are all equally suitable, the court orders the one which is least onerous for the defendant).

3 Object and nature of such measures?

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

The subject of securing measures and interim measures may be any object or right owned by the debtor, e.g. real estate, movables, pecuniary claims related to salary, pensions, disability benefits, cash deposits in bank accounts or savings accounts and other property rights, provided that they are not items exempt from enforcement under the law or there is no legally restricted right to enforcement on the items concerned (e.g. items that are not in circulation, agricultural land and farm buildings of farmers to the extent required for their subsistence and the subsistence of immediate family members and other persons legally requiring support, etc.)

The court will reject an application for enforcement if enforcement is requested in order to settle a secured claim that is less than or equal to the amount in principal of HRK 40 000.00, irrespective of the note regarding the enforceability of the claim in land registers and other public records.

3.2 What are the effects of such measures?

Securing real estate by the establishment of right of lien (voluntary or compulsory, judicial or notarial), is carried out by the entry of the lien in the land register in which the real estate is recorded.

Through judicial and notarial securing involving the transfer of ownership of objects and transfer of rights, the applicant becomes the owner of an object or right by an entry in the legally required public books or registers. The applicant and the defendant may, for the purpose of providing security for the applicant' s pecuniary claim by obtaining a lien on certain objects of security, consensually ask the court to order and implement, to the applicant's benefit:

1. registration of a lien on the defendant's real estate,
2. depositing at the land register court of an agreement between the parties on the establishment of right of lien on real estate not entered in land registers,
3. entry of a lien on the defendant's movables,
4. entry of a lien on a pecuniary claim of the defendant,
5. entry of a lien on part of the defendant's income based on an employment or service contract,
6. entry of a lien on part of the pension, disability benefit or compensation for lost income,
7. entry of a lien on the defendant's claim against a bank account or savings book,
8. entry of a lien on a claim to surrender or deliver movables or to surrender real estate,
9. entry of a lien on other property rights or material rights,

10. entry of a lien on share certificates and other securities and their delivery for safekeeping,
11. entry of a lien on shares for which no share certificates have been issued and on stakes and participating interests in companies,
12. entry of a lien on securities kept with the Depository Company (*Depozitno društvo*).
Securing by preliminary enforcement: in order to provide security for non-pecuniary enforcement that cannot be secured by conditional registration in a public book, the court may order preliminary enforcement on the basis of a judgment reached in civil proceedings.
Securing by preliminary measures: the court may order the following preliminary measures:
1. Registration of a lien on the defendant's real estate or on a right entered with respect to real estate,
2. depositing at the land register court of an agreement between the parties on the establishment of a lien on real estate not entered in land registers,
3. entry of a lien on the defendant's movables,
4. entry of a lien on a pecuniary claim of the defendant,
5. entry of a lien on part of the defendant's income based on an employment or service contract,
6. entry of a lien on part of the pension, disability benefit or compensation for lost income,
7. entry of a lien on the defendant's claim against a bank account or savings book,
8. entry of a lien on a claim to surrender or deliver movables or to surrender real estate,
9. entry of a lien on other property rights or material rights,
10. entry of a lien on share certificates and other securities and their delivery for safekeeping,
11. entry of a lien on shares for which no share certificates have been issued and on stakes and participating interests in companies,
12. entry of a lien on securities kept with the Depository Company,
13. prohibition for a bank to pay, at the defendant's request, from the account of the defendant or a third party, an amount for which a preliminary measure has been ordered.
An applicant may obtain a lien on the object of security based on a preliminary measure. Where a payment ban has been ordered with respect to an amount of a defendant's money held at a bank, that amount may not be transferred from the account for the duration of the prohibition, except to pay the secured claim.
Interim measures
- For the purpose of securing a pecuniary claim any measure which achieves that purpose may be ordered, and specifically the following:
1. to prohibit the defendant from alienating or encumbering movables, to seize these objects and entrust them to the applicant or a third party for safekeeping;
2. to seize and deposit cash, securities and similar items with a court or notary public;
3. to prohibit the defendant from alienating or encumbering real estate or rights in rem that are registered on the real estate in their favour, and to enter a note of this prohibition in the land register;
4. to prohibit a defendant's debtor from fulfilling their obligation to the defendant voluntarily and to prohibit the defendant from receiving the fulfilment of this obligation, i.e. disposing of their claims;
5. to order a bank to refuse payment from the defendant's account to the defendant or a third party, at the defendant's request, in the amount for which the interim measure has been ordered.
- For the purpose of securing a non-pecuniary claim any measure which achieves that purpose may be ordered, and specifically the following:
1. to prohibit the alienation and encumbrance of movables against which the claim is directed, to seize them and entrust them to the applicant or a third party for safekeeping;
2. to prohibit the alienation and encumbrance of shares, stakes or participating interests against which the claim is directed, and to enter a note of this prohibition in the register of shares, stakes or participating interests and, where necessary, in the court minutes; to prohibit the use or exercise of rights on the basis of such shares, stakes or participating interests; to entrust shares, stakes or participating interests to the management of a third party; to set up an interim management board in a company;
3. to prohibit the alienation and encumbrance of other rights against which the claim is directed and to entrust the management of these rights to a third party;
4. to prohibit the alienation and encumbrance of real estate against which the claim is directed or of rights in rem recorded on the real estate against which the claim is directed, and to enter a note of the ban in the land register; to seize the real estate and entrust it to the applicant or a third party for safekeeping;
5. to prohibit a debtor of the defendant from surrendering an object, transferring a right or undertaking any other non-pecuniary obligation against which the claim is directed, to the defendant;
6. to prohibit the defendant from undertaking any actions which might cause damage to the applicant and to prohibit any alterations to the objects against which the claim is directed;
7. to order the defendant to undertake certain actions necessary to preserve movables or real estate or to preserve the current state of objects;
8. to authorise the applicant to retain the defendant's objects kept by the applicant to which the claim refers until the litigation is settled;
9. to authorise the applicant to undertake certain actions or obtain certain objects alone or by proxy, especially for the purpose of restoring a prior state of affairs;
10. to temporarily return an employee to work; to pay compensation during a work dispute, if this is necessary for their upkeep and the upkeep of persons whom they are obliged to support under the law.

3.3 What is the validity of such measures?

As a rule, judicial and notarial securing by lien or by transfer of ownership of objects and transfer of rights are valid until the final conclusion of the proceedings.
A ruling ordering a preliminary measure must include an indication of the value of the claim being secured, including interest and expenses, the measure used to secure the claim, and the period of time for which it is being ordered. This period of time may not last more than 15 days after the conditions for enforcement have been met. If it elapses before the decision on the basis of which the preliminary measure has been ordered becomes enforceable, the court – on the basis of an applicant's request submitted to court before the expiry of the period for which the preliminary measure has been ordered – extends it, provided that the circumstances under which this measure was ordered have not changed.
The ruling by which an interim measure is ordered also specifies the duration of this measure and, if the measure is ordered before an action has been filed or some other proceedings have been instituted, it also defines the time limit within which the applicant must bring an action, i.e. submit a motion to initiate other proceedings, in order to justify the measure. At the applicant's request, the court extends the duration of the interim measure, provided that the circumstances under which the measure was ordered have not changed.

4 Is there a possibility of appeal against the measure?

An appeal may be filed against a first-instance ruling within eight days of the day on which the first-instance ruling was served, unless provided otherwise by the OZ. As a rule, an appeal does not postpone the enforceability of a ruling. A court of appeal decides on the appeal.

An appeal against a ruling on a motion to issue an interim measure is not sent to the opposing party for a reply, and the court of appeal delivers its ruling on the appeal within thirty days of its receipt.
There is no judicial remedy available against a notarial document or a legalised private document, but a debtor may bring their objections against notarial securing in special litigation in which they challenge the agreements. Third parties may bring their objections against notarial securing in a procedure before court in accordance with the rules that apply to objections against judicial securing.
A review is only allowed in securing proceedings if the judgment reached in the second instance depends on the resolution of a substantive or procedural matter that is important for ensuring uniform application of the law and the equality of all parties in the application thereof, in accordance with the rules of litigation. A retrial is not allowed, and restoration of a prior state of affairs is allowed only where the deadline for lodging an appeal or objection has been missed.

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Securing assets during a claim in EU countries - Italy

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 measure 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.

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Securing assets during a claim in EU countries - Cyprus

1 What are the different types of measures?

A. Each court, in exercising its civil jurisdiction, may grant an (interlocutory, permanent or mandatory) injunction or appoint a receiver in all cases in which it appears just or convenient to the court to do so, even if no damages or other remedies are sought or granted. An interlocutory injunction is not granted unless the court is satisfied that there is a serious matter to be settled during the public hearing, that there is a possibility that the plaintiff is entitled to relief and that, unless an interlocutory injunction is granted, it will be difficult or impossible to do complete justice at a later stage (Article 32(1) of the Courts Act 14 /1960, as amended).

B. The court may, at any time while there is a pending civil action lodged before it, grant an injunction for sequestration, preservation, custody, sale, detention or inspection of the property that is the object of the action or an injunction for preventing loss or damage or an adverse effect which, unless the injunction is granted, will be incurred by a person or property pending a final court judgment on a matter affecting that person or property or pending enforcement of the court judgment (Article 4(1) of the Civil Procedure Act, Chapter 6). The purpose of the injunction granted under this provision is to protect (by granting the specific injunctions referred to) the property that is the object of the action while the action is pending or until the judgment is enforced.

C. Each court before which there is a pending civil action for debts or damages may, at any time after the action is lodged, order that the defendant be prevented from alienating as much of the immovable property that it registered in his/her name or for which he/she has the right to register as owner as, at the discretion of the court, is sufficient for satisfying the plaintiff's claim and the costs of the action. The injunction is not granted unless the court feels that the basis for the plaintiff's action is solid and that, following sale or transfer of the property to a third party, the plaintiff may be prevented from enforcing the court judgment which may be rendered (Article 5(1) and (2), Chapter 6). This article applies to actions for debts or damages and authorises the granting of injunctions relating to immovable property that is registered in the defendant's name or for which the defendant has the right to register as owner. It aims to freeze immovable property until a future judgment is rendered in favour of the plaintiff.

The court's power described in paragraph A above is clearly broader than that described in paragraphs B and C and sets out the courts' general jurisdiction parameters to grant interlocutory restrictive injunctions. Paragraphs B and C indicate the specific types of injunctions that courts may grant.

Based on the case law of the Supreme Court, the general power referred to in paragraph A (Article 32 of the Courts Act) is broad and allows for granting an interim injunction against property which is not the object of the main action. According to the case law, the courts of Cyprus have the power, under Article 32 of the Courts Act, to grant interlocutory Mareva injunctions [injunctions to freeze assets (monies or movable assets) that are within the court's jurisdiction, to prevent them from being moved outside the jurisdiction or spent].

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

2.1 The procedure

Applications for an interim injunction can be filed at any stage of the proceedings for which there is a pending civil action. The proceedings for filing the application are governed by the Procedural Regulations on Civil Procedure. Any delay on the part of the plaintiff in claiming interim measures is a factor that should be taken into account by the court.

Under Cypriot law, it is possible to grant an interim injunction without notice given to the other party (*ex parte,* see Article 9 of the Civil Procedure Law, Chapter 6). Such proceedings are an exceptional measure and, in that case, the urgency of the matter is a procedural condition that must be met for the court to exercise its discretion without hearing the other party. The courts apply this particular principle with stringency. The consequences of the claimant's failure to disclose material facts are also severe in a unilateral (*ex parte*) application for granting an interim injunction.

An interim injunction granted unilaterally is effective immediately upon service to the defendant, but it may be returned to the court as soon as possible after service thereof to allow the defendant to state whether he/she objects to it being granted. Any third party that is directly affected by the injunction may also request the court to hear his/her view on the matter. If the respondent objects to the injunction, the court will hold a hearing to decide whether the injunction will stand or will be cancelled or modified. If rejected, the claimant has the right to address the court again, on condition that the material circumstances of the

case have changed. It should also be noted that in all cases where an interim injunction is granted based on a unilateral (*ex parte*) application, the court orders the claimant, based on an explicit legal provision, to provide security to such amount as set by the court as guarantee for any losses that may be incurred by the respondent. In accordance with case law, the court does not have the power to grant the injunction unless the claimant himself/herself provides the security.

It is possible, of course, to secure the granting of an interim injunction based on an application with notice (that is, by giving notice to the other party). In that case, however, the factor of urgency is not considered by the court.

2.2 The main conditions

The granting of an interlocutory restrictive injunction is left to the discretion of the court. There are three key conditions that must be met before the court decides to exercise its discretion, based on the balance of convenience, whether or not to grant the requested injunction:

there is a serious matter to be heard (disclosure of a debatable assumption based on the case will suffice);

there appears to be a probability of success (obvious possibility of success/obvious prospect that the plaintiff is entitled to relief);

it will be difficult or impossible to do complete justice at a later stage without granting the injunction (whether the award of damages to the plaintiff at the final stage is insufficient to secure his/her rights).

As stated above, the issue of whether or not to grant an interim injunction is left entirely to the discretion of the court. An injunction is not granted automatically where the above three conditions are met. The court is called upon to weigh up whether it is just and convenient to grant the requested injunction in the light of all the facts and circumstances.

3 Object and nature of such measures

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

Case law has demonstrated that the nature/type of the assets is not a factor that can restrict the power exercised by the court. The nature of the assets, however, can be a relevant factor in the court's assessment of the balance of convenience in exercising its discretion to grant an injunction. It is easier for the complainant to prove the risk of losing money from a bank account than the risk of alienation of immovable property.

3.2 What are the effects of such measures?

Upon granting the injunction, any party for which the injunction is intended is subject to the legal obligation to comply therewith. Disobeying the injunction constitutes contempt of court and is punishable by law. Moreover, any person inciting or facilitating disobedience of an injunction granted by the court may be guilty of contempt of court (Article 42 of the Courts Act 14/1960, as amended).

3.3 What is the validity of such measures?

An injunction granted by the court includes a specific clause setting out its effective period. It usually remains effective until a final judgment is rendered for the main action or until it is cancelled or modified by a subsequent court injunction. While a final judgment is being rendered for the main action, the court may include a specific clause in the judgment to keep the injunction in effect for a specific period of time following the rendering of the judgment, to facilitate enforcement of that judgment.

4 Is there a possibility of appeal against the measure?

A court judgment by which an interim injunction is granted is subject to appeal before the Supreme Court. A court judgment rejecting an application for an interim injunction is also subject to appeal.

In trying the case, the Supreme Court has broad powers. It may grant an injunction that was refused by the first instance court or may cancel or modify an injunction that was granted by the lower court. It should be noted, though, that the appeal proceedings do not constitute a new hearing of the case. The first instance court judgment will not be reversed just because the Supreme Court would have exercised its discretion differently. The Supreme Court will intervene only when it decides that the first instance court has exercised its discretion *erroneously*.

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Securing assets during a claim in EU countries - Latvia

1 What are the different types of measures?

Under Latvian legislation the interim and precautionary measures available pending a final decision may be aimed at securing an actual or potential claim, or securing the protection of intellectual property rights that are in dispute, or at securing evidence. These measures can be ordered only by a court and at the request of an interested party. The procedure is laid down in the Law on Civil Procedure (*Civilprocesa likums*).

At the time a claim is brought, or earlier, the following measures are available in order to secure the claim:

attachment of movable property or funds belonging to the defendant;

entering an endorsement indicating a prohibition (*aizlieguma atzīme*) in a register of the respective movable property or any other public register;

entering an endorsement regarding the securing of a claim in the land register or ship register;

seizure of a vessel in connection with a maritime claim;

a prohibition preventing the defendant from performing certain acts;

attachment of payments due from third parties, including funds held with credit institutions and other financial institutions;

postponement of enforcement (which includes prohibiting bailiffs from transferring money or property to a judgment creditor or debtor, or suspending the sale of property).

A claim can be secured only if it is of a property nature.

If the claim is to be secured by entering an endorsement to indicate a prohibition in a moveable property register or other public register, the decision must indicate the type of prohibition to be entered.

If the subject-matter of an action is the ownership of property, movable or immovable, or if the action seeks confirmation of ownership rights, the claim can be secured by attaching the disputed movable property, or by entering an endorsement to indicate a prohibition in the appropriate immovable property division of the land register.

If the subject-matter of an action is a monetary claim, the claim can be secured against immovable property by entering an endorsement showing a right of pledge (*ķīlas tiesības atzīme*) in the appropriate immovable property division of the land register.

If the subject-matter of an action is a right *in rem* in respect of immovable property, the claim can be secured by entering an endorsement indicating an encumbrance (*apgrūtinājuma atzīme*) in the appropriate immovable property division of the land register.

Vessels can be seized only in maritime claims.

The suspension of the sale of property is not allowed in cases where the claim concerns the recovery of money.

The attachment of payments due from third parties, including funds held with credit institutions and other financial institutions is not allowed in cases where the claim is for compensation which is at the discretion of the court.

In intellectual property disputes, the following provisional protection measures are possible:

the attachment of movable property with which it is alleged that intellectual property rights are being infringed;

an obligation to recall goods with which it is alleged that intellectual property rights are being infringed;

a prohibition on the performance of specific acts by the defendant, or by persons providing services that are used in order to infringe intellectual property rights, or by persons who make it possible for such infringements to be committed.

Securing evidence

If a person has reason to believe that the submission of evidence that they will need may become impossible or problematic, they may ask for such evidence to be secured.

Applications to have evidence secured may be submitted at any stage of the proceedings, and even before an action is brought in court.

Before an action is brought evidence can be secured by the district court (*rajona tiesa*) or city court (*pilsētas tiesa*) of the place where the source of evidence to be secured is located. Once an action has been brought the evidence can be secured by the court adjudicating the matter.

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

2.1 The procedure

Securing a claim

If there is reason to believe that the enforcement of the court's judgment in a case before it may become problematic or impossible, the court or judge may, in response to a reasoned application by the plaintiff, take a decision securing the claim. A claim can be secured only if it is of a property nature. An application to secure a claim may be considered at any stage of the proceedings, and even before an action is brought in court.

An application to have a claim secured must contain:

the name of the court to which the application is submitted;

the applicant's given name, surname, personal identity number and registered place of residence, or failing that, the *de facto* place of residence; for a legal person – the name, registration number and registered office. If the applicant agrees to communicate with the court by electronic means, and if they are included among the persons/entities listed under Section 56(23) of the Law on Civil Procedure, an e-mail address and, where they are registered in the online system for correspondence with the court, the registration reference should also be indicated. The applicant may, in addition, provide another address for correspondence with the court;

the given name, surname, personal identity number and registered place of residence, or failing that, the *de facto* place of residence of the respondent and any third party; for a legal person – the name, registration number and registered office. The personal identity number or registration number of the respondent is to be indicated if known;

the given name, surname, personal identity number and address for correspondence of the applicant's representative (if the action is brought by a representative); for a legal person – the name, registration number and registered office. If the applicant's representative, with a registered place of residence or an address for correspondence in Latvia, agrees to communicate with the court by electronic means, an e-mail address and, if they are registered in the online system for correspondence with the court, the registration reference should also be indicated. If the registered place of residence or address for correspondence of the applicant's representative is outside Latvia, their e-mail address and participation in the online system for correspondence is to be indicated too. If the applicant's representative is a lawyer, the e-mail address of their chambers should be added;

the subject-matter of the claim;

the amount of the claim;

the means of securing the claim whose enforcement the applicant is requesting;

the circumstances by which the applicant justifies the need to secure the claim.

An application to have a claim secured before the claim is brought in court must be submitted to the court that is to hear the claim itself. Where the parties have agreed to submit the dispute to arbitration, an application must be submitted to the ordinary court of the place where the debtor or the property is located.

The suspension of the sale of property is not allowed in cases where the claim concerns the recovery of money.

The attachment of payments due from third parties, including funds held with credit institutions and other financial institutions is not allowed in cases where the claim is for compensation which is at the discretion of the court.

When hearing an application from one of the parties, the court may replace the means to secure the claim requested by other means.

A prospective plaintiff may petition to have a claim secured even before bringing a court action, and even before an obligation has become due, if the debtor, with the purpose of avoiding performance of the obligation, removes or alienates their property, vacates their place of residence without informing the creditor, or performs other actions which indicate that the debtor is not acting in good faith. When submitting an application to secure a claim before bringing a court action, the prospective plaintiff must submit evidence in support of their rights and the necessity of securing the claim.

A decision on an application to secure a claim is taken by a court or a judge no later than the day following, without giving prior notice to the defendant or other interested parties. In reaching its decision the court or judge considers the *prima facie* formal legal basis. If the application to have the claim secured is accepted, the court or judge may require that the plaintiff provide security for any losses that the defendant may suffer as a result of the measure securing the claim, by lodging a specified sum of money to a bailiff's deposit account.

If a decision is taken to secure an actual or potential claim, the court issues an enforcement order (*izpildu raksts*), which is to be given for enforcement to a certified bailiff (*zvērināts tiesu izpildītājs*).

The claim is secured until the day the final judgment takes legal effect. If the claim is left unadjudicated or the proceedings are terminated, the court decision will cancel the measure securing the claim. The claim is secured until the day the decision takes legal effect. If the claim is dismissed, the court's ruling cancels the measure securing the claim.

If the decision securing a claim is taken before the claim itself is brought in court, and the claim is not in fact brought in court within the time that the court specified, the judge may decide to cancel the measure securing the claim upon application from the prospective plaintiff or from the prospective defendant.

Provisional protection measures

If there is reason to believe that the rights of an intellectual property holder are being infringed or may be infringed, a court may, on a reasoned application from a plaintiff, order provisional protection measures. An application for provisional protection measures must indicate the provisional protection measures to be taken (Section 250.10 of the Law on Civil Procedure).

An application for provisional protection measures may be submitted at any stage of the proceedings, and even before an action is brought in court.

An application for provisional protection measures will be decided by a court or a judge within 10 days of receipt of the application, or of the initiation of proceedings if the application for provisional protection measures is lodged together with the claim itself.

If delay may cause irreversible harm to the holder of an intellectual property right, the court or judge must decide on an application for provisional protection measures no later than the next day after the receipt of the application, without previously notifying the defendant and other interested parties. If a decision ordering provisional protection measures is taken in the absence of the defendant or any other interested party, they are to be notified of the decision no later than the moment the decision is enforced.
If a court or judge accepts an application to have the claim secured before the claim itself is brought, the court or judge may require the plaintiff to provide security for any losses which may be caused to the defendant or to service providers as a result of the provisional protection measures, by lodging a specified sum of money to a bailiff's deposit account or by providing an equivalent guarantee.
Upon application by the plaintiff, the court may replace the provisional protection measures previously ordered with other measures.
Provisional protection measures may be cancelled by the same court upon application by an interested party.
If the court dismisses a claim, its judgment cancels the provisional protection measures. The provisional protection measures remain in force up to the day when the judgment takes legal effect.
If the claim is left unadjudicated or the proceedings are terminated, the court decision will cancel the provisional protection measures. The provisional protection measures remain in force up to the day when the judgment takes legal effect.
If the decision ordering provisional protection measures is taken before the claim itself is brought in court, and the claim is not in fact brought in court within the time that the court specified, the judge may decide to cancel the provisional protection measures upon application by the prospective plaintiff or another interested party or by the prospective defendant.
If the application of provisional protection measures is lodged together with the claim itself, a decision ordering provisional protection measures must be enforced with 30 days of the day the decision is taken. The fact that an ancillary objection (*blakus sūdzība*) has been lodged against the decision does not prevent the decision from being enforced.
A decision ordering provisional protection measures taken on the ground that delay might cause irreversible harm to the holder of an intellectual property right is to be enforced after the plaintiff has paid the sum specified by the court or judge into the bailiff's deposit account or provided an equivalent guarantee. The enforcement document is served after the receipt of payment of the sum specified or the equivalent guarantee.
A decision ordering provisional protection by attachment of the movable property with which the intellectual property rights are allegedly being infringed is to be enforced in accordance with the procedure laid down in the Law on Civil Procedure for directing recovery against movable property.
A decision ordering provisional protection by imposing a prohibition on the performance of certain acts or an obligation to recall goods with which intellectual property rights are allegedly being infringed is to be enforced by a bailiff, and will be notified to the defendant or any other interested party against signature or by registered mail.
If a provisional protection measure is cancelled, the cancellation will be enforced by the bailiff who enforced the order initially imposing it.
If a provisional protection measure is cancelled, the cancellation will be enforced by the bailiff who enforced the order initially imposing it.
Moreover, Chapter 30.5 of the Law on Civil Procedure provides for provisional protection against violence.
Provisional protection against violence may be ordered in connection with actions for divorce or annulment of marriage; actions arising out of personal injury; actions for recovery of maintenance; actions seeking the division of the joint home, or specification of the use of the joint home, if the parties live in the same household; and matters arising out of trusteeship and access rights.
An application for provisional protection against violence may be submitted by spouses or ex spouses; persons between whom there is a parent and child relationship; persons between whom there is or has been a trusteeship relationship or any other extrafamilial care relationship; persons between whom there is a relationship of kinship or affinity; persons who live or have lived in the same household; persons who have or are expecting a common child, irrespective of whether or not they have been married or have lived together; or persons between whom there is or has been a close personal or intimate relationship.
Several measures to provide provisional protection against violence may be imposed simultaneously.
If a person has suffered any physical, sexual, psychological or economic violence that takes place between former or current spouses or otherwise mutually related persons, irrespective of whether the inflicting party lives or has lived in the same household with the victim, a court or judge may order provisional protection against violence in response to a reasoned application by the person or an application submitted via the police.
Similar measures are available if a person suffers abusive control, i.e. an act or a set of acts, including harassment, sexual coercion, threats, humiliation, intimidation or other abusive acts, which are aimed at harming, penalising or intimidating the victim.
Provisional protection against violence may be sought at any stage of the proceedings, and even before an action is brought in court.

Securing evidence

If a person has reason to believe that the submission of evidence that they will need may become impossible or problematic, they may ask for such evidence to be secured. Applications to have evidence secured may be submitted at any stage of the proceedings, and even before an action is brought in court.
An application to have evidence secured is considered at a court hearing to which the applicant and interested parties are summoned. However, the court may hear the application even if any of these persons fails to appear.
Where an application to have evidence secured is submitted before an action is brought, a court or judge takes a decision on the application within 10 days of receiving it.
Evidence may be secured without summoning potential interested parties only in urgent cases, including violations or potential violations of intellectual property rights or instances where it cannot be established who the interested parties may be.
If a decision on securing evidence is taken in the absence of the defendant or any other interested party, they are to be notified of the decision no later than the moment the decision is enforced.
If a judge accepts an application to have evidence secured before an action is brought in court, the judge sets a time limit for the lodging of the action, which may not be longer than 30 days.
If the judge accepts the application to have the evidence secured before the claim itself is brought, the judge may require the plaintiff to provide security for any losses which may be caused to the defendant as a result of the measure securing the evidence, by lodging a specified sum of money to a bailiff's deposit account or by providing an equivalent guarantee
The minutes of the court sitting and any documents assembled in the course of securing the evidence will be kept until required by the court that adjudicates the main action.
If the court considering a case is unable to gather evidence located in another city or district, the court or a judge will ask the appropriate court to take specified procedural steps on the first court's behalf.

2.2 The main conditions

Provisional protection measures may be ordered only if there is reason to believe that the enforcement of a court judgment in a dispute of a property nature may become problematic or impossible; or that the rights of an intellectual property holder are being infringed or may be infringed; or that the submission of necessary evidence may become impossible or problematic.

3 Object and nature of such measures?

An application for provisional protection of intellectual property must indicate the provisional protection measure sought.

The provisional protection measures available are:

the attachment of movable property with which it is alleged that intellectual property rights are being infringed;

an obligation to recall goods with which it is alleged that intellectual property rights are being infringed;

a prohibition on the performance of specific acts by the defendant, or by persons providing services that are used in order to infringe intellectual property rights, or by persons who make it possible for such infringements to be committed.

An application to have a claim secured must indicate the measure sought in order to secure the claim.

The measures available to secure a claim are:

attachment of movable property or funds belonging to the defendant;

entering an endorsement indicating a prohibition (*aizlieguma atzīme*) in a register of the respective movable property or any other public register;

entering an endorsement regarding the securing of a claim in the land register or ship register;

seizure of a vessel in connection with a maritime claim;

a prohibition preventing the defendant from performing certain acts;

attachment of payments due from third parties, including funds held with credit institutions and other financial institutions;

postponement of enforcement (which includes prohibiting bailiffs from transferring money or property to a judgment creditor or debtor, or suspending the sale of property).

An application for provisional protection against violence must indicate the measure to be imposed.

The measures available to provide provisional protection against violence are:

the defendant may be ordered to leave the home where the plaintiff is habitually resident, and forbidden from returning or staying there;

the defendant may be forbidden from coming within a specified distance of the home where the plaintiff is habitually resident;

the defendant may be forbidden from visiting certain places;

the defendant may be forbidden from meeting the plaintiff and from making physical or visual contact with the plaintiff;

the defendant may be forbidden from entering into any kind of communication with the plaintiff;

the defendant may be forbidden from arranging through the intermediation of other persons to meet the plaintiff or enter into communication with the plaintiff;

the defendant may be prohibited from using the plaintiff's personal data;

the court or judge may impose other prohibitions and obligations on the defendant in order to give the plaintiff provisional protection against violence.

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

Movable and immovable property, including vessels, cash and funds at credit institutions and other financial institutions.

3.2 What are the effects of such measures?

A debtor's movable property is attached by taking an inventory of the property, sealing the property (indicating who has attached the property and in what way), and placing it under protection. The property need not be sealed if that might damage the property or significantly affect its value.

The bailiff delivers the attached property into the care of a natural person, who signs for receipt. The debtor or members of his or her family may still use the property if, owing to the characteristics of the property, its use does not destroy the property or substantially decrease its value.

If a court or judge accepts an application to have a claim secured before the claim itself is brought in court, the court or judge may require that the prospective plaintiff provide security for any losses that the defendant may suffer as a result of the measure securing the claim, by lodging a specified sum of money to a bailiff's deposit account. Deposits and other securities belonging to a debtor held at credit institutions or elsewhere may be attached only on the basis of an enforcement document issued by a court, or a bailiff's warrant, or a public prosecutor's warrant.

An endorsement in the register of immovable property indicating recovery or the securing of a claim prevents any voluntary registration on the owner's part.

If a judge accepts an application to have evidence secured before an action is brought in court, the judge may require that the prospective plaintiff provide security for any losses that the defendant may suffer as a result of the measure securing the evidence, by lodging a specified sum of money to a bailiff's deposit account or providing an equivalent guarantee.

Provisional protection measures allow an author to ask a court to secure a civil claim even if it is not of a property nature, thus decreasing the number of potential violations of intellectual property rights and the scope of the losses suffered by the author. Such measures make it possible to prevent violations of intellectual property rights and to restore the lawful interests and rights of the author that are being breached by the violation.

3.3 What is the validity of such measures?

Measures to secure a claim remain in force up to the day when the judgment takes legal effect or the proceedings are terminated, or until a judge cancels the measure securing the claim, or until a judge replaces the measure securing the claim with another measure.

The provisional protection measures remain in force up to the day when the judgment takes legal effect.

Provisional protection measures may be cancelled by the same court upon application by an interested party. If the court dismisses a claim, its judgment cancels the provisional protection measures. If the claim is left unadjudicated or the proceedings are terminated, the court decision will cancel the provisional protection measures. The provisional protection measures remain in force up to the day when the judgment takes legal effect.

If the decision ordering provisional protection measures is taken before the claim itself is brought in court, and the claim is not in fact brought in court within the time that the court specified, the judge may decide to measure securing the evidence upon application by the prospective plaintiff or another interested party or by the prospective defendant.

If the decision ordering a measure to secure evidence is taken before an action is brought in court, and the action is not in fact brought in court within the time that the court specified, the judge may decide to cancel the measure securing the evidence upon application from the prospective plaintiff or from the prospective defendant.

Provisional protection against violence remains in force until the day when the final judgment in the case takes legal effect. In certain cases, a court may specify in its judgment that the provisional protection against violence is to remain in force after the judgment takes legal effect, but no longer than for one year after that date. If provisional protection against violence has been ordered against a defendant who was habitually resident in the same home as the plaintiff, for example where the defendant has been required to leave the home where the plaintiff is habitually resident and has been forbidden from returning or staying there, or where the defendant has been forbidden from coming within a specified distance of the home where the plaintiff is habitually resident, a court may specify that the provisional protection against violence is to remain in effect no longer than for 30 days after the judgment takes legal effect.

Measures providing provisional protection against violence remain in force until the day when a judge's decision cancelling the measure takes legal effect or until a judge's decision replacing the provisional protection measure with another measure.

4 Is there a possibility of appeal against the measure?

Securing of a claim

In response to a reasoned application by a party, a measure securing a claim may be cancelled by the same court that ordered it, or by a court which is due to hear the case on the merits.

An ancillary objection (*blakus sūdzība*) may be lodged within 10 days against a court decision to replace a measure securing a claim with another measure, against a decision dismissing an application to have a claim secured, or against a decision dismissing an application for the cancellation of a measure securing a claim.

If an application to have a claim secured is accepted, the plaintiff may lodge an ancillary objection against a part of the court decision that requires the plaintiff to provide security for any losses that may occur as a result of the measure securing the plaintiff's claim.

If a decision to secure a claim is taken in the absence of an interested party, the ten day time limit for the submission of an ancillary objection runs from the day when the party receives the decision.

Provisional protection measures

Provisional protection measures may be cancelled by the same court upon application by an interested party.

An ancillary objection may be lodged against a decision on a plaintiff's application to replace a provisional protection measure previously ordered with a different measure, against a decision dismissing an application for a provisional protection measure, or against a decision dismissing an application for the cancellation of a provisional protection measure.

If a decision ordering provisional protection is taken in the absence of an interested party, the 10 day time limit for the submission of an ancillary objection runs from the day the decision is served.

Securing evidence

A decision accepting an application to have evidence secured is not open to challenge. However, the defendant may seek compensation for losses incurred as a result of the measure securing the evidence where:

evidence is secured before a claim is brought, and the claim is not in fact brought within the time allowed by the court;

the claim brought against the defendant is dismissed;

the claim is left unadjudicated;

the proceedings are terminated because the claim was brought by a person who was not entitled to do so or because the plaintiff has withdrawn the claim.

An ancillary objection may be lodged against a judge's decision to dismiss an application to have evidence secured, or against a decision taken without summoning the prospective parties. If a decision securing evidence is taken in the absence of an interested party, the 10 day time limit for the submission of an ancillary objection runs from the day the decision is served or dispatched.

Provisional protection against violence

In response to a reasoned application by a party, a measure providing provisional protection against violence may be replaced with another measure by the same court that ordered it or by a court that is due to hear the case on the merits.

In response to a reasoned application by a party, a measure providing provisional protection against violence may be cancelled by the same court that ordered it or by a court that is due to hear the case on the merits.

An ancillary objection may be lodged within 10 days against a decision to replace a measure providing provisional protection against violence with another measure, against a decision dismissing an application for provisional protection against violence, or against a decision dismissing an application for the cancellation of a measure providing provisional protection against violence. If the decision is taken in the absence of an interested party, the 10 day time limit for the submission of an ancillary objection runs from the day the decision is served.

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Securing assets during a claim in EU countries - Lithuania

1 What are the different types of measures?

Article 145 of the Code of Civil Procedure (*Civilinio proceso kodeksas*) sets out the various types of interim measures. Interim measures may be the following:

seizure of the defendant's immovable property;

entry in the public register of a prohibition preventing the transfer of a title;

seizure of movable property, money or property rights owned by the defendant and held by the defendant or third persons;

detention of property owned by the defendant;

appointment of an administrator for the defendant's property;

a prohibition preventing the defendant from taking part in certain transactions or taking certain actions;

a prohibition preventing other persons from transferring property to the defendant or fulfilling other obligations;

in exceptional circumstances, a prohibition preventing the defendant from leaving his/her permanent residence and/or a prohibition preventing removal of a child from his/her permanent residence without the court's authorisation;

suspension of the realisation of assets where a claim has been filed for cancellation of the seizure of such assets;

stay of recovery enforcement;

award of temporary maintenance or imposition of provisional constraints;

an order to take steps preventing damage from occurring or increasing;

other measures prescribed by law or ordered by the court in the absence of which compliance with the court decision may be rendered more difficult or impossible.

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

At the request of the persons involved in the case or other persons concerned, the court may impose interim measures if such persons provide a credible justification for their claim and if failure to adopt such measures may render compliance with the court decision more difficult or impossible.

The court may apply interim measures of its own motion only where that is necessary to protect the public interest and where failure to adopt such measures would violate the rights and legitimate interests of a person, society or the State.

Interim measures may be applied both in the absence of an action and at any stage of the civil procedure.

2.1 The procedure

Requests in connection with interim measures are examined by a court of first instance or, in the cases specified in the Law on Commercial Arbitration (*Komercinio arbitražo įstatymas*), by the Vilnius Regional Court (*Vilniaus apygardos teismas*). Where the request for interim measures is stated in the

application lodged, the issue of interim measures is decided only after the question of admissibility of the application requesting them has been resolved. The court rules on the request for interim measures as quickly as possible in a written procedure, but must do so no later than three working days after receiving the request. Where deemed necessary by the court, the defendant is notified of the examination of the request for interim measures.
Persons involved in the case have the right to lodge requests for interim measures with the appellate court or court of cassation in which the matter is pending on the merits.
The court may issue interim measures on the basis of a written reasoned request for interim measures from the person concerned before the date on which a court action is brought. In this request, the applicant must state the reasons why the action was not filed with the said request, produce evidence of a risk to the applicant's interests, and pay a deposit equal to half of the court fee charged for a request for interim measures, i.e. LTL 100. A deposit of LTL 1 000 is charged in the case of requests for interim measures relating to cases pending in national or foreign courts of arbitration or in foreign courts. The court may reduce the amount of the deposit in the light of the applicant's difficult financial situation if the applicant has submitted a reasoned request to that end with supporting evidence. When imposing interim measures, the court sets a time limit for bringing the action. This time limit may not exceed 14 days. If the action has to be brought before a foreign court or court of arbitration, the time limit may not exceed 30 days. If the action is not brought within the time limit prescribed, the interim measures are lifted. If it has not been brought due to the fault of the person concerned, the deposit is not returned.
A request for interim measures must be lodged with the same court that is to hear the action in accordance with the rules of jurisdiction. A request for interim measures relating to a case pending in a foreign court or a foreign or national court of arbitration must be filed with the Vilnius Regional Court.
At the reasoned request of the persons involved in the case or other persons concerned, the court may replace one interim measure with another. The court must inform the persons involved in the case or other persons concerned about any such request, and they are entitled to object to it.
The court may decide not to impose interim measures if the defendant pays the requested amount to the court's account or a guarantee has been issued for the defendant. Additionally, the defendant may pledge his/her assets for the benefit of the applicant.

2.2 The main conditions

(see section 2)

3 Object and nature of such measures?

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

Interim measures may be applied with respect to real estate, movable property, funds and property rights.

3.2 What are the effects of such measures?

Interim measures are measures in the absence of which compliance with the court decision may be rendered more difficult or impossible. In cases involving the temporary restriction of the property rights to a jointly owned item, seizure may be imposed only on that share of the property which belongs to the person subjected to the interim measures. Where his/her share in the joint property has not been identified, the entire property may be seized until that share is identified.
Upon seizure of funds in accounts with banks and other credit institutions, the use of these funds is authorised only for the operations specified in the court order.
In cases where goods in free circulation, raw materials, semi-manufactures or ready-made products are seized, the property holder may change the composition and form of such property only if the total value thereof will not decrease, unless the court order provides otherwise.
A person whose property has been seized is liable for any infringement of the restrictions imposed from the moment of notification of the order to seize the property and, if notification is impossible, including where the order for interim measures is adopted in the absence of that person, from the moment the order is registered in the register of property seizures.

3.3 What is the validity of such measures?

If the court dismisses the claim, any previous interim measures are retained until the entry into force of the court judgement. The issue of lifting interim measures must be decided by court judgement.
If the claim is met, any previous interim measures remain valid until the court judgement is executed. The bailiff executing the court judgement will inform the keeper of the respective public register about the termination of interim measures in the case in question.
In the event of seizure of movable property which is not registrable in a property register, or if on the day of the order the value and nature of the defendant's property is not known to the court, the person requesting interim measures must apply to the bailiff with a request to locate and describe the defendant's property. Where no such request is filed with the bailiff and the details of the property seized are not clarified, the interim measures remain valid for fourteen days from the date of the order imposing them. At the request of the persons involved in the case or other persons concerned, interim measures may be lifted by an order of the court hearing the case on its merits.
The court will cancel the interim measures of its own motion if the person requesting interim measures fails to bring an action within the time limit prescribed by the court. An order to that effect is not subject to a separate appeal. The court may also cancel interim measures of its own motion where that is necessary to protect the public interest and where failure to lift them would violate the rights and legitimate interests of a person, society or the State.
If court-imposed interim measures limit, infringe or restrict the rights of persons not involved in the case, such persons are entitled to request the court hearing the case on its merits to cancel the interim measures imposed on them.

4 Is there a possibility of appeal against the measure?

Any order on interim measures adopted by the court of first instance in accordance with the applicable procedure may be challenged by the persons involved in the case by filing a separate appeal to a higher court, except in a number of cases set out in the Code of Civil Procedure. Persons not involved in the case may file a separate appeal only in respect of those orders of the court of first instance that have dismissed their requests for cancellation of the interim measures imposed on them. Filing of a separate appeal does not result in a stay of proceedings.
Court orders on interim measures are not subject to appeal in cassation.

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Securing assets during a claim in EU countries - Luxembourg

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 or precautionary 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 their own orders.
The presiding judge or their 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 their 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 their 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 €15 000) 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, on the basis of the documents and explanations that it has received, check whether 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. See also the fact sheet 'How to enforce a court decision - Luxembourg'.
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. However, 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.

Related links

http://www.legilux.lu/

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Securing assets during a claim in EU countries - Hungary

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.

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Securing assets during a claim in EU countries - Malta

1 What are the different types of measures?

The different types of precautionary measures are the following:

the warrant of description;

the warrant of seizure;

the warrant of seizure of a commercial going concern;
the garnishee order;
the warrant of impediment of departure;
the warrant of arrest of sea vessels;
the warrant of arrest of aircraft;
the warrant of prohibitory injunction.

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

The measures are regulated by means of Cap 12 of the Laws of Malta under Sections 829 *et seq.* Provisions of special laws may also apply in some cases.

2.1 The procedure

The demand for the issue of one of the measures mentioned must be made by sworn application prepared by the applicant and must contain the origins and the kind of debt or claim sought to be secured: where the right sought to be secured is a debt or a demand that may be satisfied by the payment of a sum of money, the amount must be stated in the claim.

2.2 The main conditions

These warrants are issued by the court. The warrant of description or of impediment of departure by reference to the oath of the respondent cannot be issued by the Court of Magistrates (Malta) or by the Court of Magistrates (Gozo) in its inferior jurisdiction. Furthermore, no warrants of seizure or garnishee orders may be issued against the Government to secure rights or claims. No warrants of seizure or garnishee orders may be issued to secure rights or claims against armed forces members or against any vessel wholly chartered in the service of the Government of Malta if such person is in Malta with the armed force or vessel to which he belongs. No warrant of impediment of departure may be issued in security of any right or claim against any master, seaman or other person regularly enrolled, if the ship to which he belongs has obtained her clearance, and any engineer of any rank employed on any steam vessel.

Reference must always be made to Section 829 *et seq.* of Cap 12 of the Laws of Malta. Provisions of special laws may also apply in some cases.

3 Object and nature of such measures?

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

The assets subject to these measures are movable and immovable assets. A warrant of seizure may also be issued against a commercial going concern. A warrant of precautionary arrest can be issued on sea vessels larger than ten metres, as well as on aircraft.

3.2 What are the effects of such measures?

Their effect varies according to the nature of the measure, but in general, neither movable nor immovable assets can be sold or be transferred to third parties. A warrant of description may be issued in order to secure a right over movable objects: in this case, in order for the applicant to be able to exercise the said right, it may be in his/her interests for such movable things to remain in their actual place or condition. In a warrant of seizure of movable property the Registrar seizes from the debtor the articles or article indicated in the application. The effect of a warrant of seizure of a commercial going concern is to preserve the totality of the assets of the going concern, including licences and goodwill, and to order that the same is not sold in part or in whole and is concurrently kept in business: in any case, however, the court shall not accept a demand for the issuing of a warrant if it is satisfied that there are other means to safeguard the amount due. Conversely, the effect of a warrant of arrest of sea vessels and aircraft is to seize the sea vessel greater than ten metres in length or aircraft from the debtor, to attach the same in the hands of the authority where the property is located, and also to order that the said authority shall not release such sea vessel or aircraft or allow the debtor to divest himself in any way from the same in whole or in part or to give or surrender to any person any rights on the same. The aim of the warrant of prohibitory injunction is to restrain a person from doing anything whatsoever which might be prejudicial to the person who sought the warrant.

3.3 What is the validity of such measures?

Until they are rescinded by the court or withdrawn by the party issuing the warrant, every precautionary warrant shall remain in force for fifteen days after the lawsuit becomes *res iudicata.*

4 Is there a possibility of appeal against the measure?

There is no possibility of appealing against these measures. However, there is the possibility of issuing counter-warrants. In this case, the respondent against whom a precautionary act is issued may file an application in the court which issued the precautionary act, alternatively, if court action has been brought, he may file an application in the court which is dealing with this case to request that the precautionary act be revoked, entirely or partially, for one of the following reasons:

that the precautionary act has ceased to be in force;
that any one of the conditions required by law for the issue of the precautionary act does not in fact subsist;
that other adequate security is available to satisfy the claim of the person at whose request a precautionary act was issued, either by the issue of some other precautionary act or if such other security can adequately secure the claim to the satisfaction of the court; or
if it is shown that the amount claimed is not *prima facie* justified or is excessive; or
if the security provided is deemed by the court to be sufficient; or
if it is shown that in the circumstances it would be unreasonable to maintain in force the precautionary act in whole or in part, or that the precautionary act in whole or in part is no longer necessary or justifiable.

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Securing assets during a claim in EU countries - Netherlands

1 What are the different types of measures?

What are the different types of measures?

There are two types of measures: interim measures and precautionary measures.

Interim measures are measures preceding court rulings in proceedings on the merits. The judgment delivered by the court in the proceedings on the merits may confirm the interim measure or set it aside.

Precautionary measures are measures designed to ensure that the debtor fulfils his obligations. These measures enable creditors to cover themselves against the risk of not receiving what is due to them.

The court may impose interim and precautionary measures against the debtor’s property. The creditor is entitled by law to request certain measures before the judgment, and even before the proceedings, which serve to preserve rights which can be exercised only after the judgment. The intention is to avoid the

other party from rendering the creditor's right of recovery illusory, for example by selling goods, concealing then, giving them away or encumbering them with a lien or mortgage.

1.1 Interim measures

Interim measures may be imposed in proceedings specifically seeking them or in proceedings on the merits pending before the court.

Special rules apply for interim injunctions in divorce proceedings.

1.2 Precautionary measures

A. Attachment (*conservatoir beslag*)

The court may give the creditor permission to attach the debtor's property, with a view to preserving the property until the right claimed by the person levying attachment has been established.

There are four types of attachment:

Attachments for the collection of receivables (*conservatoire verhaalsbeslagen*). Property is attached after the court has ruled that a monetary claim must be met.

Attachment for the purpose of surrender of movable property or delivery of goods (*conservatoir beslag tot afgifte van roerende zaken of levering van goederen*). In this case, attachment is imposed on the debtor to ensure the preservation of rights as owner or beneficiary entitled to delivery.

The prejudgment marital attachment (*conservatoir marital beslag*). The spouse seeking divorce, legal separation or the liquidation of the marital community of property can levy this attachment in order to prevent goods from being removed from the community before the distribution takes place.

The attachment to preserve evidence (*conservatoir bewijsbeslag*). The purpose of this attachment is to safeguard evidence.

B. Consignment

This measure relates mainly to cases where there is a risk that attached items will be removed. At the request of the person levying the attachment, the court orders that the items attached or to be attached are handed over to a custodian to be designated by the court.

Consignment can also be ordered separately from attachment.

C. Placing under administration

Property that is the subject of a dispute over ownership can be placed under administration by the court. For example: there is a dispute on the right to delivery of a company. Attachment or consignment of the company's goods could impede the continuation of its business operation. The administrator can run the company pending the proceedings.

D. Placing of seals and inventory

With the permission of the sub-district court (*kantonrechter*), goods belonging to a succession or certain jointly owned property can be placed under seal by the notary. A lawyer is not required. This measure is rarely used. It can be requested for example by heirs, the surviving spouse or registered partner, executors and persons with (limited) entitlement to a share of the jointly owned property.

Request for removal of the seal is also made to the sub-district court.

At the request of the aforementioned persons, among others, the sub-district court may order an inventory by a notary. A lawyer is not required. The measure serves to determine the size (and value) of the estate. The application may be made together with a request to seal or remove a seal. The measure comprises a brief description of all assets and liabilities of the estate and, at the request of a party, an assessment of the value of the movable property. If the parties are unable to agree on the designation of the certified valuer(s), the valuer(s) are appointed by the notary.

1.3 Provisional enforcement

If required, the court may declare its judgment provisionally enforceable in all cases that arise, unless otherwise determined by law or the nature of the case. If it does not follow from the law, the provisional enforcement order must be requested by the claimant. The court cannot pronounce this of its own motion.

A judgment declared provisionally enforceable may be enforced immediately even if opposition, appeal or appeal in cassation is lodged against the decision. The enforcement order may cover all or part of the judgment. The judgment could also be executed without being declared provisionally enforceable, although its execution would be suspended by the lodging of an appeal. If a judgment is declared provisionally enforceable, its execution may be continued or even commenced after an appeal has been lodged against the judgment.

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

2.1 The procedure

A. Attachment

Attachment is levied with the permission of the district court judge hearing applications for interim relief. Application for permission is made by a lawyer. The judge may in principle rely on the applicant's claims. In principle, the debtor is not heard. The court order is usually issued the same day. In the case of a monetary claim, the judge sets the amount for which the permission is granted. The judge may order the provision of security for possible damage caused by the attachment.

The attachment is levied by writ served by a bailiff. A person levying attachment who is later found to have wrongfully levied attachment may be ordered to pay damages.

The procedure requesting attachment gives rise to costs, such as: court registration fee (http://www.rechtspraak.nl/), costs incurred in instructing a lawyer (http://www.advocatenorde.nl/) and bailiff's fees (http://www.kbvg.nl/).

B. Consignment

Consignment is ordered at the request of the party levying attachment by the district court judge hearing applications for interim relief. The attached party and any other interested parties are heard unless urgent circumstances preclude this. No appeal is permitted against the order. The judge may order the provision of security.

The district court judge hearing applications for interim relief may order consignment separately from attachment.

The procedure requesting consignment gives rise to costs, such as: court registration fee (http://www.rechtspraak.nl/), costs incurred in instructing a lawyer (http://www.advocatenorde.nl/) and bailiff's fees.

C. Placing under administration

At the request of the interested party, the district court judge hearing applications for interim relief places the disputed property under administration. The measure is not related to any attachment levied. Any attachments levied on the property do not restrict the powers of the administrator. The measure may cover any kind of goods, movable and immovable property and property rights. The administration is mainly of interest to ensure continued management by an independent third party of the goods of companies, for example, during the proceedings.

The procedure requesting placing under administration gives rise to costs, such as: court registration fee (http://www.rechtspraak.nl/), costs incurred in instructing a lawyer (http://www.advocatenorde.nl/) and administrator's salary.

D. Interim measures

Interim proceedings can be conducted entirely separately from, and do not have to be followed by, proceedings on the merits.

The district court judge hearing applications for interim relief has jurisdiction to grant interim relief, where appropriate, in all matters. The sub-district court judge also has jurisdiction in cases for which he is to give judgment in proceedings on the merits. In addition to normal territorial jurisdiction, the court in whose area of jurisdiction the measure is to be taken has extra jurisdiction. Each order or prohibition that could be requested in proceedings on the merits may be requested in interim proceedings. Monetary claims may be allowed under certain conditions (see 2.2).
In proceedings before the judge hearing applications for interim relief, the claimant must be assisted by a lawyer. The defendant may be assisted by a lawyer. In proceedings before the sub-district court judge, the parties may proceed without a lawyer. The hearing is oral and informal. The judgment is usually given after a few weeks. The court may declare of its own motion that the interim measure is provisionally enforceable. 'Interim' means that the judgment is legally reversible. A different judgment may be delivered in any proceedings on the merits.
This procedure gives rise to the following costs: court registration fee (http://www.rechtspraak.nl/), bailiff's fees (http://www.kbvg.nl/) and, for the claimant, costs incurred in instructing a lawyer (http://www.advocatenorde.nl/).
Interim relief measures may also be granted in pending court proceedings on the merits, which apply for the duration of the litigation. The interim relief to be requested must be related to the claim in the main proceedings. This procedure is little used.
In divorce cases, interim injunctions are requested for the duration of the procedure and for some time afterwards. Examples are: the marital home, the goods intended for daily use, the children and the maintenance allowance for one spouse to be paid by the other.
These measures are requested by separate petition, prior to, during and even after divorce proceedings, until the time when they cease to have effect. The oral proceedings must have commenced no later than in the third week after filing and the judge will rule as soon as possible.
This procedure gives rise to the following costs: court registration fee (http://www.rechtspraak.nl/) and costs incurred in instructing a lawyer (http://www.advocatenorde.nl/).
E. Provisional enforcement
In ordinary summons proceedings, the court may, on application of the claimant, declare all or part its judgment to be provisionally enforceable, unless otherwise determined by law or the nature of the case. It may make provisional enforceability subject to the condition of the provision of security. Declaration of provisional enforceability is also possible of its own motion in interim proceedings. The same applies in petition proceedings.

2.2 The main conditions

A. Attachment
The petition must contain certain information: the nature of the attachment to be levied and the right invoked by the petitioner and, in the case of a monetary claim, also the (maximum) amount thereof. In addition to this, depending on the attachment to be levied, it has to be demonstrated whether or not the fear of misappropriation is founded. An urgent interest is not required.
B. Consignment
In the case of a request by a person levying attachment, urgency is not required. In interim proceedings, however, the claimant must have an urgent interest. Fear of misappropriation does not need to be demonstrated.
C. Placing under administration
This involves interim proceedings, so the claimant must have an urgent interest. Fear of misappropriation does not need to be demonstrated.
D. Interim measures
In interim proceedings, the claimant must have an urgent interest, the court weighs up the interests of the parties and the decision provides interim relief. The urgent interest of the claimant does not have to lie in circumstances related to the defendant. The claim may be contested or contestable. More stringent requirements apply with respect to the admissibility of monetary claims in interim proceedings. The claimant's urgent interest receives extra scrutiny, while the risk of impossibility of repayment – which may lead to refusal of relief – will also have to be taken into account in the weighing up of interests. At all district courts, interim debt collection proceedings are possible for uncontested claims or claims which cannot reasonably be contested arising from an agreement in respect of goods delivered and/or services provided.
For interim measures in divorce proceedings and other proceedings on the merits, no requirements apply concerning contestability or urgency of the case. Fear of misappropriation is also irrelevant.
E. Provisional enforcement
Not applicable.

3 Object and nature of such measures?

The purpose of precautionary measures is to maintain a *de facto* or *de jure* situation for the preservation of rights (of redress). The purpose of interim measures is to create a *de facto* or *de jure* situation prior to a ruling in proceedings on the merits.

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

A. Attachment
In principle, attachment is possible on all types of goods, with the exception of assets intended for public services and the items stated in Articles 447, 448 and 712 of the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*). A portion of wages and other claims to periodic payments is not eligible for attachment. Attachment can also be levied on a limited right or on a share in an asset. The rules for attachment on such assets are in that case applicable *mutatis mutandis* (Article 707 Code of Civil Procedure).
B. Consignment
Movable property that is not registered property.
C. Placing under administration
All goods to which entitlement is in dispute.
D. Interim measures
All types of goods may be the subject of a claim in interim proceedings or of a provisional claim in proceedings on the merits.
E. Provisional enforcement
Not applicable.

3.2 What are the effects of such measures?

A. Attachment
The consequence of attachment is that the attached assets are frozen. The attached party may no longer sell, give away, encumber or lease the property, etc. This incapacity to dispose of property is relative: it has effect only in relation to the person levying attachment. In the case of attachment by garnishment, the garnishee must also refrain from making any further payment or handing over property. However, the *bona fide* third party acquirer is protected under certain conditions. In the case of attachment by garnishment, the garnishee is obliged to state what he is holding on behalf of the attached party. Withdrawal of attached goods is punishable.
B. Consignment

Withdrawal of consigned goods is punishable.
C. Placing under administration
The administration of the goods is transferred to the administrator.
D. Interim measures
Compliance is often enforced by means of a periodic penalty payment.

3.3 What is the validity of such measures?

A. Attachment
When granting permission for the attachment, the court must always specify the time limit within which the statement of claim in the principal action must be lodged. If no principal action is yet pending, the court specifies a time limit in the permission for attachment, of at least eight days following the attachment, within which the principal action must be brought. Only proceedings to obtain an enforceable order for payment of the claim, for which the attachment was levied as insurance, can be considered as principal action. The attachment can in the meantime be lifted by the court at the request of the person on whose goods the attachment has been levied or at the request of another interested party. If the time limit set by the court is exceeded, the attachment lapses. Attachment becomes executory as soon as the person levying the attachment has obtained an enforceable enforcement order and this order has been served on the attached party (and in the case of garnishment, also on the third party).
If the statement of claim in the principal action is irrevocably dismissed, the attachment lapses. Attachment can be lifted at the request of the attached party.
B. Consignment
Consignment can be lifted by the judge hearing applications for interim relief at the request of each interested party in interim proceedings. This judge determines, if required, to which party the custodian must hand over the property. Lifting the attachment on which the consignment is based results in lifting the consignment. The custodian then delivers the property to the attached party. Once the party entitled to the property has been determined by judgment declared final or provisionally enforceable, the custodian hands over the property to this person.
C. Placing under administration
If the claim in the principal action has not yet been brought before the court, it must be lodged within a time limit to be determined by the court. If this time limit is exceeded, the administration ends.
Once the party entitled to the property has been determined by judgment declared final or provisionally enforceable, the administrator hands over the property to this person. The administration is lifted by a joint decision between the parties or, at the request of one of them, by the judge hearing applications for interim relief.
D. Interim measures
Interim relief measures apply until the court has passed judgment in the proceedings on the merits.
The judge in interim proceedings may also limit the period of validity of the measures or make them subject to the condition that proceedings on the merits are brought within a certain time limit. Interim injunctions issued in proceedings on the merits also end if the principal action is prematurely ended.
Interim injunctions in divorce proceedings may remain in effect for some time after the divorce. They may be amended or withdrawn. Interim injunctions issued prior to the divorce proceedings lapse if the divorce petition is not lodged within four weeks of the decision granting the interim injunctions.
E. Provisional enforcement
The court of appeal can suspend the enforcement. Suspension can also be obtained by way of execution proceedings.

4 Is there a possibility of appeal against the measure?

General rules
Opposition, appeal and appeal in cassation may be lodged against a judgment.
Opposition may be lodged with the court that entered the judgment in default, by the party convicted in absentia, within four weeks (commencement variable).
Appeal (for amounts in excess of EUR 1 750) may be lodged with the court of appeal, by the unsuccessful party, within three months of the date of delivery of the judgment.
Appeal in cassation may be lodged with the Supreme Court of the Netherlands (*Hoge Raad der Nederlanden*) by the unsuccessful party, within three months of the date of delivery of the judgment either in the first and highest instance, or in appeal.
Appeal to the court of appeal and appeal in cassation to the Supreme Court of the Netherlands against an order are possible.
Appeal is lodged by the applicant and interested parties who appeared in the proceedings, within three months of the date of delivery of the judgment, and by other interested parties, within three months of the court order being notified to them.
Appeal in cassation can be lodged by parties who appeared in one of the previous courts, within three months of the date of delivery of the judgment.
These legal remedies have the effect of suspending enforcement, unless the judgment was declared provisionally enforceable.
A. Attachment
No higher appeal is permitted against permission to levy attachment (Article 700(2) of the Code of Civil Procedure). The person levying attachment may lodge an appeal and then an appeal in cassation against a decision to dismiss the claim.
B. Consignment
If consignment has been ordered at the request of the person levying attachment, no higher appeal is permitted against the order.
The applicant may lodge an appeal and then an appeal in cassation against dismissal of the claim.
Opposition, appeal and appeal in cassation may be lodged against an interim court order.
C. Placing under administration
Opposition, appeal and appeal in cassation may be lodged against an order placing property under administration.
D. Interim measures
Opposition, appeal and appeal in cassation may be lodged against interim injunctions granted in interim proceedings or in proceedings on the merits. Appeal or appeal in cassation against interim injunctions granted in divorce proceedings is not permitted.
E. Provisional enforcement
If a judgment has not been declared provisionally enforceable, such a declaration may still be obtained in appeal or in appeal in cassation or via execution proceedings. If a judgment is declared provisionally enforceable, the appeal judge may suspend enforcement. This is not possible under an appeal in cassation. Suspension can also be obtained via execution proceedings.

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Securing assets during a claim in EU countries - Austria

1 What are the different types of measures?

Interim and preventive measures are examples of precautionary measures. Austrian law provides for the following precautionary measures:
measures to preserve evidence;
measures to achieve the forced sale of collateral;
interim injunctions.
The common feature of all these precautionary measures is that the parties do not have to prove their claims; they simply have to provide *prima facie* evidence of them (i.e. credibly demonstrate them).
Interim injunctions are the most important of these measures, which is why the notes below are confined to them.
Interim injunctions are court rulings in the form of an order which secures future enforcement, regulates current circumstances for a certain period of time or achieves provisional satisfaction of a claim.
Interim injunctions are sub-divided into injunctions to:
secure a claim to payment of money;
secure a claim to performance of an action;
protect a right or legal relationship.

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

2.1 The procedure

Interim injunctions are only granted on application. The parties are the applicant and the respondent. The following courts have jurisdiction to grant interim injunctions:
during proceedings already pending: the trial court at the same instance;
during enforcement proceedings: the enforcement court;
before the main action in contentious proceedings or between the trial and enforcement proceedings: the district court (*Bezirksgericht*) in the district where the respondent's general place of jurisdiction is located;
alternatively, the place of jurisdiction of the subject of the injunction or of the permanent or temporary place of residence of the third party debtor, or the district court which holds the first enforcement hearing.
As the procedure complies with the provisions of enforcement law, legal representation is not compulsory at first instance.
Actual acts of enforcement (such as impounding by the court) are carried out *ex officio* (by the enforcement officer). As a rule, the costs of an interim injunction, which depend on the value of the claim to be secured, are initially borne by the applicant. An applicant may only claim reimbursement of costs if they are successful in the main proceedings for which the application is made in the main proceedings. However, if a respondent is successful at the stage of the ruling on the interim injunction, they will already be entitled to reimbursement of costs.

2.2 The main conditions

In order to obtain an interim injunction, the injured party must file an application asserting and providing *prima facie* evidence of a monetary claim, a non-monetary claim to some other performance or a disputed right or legal relationship and also that there is a risk.
In order to obtain an interim injunction to secure a monetary claim, the applicant must provide *prima facie* evidence of a subjective risk; i.e. *prima facie* evidence that, without an injunction, the respondent will take measures to frustrate or complicate collection of the monetary claim.
For all other types of interim injunction, only *prima facie* evidence of an objective risk is needed, i.e. that, without an interim injunction, pursuit and collection of the claim through the courts would be impeded or considerably complicated, especially as a result of a change in the current situation of the subject of the injunction.
For interim injunctions to secure monetary claims and other forms of interim injunctions, proof that the claim would have to be enforced in countries in which such enforcement is not guaranteed by either international treaties or EU law is sufficient as *prima facie* evidence of risk.

3 Object and nature of such measures?

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

All the means available for securing a monetary claim are listed in the Enforcement Code (*Exekutionsordnung*). They are:
measures to impound and administer movable assets;
an order prohibiting the disposal or pledging of movable physical assets;
a third-party prohibition order;
measures to administer the respondent's property;
an order prohibiting the disposal or encumbering of property or of rights registered in the Land Register.

3.2 What are the effects of such measures?

The effects of these measures vary according to the security provided. Impounding and administering movable physical assets removes those assets from the direct personal influence of the respondent. In principle, even legal disposal of assets impounded and administered is null and void. The law grants the courts broad latitude to give 'necessary or useful' directions whilst the goods are being retained and administered in order to prevent changes that would reduce their value or the proceeds from them. Such directions may, for example, include the sale of impounded perishable goods.
All disposals which infringe a prohibition on the disposal or pledging of movable, tangible assets are null and void.
Third-party prohibition orders granted by the court prohibit the respondent from disposing of or collecting any claims against third parties. At the same time, third parties are ordered not to pay any debts owed to the respondent and not to deliver any items due to him or do anything else which might frustrate or considerably complicate enforcement in respect of the claim or the items owed or to be delivered, until further notice from the court. In other words, third-party debtors may only be prohibited from fulfilling an obligation or from impairing fulfilment; they cannot be prohibited from making payment to the applicant or from exercising any right. Third parties who fail to comply with the order are liable for damages. Whether disposals in breach of an injunction are null and void is not expressly regulated by law and legal opinion in Austria is divided on the subject.
An administrator appointed and thereafter supervised by the court administers the respondent's real property.
An entry is made in the Land Register to the effect that the debtor is prohibited from disposing of or encumbering his properties or rights registered in the Land Register. Once that entry has been made, voluntary disposal of property or rights by the respondent and corresponding entries in the Land Register are possible, but only have limited effect in respect of the applicant. Only if the applicant's claim is dismissed by the court in a final judgment or the interim injunction is otherwise cancelled does the third party come into full possession of his/her rights, including with regard to the applicant, and can have the prohibition removed.

3.3 What is the validity of such measures?

An interim injunction is only valid for a specified period of time, although it may be extended at the applicant's request. If an interim injunction is ordered separately from the substantive proceedings, the court must set a reasonable time limit for substantiating the secured claim and filing a claim or application for enforcement. The respondent can stay enforcement of the injunction and cancel injunctions already enforced by lodging a redemption sum.
Interim injunctions must be cancelled on request or *ex officio* if:
the deadline for substantiating the claim has expired;
the interim injunction was enforced to a greater extent than was necessary in order to protect the applicant;
the conditions for an injunction are no longer fulfilled;
the respondent has paid a redemption sum or provided security;
the grounds for the injunction no longer apply.

4 Is there a possibility of appeal against the measure?

There are two types of appeal under the interim injunction procedure, neither of which delays the proceedings:
an objection to the interim injunction itself: if the respondent and third-party debtor have not previously been heard, they may lodge an objection within 14 days. New evidence may be provided in order to ensure a fair hearing. The court of first instance rules on such objections by order and the hearing of the appeal is not open to the public;
an appeal known as a '*Rekurs*' is also available against an order granted in interim injunction proceedings. The time limit for this appeal is 14 days. The appeal process is a purely written procedure in which new evidence is barred. An appeal on a point of law may also be lodged against a confirmed order granting an interim injunction, but not if the application for an injunction was dismissed.

Special rules:

The law makes provision for the following:
temporary accommodation for a (divorced) spouse;
temporary regulation, use or safeguarding of matrimonial assets and matrimonial savings;
temporary accommodation for a child;
interim injunctions to prevent domestic violence;
interim injunctions to prevent violence in general;
interim injunctions to prevent invasion of privacy;
measures to satisfy a spouse's urgent need for accommodation.
temporary rent.
Of these special rules, interim injunctions preventing violence are especially important. Austria has a very simple but efficient system of protection against violence which allows a violent resident to be expelled from the home and forbidden to return. A person whose violent behaviour makes it unreasonable to expect the other person to meet them may also be forbidden from frequenting certain places or making contact. Most importantly, this system provides for close cooperation for the prevention of domestic violence between the police, the courts, the local domestic violence centre and, where minors are involved, child and youth welfare agencies. In certain cases provision is also made for representation by a victim support organisation.
The forces of law and order have the power under policing laws to issue an expulsion or restraining order for up to two weeks on persons who have endangered another person's life, health or liberty. If an application for an interim injunction is filed with the court, the order is extended to a maximum of four weeks. The police must also inform the local domestic violence centre, so that they can provide the victims with support.
If one person makes continued cohabitation intolerable for the other person through physical assault, the threat of physical assault, or any behaviour which is severely damaging to the other's mental health, the Court must, upon application from the other person:
order the former to leave the residence and its immediate vicinity and
not to return to the home or the immediate vicinity while the home is being used to meet the applicant's urgent need for accommodation.
The court may also prohibit the expelled person from frequenting specified locations (such as the street outside the home or the child's school) and order them to refrain from meeting or contacting the applicant, provided that this does not conflict with the respondent's own serious interests.
Interim injunctions granted in connection with main proceedings, such as divorce proceedings, annulment proceedings, division of property proceedings or proceedings to clarify rights of use of the home, apply pending final judgment in the main proceedings. Interim injunctions may be granted irrespective of whether or not the parties are still living together and independently of the main proceedings. However, if no main proceedings are pending, an injunction may not be granted for longer than six months.
If the conditions for doing so are met, an interim injunction must be enforced immediately either *ex officio* or on request. The enforcing authority (bailiff) must order the respondent from the home and remove all keys to the home from him and lodge them with the court. When a domestic violence injunction is enforced, the court may instruct the forces of law and order to call on the law and order enforcement officers at their disposal. This is a frequent occurrence in practice, meaning that violence interim injunctions are generally enforced by the police rather than by a bailiff.

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Securing assets during a claim in EU countries - Poland

1 What are the different types of measures?

The type of measure depends on the nature of the claim to be secured. Under Article 747 of the Code of Civil Procedure ('*kodeks postępowania cywilnego*'), pecuniary claims are secured through:
the seizure of movable assets, wages and salaries, claims from a bank account or other claims, or another property right;
the encumbrance of the obligated party's real estate with a compulsory mortgage;
the establishment of a prohibition on the disposal or encumbrance of real estate for which there is no land and mortgage register or for which the land and mortgage register has been lost or destroyed;
the encumbrance of a vessel or a vessel under construction with a maritime mortgage;
the establishment of a prohibition on the disposal of the cooperative ownership right to premises;
the establishment of receivership over an enterprise or agricultural holding of the obligated party or an establishment forming part of an enterprise or a part thereof, or a part of an agricultural holding of the obligated party.
If an injunction is sought with respect to claims other than pecuniary claims, the court grants the injunction it considers appropriate in the circumstances, not excluding measures designed to secure pecuniary claims (Article 755 of the Code of Civil Procedure). In particular, the court may:

regulate the rights and obligations of the parties to or participants in proceedings for the duration of the proceedings;
prohibit the disposal of things or rights involved in the proceedings;
stay enforcement or other proceedings aimed at enforcing a decision;
decide on the custody of minors and contacts with a child;
order that an appropriate caveat be entered in the land and mortgage register or another appropriate register.
The interests of the parties to or participants in proceedings should be taken into account when selecting the form in which the injunction is granted, so as to ensure proper legal protection for the qualifying party and not to burden the obligated party excessively.

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

2.1 The procedure

Injunction proceedings are instituted:
at the request of a party to or participant in proceedings lodged with the court competent to examine the case in first instance. If that court cannot be identified, the competent court is the court of the place where the injunction is to be implemented or, in the absence of that basis or if the injunction is to be implemented within the jurisdiction of different courts, Warsaw District Court (‘*sąd rejonowy dla m.st. Warszawy*’). An application for an injunction lodged during proceedings is considered by the court of the instance in which the case is pending, except where this is the Supreme Court (‘*Sąd Najwyższy*’). In such cases, the court of first instance decides whether or not the injunction should be granted (Article 734 of the Code of Civil Procedure);
ex officio in cases where proceedings may be instituted *ex officio* (Article 732 of the Code of Civil Procedure).
Applications for an injunction are lodged in writing. They should meet the requirements for pleadings and specify the form in which the injunction is granted and, in the case of a pecuniary claim, the amount of the injunction (which must not exceed the amount of the claim, plus interest to the date on which the injunction is granted and the associated costs, and may also include the projected costs of proceedings) and the circumstances justifying the application. If an application for an injunction is lodged before proceedings are instituted, a summary should be provided of the subject-matter of the case (Article 736 of the Code of Civil Procedure).
Security may be provided before proceedings are instituted or during proceedings. After the qualifying party has obtained an enforceable title, an injunction may be granted only if it is designed to secure a claim for which the performance deadline has not yet expired (Article 730(2) of the Code of Civil Procedure).
When an injunction is granted before proceedings are instituted, the court sets a deadline by which the letter instituting proceedings should be lodged, failing which the injunction will be annulled. This deadline must not be longer than two weeks (Article 733 of the Code of Civil Procedure).
Applications for an injunction must be examined without delay, within one week of the date on which they are lodged with the court, unless special provisions stipulate otherwise. If an act of law provides for applications to be examined at a hearing, that hearing should be scheduled within one month of the date on which the application was lodged (Article 737 of the Code of Civil Procedure).
Injunctions are granted on the basis of a court judgment.

2.2 The main conditions

An injunction may be requested in all civil cases examined by a court or court of arbitration (Article 730 of the Code of Civil Procedure).
The conditions for granting an injunction are as follows: the claim and the legal interest in granting an injunction must be substantiated. There is a legal interest in granting an injunction if it will be impossible or very difficult to implement the judgment handed down in the case or it will otherwise be impossible or very difficult to achieve the aim of the proceedings if the injunction is not granted (Article 7301 of the Code of Civil Procedure).
The purpose of an injunction cannot be to satisfy a claim, unless an act of law stipulates otherwise (Article 731 of the Code of Civil Procedure).
The court may make implementation of an injunction conditional on the lodging of a deposit by the qualifying party to secure the obligated party’s claims resulting from implementation of the injunction, except where the qualifying party is the Treasury and where security is provided for claims for maintenance, disability pensions or amounts owed to an employee in cases relating to labour law in a part not exceeding their full monthly remuneration (Article 739 of the Code of Civil Procedure).

3 Object and nature of such measures?

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

An injunction may be granted for:
movable assets;
wages and salaries;
claims from a bank account or other claims, or another property right;
real estate;
vessels or vessels under construction;
the cooperative ownership right to premises;
an enterprise or agricultural holding, an establishment forming part of an enterprise or a part thereof, or a part of an agricultural holding.
An injunction cannot cover items, debts or rights excluded from enforcement. Perishable goods may serve as security if the obligated party has no other property with which to secure the entitled party’s claims and the goods can be sold promptly.

3.2 What are the effects of such measures?

The main purpose of injunction proceedings is to ensure that the entitled party (usually the creditor) is protected against the potential adverse effects of delay in cases pending before the court (or involving settlement out of court) and to improve the entitled party’s situation in enforcement proceedings if the subject of court proceedings and the injunction is an enforceable claim. To a limited extent, an injunction may also allow the entitled party to obtain pecuniary benefits.
An injunction may also be a response to action taken by the obligated party to the detriment of the entitled party.
The effects of an injunction on the obligated party vary according to the form which it takes:
if movable assets are seized, the management of the movable assets after seizure has no impact on the further course of proceedings, and enforcement proceedings for the movable assets seized may also be conducted against the buyer;
if the bank account of an enterprise or owner of an agricultural holding is seized as security, the obligated party may collect only the amounts specified by the court for the payment of current wages and salaries, together with payroll tax and other statutory amounts, as well as overheads;
limited use can be made of other debts and property rights seized (the use is determined by the court);
a bailiff sells all the items seized along with the rights to financial instruments recorded on a securities account or other account within the meaning of the rules on financial instrument trading, and the amount obtained is deposited on the court’s deposit account;
a prohibition on the disposal or encumbrance of real estate and the cooperative ownership right to premises is established;
a vessel or a vessel under construction is encumbered with a maritime mortgage;
the obligated party is deprived of management rights and receivership is established, and the income from receivership serves as security;

in maintenance cases, the obligated party is required to pay a specified sum to the entitled party periodically or on a one-off basis.

3.3 What is the validity of such measures?

The obligated party may request at any time that a legally binding decision to provide security be revoked or amended if the reason for the security ceases to exist or changes (Articles 742, 7541(3) and 757 of the Code of Civil Procedure).

Security is annulled if:

the obligated party deposits the amount of security requested by the entitled party in the application for an injunction on the Minister for Finance's deposit account;

a claim or application is returned or rejected following a final judgment;

a claim or application is dismissed or proceedings are discontinued;

the entitled party does not apply for the entire claim in proceedings or applies for claims other than that secured before proceedings were instituted;

a judgment allowing a secured claim becomes final (the security is annulled one month after the judgment becomes final);

the entitled party does not apply for further enforcement measures within two weeks of a judgment allowing a claim becoming final in cases in which security was provided through the seizure of movable assets, wages and salaries, claims from a bank account or other claims, another property right or through the establishment of receivership over an enterprise or agricultural holding of the obligated party or an establishment forming part of an enterprise or a part thereof, or a part of an agricultural holding of the obligated party.

Security is also annulled (Article 754 1 of the Code of Civil Procedure):

two months after the judgment allowing a secured claim becomes final or after a decision to reject an appeal or other judicial remedy brought by the obligated party against a judgment granting a secured claim becomes final;

if the entitled party does not apply for further enforcement measures within one month after the judgment granting a secured claim becomes final or after a decision to reject an appeal or other judicial remedy brought by the obligated party against a judgment granting a secured claim becomes final in the case of an injunction involving *inter alia* the seizure of movable assets.

4 Is there a possibility of appeal against the measure?

Both the entitled party and the obligated party may lodge a complaint against the decision of the court of first instance regarding security (Article 741 of the Code of Civil Procedure).

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Securing assets during a claim in EU countries - Portugal

1 What are the different types of measures?

Interim and precautionary measures are intended for the protection of certain legal situations, and may include: (a) interim measures within the scope of the legal framework for accompanied adults provided for by Law No 49/2018 of 14 August 2018; (b) provisional curatorship of an absentee's assets (Article 1021 of the Code of Civil Procedure); (c) appointment of a curator *ad litem* (Article 17 of the Code of Civil Procedure); or (d) measures necessary to protect assets comprising an estate in abeyance (Article 938 of the Code of Civil Procedure).

The purpose of interim proceedings (e.g. those provided for under Articles 362 et seq. of the Code of Civil Procedure) is to minimise the risk of a late decision and to ensure the effectiveness of the final judgment (Article 2 of the Code of Civil Procedure).

Interim proceedings seek to secure the practical outcome of the action, to avoid serious damage or to anticipate the enforcement of the right, while striking a balance, as far as possible, between the interests of speed and legal certainty.

Portuguese civil procedural law provides for two types of interim proceeding:

(a) ordinary interim proceedings (*procedimento cautelar comum*) (Articles 362 to 376 of the Code of Civil Procedure);

(b) specific interim proceedings (*procedimentos cautelares especificados*) (Articles 377 to 409 of the Code of Civil Procedure).

Examples include:

(a) provisional restitution of possession (Article 377 of the Code of Civil Procedure);

(b) suspension of company resolutions (Article 380 of the Code of Civil Procedure);

(c) provisional maintenance (Article 384 of the Code of Civil Procedure);

(d) award of provisional damages (Article 388 of the Code of the Code of Civil Procedure);

(e) seizure (Article 391 of the Code of Civil Procedure);

(f) injunction prohibiting new works (Article 397 of the Code of Civil Procedure);

(g) inventory (Article 403 of the Code of Civil Procedure).

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

Where someone demonstrates a justified fear that another person may cause serious and irreparable harm to their rights, they can request the appropriate precautionary or anticipatory measure to secure the effectiveness of the right at risk (Article 362(1) of the Code of Civil Procedure).

Recourse to the ordinary precautionary measure, being as it is a supplementary remedy, is also dependent on a lack of a specific precautionary measure that is appropriate to the facts of the case (Article 362(3) of the Code of Civil Procedure).

Thus, the **precautionary measures not elsewhere specified** referred to in Article 362 of the Code of Civil Procedure have the following legal preconditions:

(a) the apparent existence of a right;

(b) the well-founded fear that another person may cause serious and irreparable harm to their right (*periculum in mora, or danger in delay*);

(c) the practical suitability of the precautionary or anticipatory measure to ensure the effectiveness of the right at risk;

(d) the measure to be obtained must not be covered by other precautionary procedures.

For the court to order precautionary measures, it is sufficient for it to find that there is a prima facie case that the right asserted exists and a justified fear that the time naturally taken to reach a final resolution of the dispute may cause harm that is irreparable or difficult to compensate. The judge must be sufficiently convinced that the outcome of the main case will be favourable to the applicant, as precautionary measures entail clear interference with the defendant's legal situation (Article 368(1) of the Code of Civil Procedure).

2.1 The procedure

Except for the injunction prohibiting new works, for which it is possible to take prior outofcourt action followed by an application for confirmation by the court (Article 397(2) and (3) of the Code of Civil Procedure), all other proceedings are based on an initial application to the court in which the applicant provides summary proof of the right at risk and justifies the fear of injury. In this application, the list of witnesses is submitted and other evidence requested, with a limit of five witnesses, in accordance with Article 365 of the Code of Civil Procedure.
As regards territorial jurisdiction, Article 78 of the Code of Civil Procedure states that:
(a) applications for the seizure and inventorying of assets may be filed with the court where the related action is to be brought, or in the place where the assets are located or, if there are assets in a number of districts, in one of them (Article 78(1)(a) of the Code of Civil Procedure);
(b) for an injunction prohibiting new works, the court of the place where the work is to be done has jurisdiction (Article 78(1)(b) of the Code of Civil Procedure);
(c) for the other interim proceedings, the court with jurisdiction is the court before which the related action is to be brought (Article 78(1)(c) of the Code of Civil Procedure).
Representation by a lawyer is mandatory where the value of the measure exceeds € 5 000.00 or where appeals are admissible, under Articles 58 and 1090 of the Code of Civil Procedure in conjunction with Article 44(1) of the Law on the Organisation of the Judicial System.

2.2 The main conditions

When assessing the criteria for ordering a precautionary measure, the court must always examine whether the fear invoked is wellfounded and how serious and difficult it will be to compensate for the potential harm. It will also assess whether the precautionary or anticipatory measure is appropriate in the specific case at issue, with a view to safeguarding the right alleged to be at risk. It must establish that there is a risk associated with any delay.
It will also examine whether the proceedings are actually or potentially dependent on an action brought or to be brought in respect of the right protected by the measure.
In this type of proceeding, it is for the court to obtain prima facie evidence (i.e. less rigorous evidence than in the main action) that there is a real likelihood that the right to be safeguarded exists and that the fear of its being harmed is sufficiently justified.
All interim proceedings are regarded as urgent, taking priority over any other nonurgent judicial work (Article 363(1) of the Code of Civil Procedure), and must be decided at first instance within two months at most or, if the defendant does not have to be summoned, within 15 days (Article 363(2) of the Code of Civil Procedure).

3 Object and nature of such measures?

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

Rights and movable and immovable property not totally or partially excluded by law may be subject to precautionary measures.

3.2 What are the effects of such measures?

Since they are ordered by the courts, precautionary measures are binding on all public and private entities and take precedence over measures adopted by any other authority (Article 205(2) of the Constitution of the Portuguese Republic). Any person who infringes the precautionary measure ordered will incur the penalty for the offence of aggravated failure to comply with an official order (*desobediência qualificada*), notwithstanding any enforcement measures (Article 375 of the Code of Civil Procedure).

3.3 What is the validity of such measures?

Without affecting the possibility of the applicant's being relieved of the responsibility for bringing the main action, Article 373 of the Code of Civil Procedure stipulates that the interim proceedings end and any measure ordered expires:
(a) if the applicant does not bring the action on which the measure depends within 30 days of the date on which they were notified that the decision ordering the measure became final (Article 373(1)(a) of the Code of Civil Procedure);
(b) if, after the action has been brought, proceedings have been stopped for more than 30 days by the applicant's negligence (Article 373(1)(b) of the Code of Civil Procedure);
(c) if the action is dismissed by a final decision (Article 373(1)(c) of the Code of Civil Procedure);
(d) if the action is dismissed on procedural grounds and the applicant does not bring a new action in time to take advantage of the effects of the previous action (Article 373(1)(d) of the Code of Civil Procedure);
(e) if the right which the applicant seeks to safeguard has lapsed (Article 373(1)(e) of the Code of Civil Procedure).

4 Is there a possibility of appeal against the measure?

Yes. Ordinary appeals are admissible when the value of the measures exceeds the limit of the court before which the decision is appealed and the contested decision is unfavourable to the appellant by more than half of this amount (Article 629(1) of the Code of Civil Procedure). Appeals may also always be brought against decisions relating to the value of precautionary measures on the grounds that the value exceeds the limit of the court which took the contested decision (Article 629(3)(b) of the Code of Civil Procedure) and against preliminary rejections of initial applications for precautionary measures (Article 629(3)(c) of the Code of Civil Procedure).
Decisions ordering reversal of the responsibility for bringing the action are only appealable in conjunction with appeals against decisions on the requested measure; decisions to reject the reversal are final and unappealable (Article 370(1) of the Code of Civil Procedure).
No appeal may be brought before the Supreme Court of Justice (*Supremo Tribunal de Justiça*) against decisions ordering precautionary measures, including those ordering the reversal of responsibility for bringing an action, without prejudice to cases in which an appeal is always admissible (Article 370(2) of the Code of Civil Procedure).
An interim order may be challenged by:
any party to the proceedings who loses the case (Article 631(1) of the Code of Civil Procedure);
anyone who is not a party to the proceedings but suffers direct and real harm as a result thereof (Article 631(2) of the Code of Civil Procedure).
The court with jurisdiction to hear the appeal is the court of appeal in the judicial district in which the court which handed down the contested decision is located.
The time limit for lodging an appeal is 15 days from notification of the decision (Article 638(1) of the Code of Civil Procedure). If the appeal also concerns the reappraisal of recorded evidence, the time limit increases by 10 days (Article 638(7) of the Code of Civil Procedure).
An appeal brought against an order which rejects outright or does not order the measure has suspensive effect (Article 647(3)(d) of the Code of Civil Procedure). In other cases it has a purely devolutive effect.

Applicable legislation

Law No 41/2013 of 26 June 2013 – Code of Civil Procedure
Law No 62/2013 of 26 August 2013 – Law on the Organisation of the Judicial System

Related links

Further information may be obtained from the following websites:
Justice Portal

Directorate-General for Justice Policy
CITIUS Portal
Legal Document Database
Official Gazette of Portugal

Note:
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Securing assets during a claim in EU countries - Romania

1 What are the different types of measures?

The different types of precautionary measure are precautionary and judicial seizure and precautionary attachment. Precautionary measures are procedural freezing and conservation injunctions issued by the court on the debtor's assets in order to prevent the opposing party from destroying or alienating the assets concerned or from reducing those assets.

Precautionary seizure consists in freezing the debtor's traceable assets in order to recover them when the creditor has obtained an enforcement order. The Code of Civil Procedure contains a series of special provisions regarding the procedure for execution of precautionary seizure of civil ships.

Judicial seizure consists in freezing assets by entrusting them to a seizure officer for safekeeping.

Judicial seizure may be applied whenever there are legal proceedings dealing with property or another overriding right in rem, with ownership of assets or with the use or management of joint property, the court being competent to approve judicial seizure of an asset.

Precautionary attachment may be applied to monies, securities or other traceable moveable intangible assets owed to a debtor by a third person.

Enforceable attachment is a form of indirect enforcement whereby the monies, securities or other traceable moveable intangible assets are recovered.

Some of the judgments of the first instance court are *legally provisionally enforceable* when their aim is to establish the exercise of parental authority, the right to have a personal relationship with the minor and the minor's residence; remuneration, unemployment benefit; workplace accident compensation; annuities, maintenance obligations; children's allowance and pensions; compensation for death or bodily injury or harm to one's health; immediate repairs; sealing, unsealing or inventorying; claims regarding possession; judgments ruled on grounds of a defendant's admission of a complainant's claims etc. These judgments shall be provisionally enforceable.

The court may admit the provisional enforcement of judgments concerning assets.

For provision of evidence, **any person who is interested in establishing, as a matter of urgency, a person's testimony, an expert's opinion or the condition of certain assets or in having a submission, a fact or a right acknowledged will be entitled to request, both before and during the trial, the administration of such evidence**.

If the holder provides evidence that his/her intellectual property rights are subject to an unlawful, current or imminent action and that such action is likely to cause him/her damage which is difficult to repair, he or she may seek interim measures from the court (prohibition of the infringement or provisional cessation thereof; taking the necessary measures to ensure preservation of evidence).

In the case of damage caused by means of written or audio-visual media, the court may order a provisional cessation of the harmful action only if the damage caused to the complainant is serious, if the action is manifestly not justified and if the measure taken by the court does not appear to be disproportionate in relation to the damage caused.

The court shall decide on the claim in accordance with the provisions relating to the interlocutory injunction. Where the claim is lodged before bringing an action on the merits of the case, the judgment ordering the interim measure shall also set out the time limit within which the action on the merits must be brought, failing which that measure must be automatically terminated. If the measures taken are likely to cause damage to the opposing party, the court may order the complainant to provide security in the amount set by it.

The measures taken prior to bringing legal proceedings to defend the infringed right are automatically terminated if the complainant has not applied to the court within the time limit set by it, but not later than 30 days after the date on which they were taken.

The complainant shall be required to make good, at the request of the party concerned, any damage caused by the interim measures taken if the action on the merits of the case is dismissed as unfounded. However, if the complainant was not at fault or was at minor fault, the court may, in relation to specific circumstances, either refuse to order him/her to pay the damages sought by the opposing party, or order that they be reduced.

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

2.1 The procedure

An injunction of precautionary seizure is admitted by the court and the enforcement is carried out by the enforcement officer without any authorisation or formality other than registration. In addition, seizure shall be applied without notice or prior notice to the debtor.

Orders may be issued only by the first instance court with jurisdiction over the matter (judicial seizure, precautionary attachment) or by the first instance court dealing with the case or by the court in the jurisdiction of which the asset is located (judicial seizure). In such special proceedings, the assistance of a lawyer is not mandatory. The judgments regarding precautionary seizure and precautionary attachment shall be enforced by a bailiff. The seizure officer may prepare all the documents for conservation and administration, receive any revenues and amounts due and pay current debts and debts established under an enforcement order. The foreseeable costs are judicial stamp duties only which, pursuant to Article 11(1)(b) of the Government Emergency Order No 80 of 26 June 2013 on judicial stamp duties, are RON 100 for claims related to precautionary measures and RON 1 000 for claims regarding seizure of ships and aircrafts. The creditor may be obliged to pay a security deposit set by the court. If the creditor's claim is not stated in writing, the security deposit is set by law at half the value claimed.

Enforceable attachment is executed, at a creditor's request, by a bailiff whose office is within the jurisdiction of the court of appeal where the debtor or third party subject to attachment has his or her domicile/office or, in the case of bank accounts, by a bailiff from the place where the debtor has the domicile /registered office or from the place where the credit institution has the head office/secondary office.

For provisional enforcement, the request may be filed in writing and orally in court until the closure of debates. The court may admit the provisional enforcement of injunctions applying to assets whenever it deems that the measure is necessary in relation to the manifest legal grounds or to the debtor's insolvency condition and when it estimates that not enforcing such order immediately is clearly detrimental to the creditor. In these cases, the court may oblige the creditor to pay a security deposit.

For provision of evidence, **the request is addressed, before the trial proceedings, to the district court in the jurisdiction of which the witness or subject-matter of the finding is located and, during the trial proceedings, to the court dealing with the matter at first instance. The party's request states the evidence and facts that they intend to prove, as well as the reasons for the need to provide such evidence or the opposing party's consent**.

2.2 The main conditions

For *precautionary seizure and attachment*, a case must be pending. In the case of judicial seizure, an injunction may be issued even if there is no pending case. A creditor having no enforcement order may request the execution of precautionary seizure or attachment if they prove that they have lodged a claim. In urgent cases, a request for precautionary seizure of a ship may be filed even before bringing an action on the merits of the case.

A court may admit the application of judicial seizure or precautionary attachment if this measure is necessary to preserve the respective right and a case is pending as regards ownership or another overriding right in rem, the possession of assets or the use or administration of joint property.

Judicial seizure may be approved, even in the absence of trial proceedings on the merits regarding an asset that the debtor offers for his/her release, in order to seize an asset with regard to which the party concerned has reasonable grounds to fear that it may be removed, destroyed or altered by the owner; for movable assets accounting for the creditor's guarantee, when he or she claims the insolvency of his/her debtor or when the creditor has reasons to suspect that the debtor will avoid enforcement or fearing of removal or deterioration of assets.

A court issues a decision in connection with the request for a precautionary seizure/precautionary attachment as a matter of urgency in chambers, without summoning parties, under an enforceable conclusion, setting, where applicable, the value of the bail and the time limit for payment of same. A request for judicial seizure is dealt with as a matter of urgency and the parties are summoned. In case of admission, the court may oblige the complainant to pay a security deposit and, in the case of immovable assets, they are listed in the land register.

There is no requirement as regards the urgency of the request but, for the creditor, there is a possibility to show that the order will not be enforced on grounds of the debtor's removal or destruction of the asset concerned, in the case of precautionary seizure and precautionary attachment, even if the claim is not payable.

Enforceable attachment is established without summons, under a conclusion acknowledging the enforcement, by a note also indicating the enforcement order, which is to be sent to the third person, together with that conclusion acknowledging the enforcement. The debtor is also informed of the injunction. The court order of attachment informs the third person, who becomes an attached third person, that they are prohibited to pay to the debtor the monies or movable assets they owe or they will owe, stating that they are subject to attachment insofar as it is necessary to achieve the obligation enforced.

For provision of evidence, the requirement **is that there should be a threat that the evidence is likely to disappear or be difficult to deal with in the future. If the opposing party gives its consent, the request may be filed even in the absence of any urgency. The court will summon the parties and serve a copy of the request to the opposing party. The court will deal with the request in closed session under a conclusion. Where there is danger of delay, the court may admit the request without summoning the parties.**

3 Object and nature of such measures?

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

Bank accounts, intangible assets, securities, etc. may be subject to precautionary attachment.

Tangible movable assets, registered means of transport, immovable assets, etc. may be subject to precautionary seizure.

Immovable assets, movable assets, etc. may be subject to judicial seizure.

Monies, securities or other intangible movable assets may be subject to enforceable attachment.

3.2 What are the effects of such measures?

For precautionary seizure and attachment, seized assets may only be recovered after the creditor has obtained an enforcement order.

An injunction of precautionary seizure of ships is enforced by having the ship restrained by the captain's office of the port where that ship is located. In this case, the port captain's office will not release the required shipping documents and will not allow the ship to leave the port or the harbour.

A fine is imposed as a penalty only if the complainant obtains in bad faith a precautionary measure that is injurious to the defendant. The defendant/debtor may be subject to penalty under the criminal law for non-compliance with court judgments.

If the debtor submits a sufficient guarantee, the court may set aside the precautionary seizure injunction at the debtor's request. The request for the release of assets is dealt with in closed session, as a matter of urgency, the parties being summoned at short notice by a conclusion.

Likewise, if the main request underlying the application of a precautionary measure has been voided, dismissed or has become obsolete by a final judgment or if the person who filed that request relinquished its pursuit, the debtor may request the release of assets from the court that issued the injunction. The court issues a final judgment regarding the request, without summoning the parties.

For enforceable attachment, all the monies and assets subject to attachment are frozen from the date when the attachment injunction has been sent to the third party subject to attachment. From the time of freezing until the full payment of obligations stated in the enforcement order, the third party subject to attachment will not make any payment or conduct any operation that is likely to reduce the frozen assets. When the attached claim is secured with a mortgage or another real guarantee, the attaching creditor will be entitled to request that the attachment be listed in the land register or in other public registers.

3.3 What is the validity of such measures?

For precautionary seizure and attachment, time limits not covering the period of the injunction issued by the court may be set under a court decision (for example, the time limit for the creditor to submit a security deposit subject to penalty of release of assets).

The injunction is valid until the judgment of the request for release of assets if that request has been dismissed, has become obsolete or set aside or, if the request is admitted, until the enforcement of the judgment or until the debtor has provided sufficient guarantees.

The appeal is always settled with the parties being summoned.

For enforceable attachment, all the monies and assets subject to attachment are frozen from the date when the attachment injunction has been sent to the third party subject to attachment. From the time of freezing until the full payment of obligations stated in the enforcement order, including for the period of suspension of the enforcement by attachment, the third party subject to attachment will not make any payment or conduct any operation that is likely to reduce the frozen assets, unless otherwise provided by the law.

A third party subject to attachment must record the amount of money or freeze the intangible movable assets attached within five days of the notice of attachment or from the due date of the amounts owed in the future. The bailiff will release or allot the recorded amount of money.

If a third party subject to attachment fails to meet their obligations, the tracing creditor, the debtor or the bailiff may notify the enforcing court in order to validate the attachment. If the administered evidence shows that the third party subject to attachment owes money to the debtor, the court will issue a

decision to validate the attachment, thereby binding the third party subject to attachment to pay to the creditor the amount owed to the debtor and, if not, it decides to set aside the attachment. If the attachment has been executed on intangible movable assets that, on the date of execution, were held by the third party subject to attachment, the court will decide to sell them.

For provision of evidence, **the evidence provided is examined in court, during the judgment of the case, in relation to its admissibility and conclusiveness. The provided evidence may also be used by the party who did not request their administration. Expenses incurred with administration of evidence are recorded by the court dealing with the case on its merits**.

4 Is there a possibility of appeal against the measure?

For precautionary seizure and attachment, the conclusion is only subject to appeal within five days of the ruling or service, depending on whether the trial was held with or without the parties being summoned, before the hierarchically higher court. If first instance jurisdiction pertains to the court of appeal, the remedy is an appeal. The effect of these remedies is either release of assets or maintenance of the precautionary measure. Any interested party may file an objection against the execution of the seizure/attachment injunction.

For enforceable attachment, the decision issued with regard to the validation of attachment is subject only to appeal within five days of service. The final validation decision has the effects of an assignment of claim and accounts for an enforcement order against the third party subject to attachment up to the concurrence of the amounts for which validation was granted. After the attachment has been validated, the third party subject to attachment proceeds to recording or payment within the limits of the amount expressly indicated in the validation decision.

For provisional enforcement, if the request was dismissed by the first instance court, it may be subject to an appeal. The suspension of the provisional enforcement may be requested either by the appeal lodged, or distinctly throughout the appeal proceedings. Until the request for suspension has been settled, the enforcement may be provisionally admitted by an interlocutory injunction even before the arrival of the case file.

For provision of evidence, **the conclusion sustaining the request for provision of evidence is enforceable and is not subject to any remedy. The conclusion dismissing the request may only be appealed against within five days of the ruling, if the parties have been summoned, and from service date, if the parties have not been summoned.**

Evidence to be provided may only be administered as soon as or within the time limit set in this respect. Administration of the provided evidence is ascertained in a conclusion that is not subject to any remedy.

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Securing assets during a claim in EU countries - Slovenia

1 What are the different types of measures?

The temporary and precautionary measures laid down by the Enforcement and Securing of Civil Claims Act (Zakon o izvršbi in zavarovanju, ZIZ) are preliminary and interim orders.

As (longer-term) precautionary measures, in the sense of the forced securing of claims, the ZIZ allows securing by the establishment of a lien on immovable property, the establishment of a lien on movable property and by the establishment of a lien on a participating interest. A creditor may request measures for the forced securing of claims on the same basis as enforcement, i.e. on the basis of an executory title, in distinction from preliminary and interim orders, which are measures of a temporary nature and may be requested under the conditions set out below.

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

Preliminary order: A court issues a preliminary order pursuant to a decision of a domestic court or other body in relation to a pecuniary claim that is not yet enforceable if the creditor can show that there is a probable risk that enforcement of the claim will otherwise be impossible or rendered considerably more difficult.

Interim orders are time-limited measures for securing claims designed either to preserve the status quo or establish a new, provisional situation in order to allow the effective enforcement of a creditor's claims at a later date (orders of a protective nature) or to avert serious and damaging consequences and the threat of violence (orders of a regulatory nature).

Under the ZIZ, **interim orders** can be divided into ***orders to secure pecuniary claims*** and ***orders to secure non-pecuniary claims.***

A court issues an *interim order to secure a pecuniary claim* if the creditor can demonstrate the likelihood of the existence of a claim or that a claim against the debtor will arise, where the creditor must demonstrate the likely risk that, owing to disposal, concealment or other use of the property by the debtor, enforcement of the claim will be impossible or rendered considerably more difficult.

A creditor is not obliged to prove that there is a risk if they demonstrate that it is probable that the debtor would suffer only insignificant damage from the proposed order. A risk shall be deemed to have been demonstrated if the claim is to be enforced abroad unless it is to be enforced in a Member State of the European Union.

A court issues an *interim order to secure a non-pecuniary claim* if the creditor can demonstrate that a claim against the debtor likely exists or will arise.

The creditor must also prove the existence of one of the following preconditions:

the risk that enforcement of the claim will be impossible or rendered considerably more difficult;

the order is necessary in order to prevent the use of force or avert the occurrence of irreparable damage;

the debtor will not suffer more detrimental consequences than the creditor if the interim order issued is proved to be unfounded in the course of proceedings.

2.1 The procedure

Preliminary order: The court that would have jurisdiction to exercise enforcement on the item for which a request to secure has been made has territorial jurisdiction to decide on a request to secure a claim by means of a preliminary order and to secure the claim itself.

After submitting a request for a preliminary order and studying the conditions for the issuing of a preliminary order, the court issues a decision indicating, inter alia, the amount of the secured claim, with interest and costs, the security ordered and the period of time which the court shall allow for it. A preliminary order may last no longer than 15 days from the occurrence of the conditions for enforcement.

If the period for which the court has permitted a preliminary order expires before the decision on the basis of which the preliminary order was issued becomes enforceable, the court, at the motion of the creditor, extends the order, provided that the circumstances under which it was issued have not changed.

Interim order: If civil or other judicial proceedings are initiated, the decision is made by the court with jurisdiction at which the proceedings are to take place. In the case of requests to secure a claim by means of an interim order filed before the opening of court proceedings in which the court would decide under special proceedings rules for matrimonial disputes and disputes relating to parental responsibility for children, and to secure the claim itself, the district court that would have jurisdiction over such proceedings has jurisdiction. In the case of requests to secure a claim by means of an interim order filed before the

opening of court proceedings based on an act governing domestic violence, and to secure the claim itself, the district court that would have jurisdiction over such proceedings has jurisdiction. If civil or other judicial proceedings are not initiated, the court with jurisdiction to decide on the motion to secure a claim by means of an interim order and to secure the claim itself is the court with territorial jurisdiction that would have jurisdiction to decide on the motion for enforcement.

It therefore follows that the territorial jurisdiction of courts to issue interim orders in these cases is determined with regard to the subject of the securing of a claim. If this is movable property, the court with territorial jurisdiction is the court of execution in the area in which the items are located or the area in which the debtor has their permanent or temporary residence. If the subject to be secured is a pecuniary claim, book-entry security or other property right of the debtor, the court with territorial jurisdiction is generally the court covering the area in which the debtor has their permanent residence or registered office. If the subject to be secured is a partner's share in a company, the court with territorial jurisdiction is the court covering the area in which the company's registered office is located. If the subject to be secured is immovable property, the court with territorial jurisdiction is the court covering the area in which the immovable property is located.

2.2 The main conditions

A court issues a **preliminary order** pursuant to a decision of a domestic court or other body in relation to a pecuniary claim that is not yet enforceable, if the creditor can show that there is a probable risk that enforcement of the claim will otherwise be impossible or rendered considerably more difficult. This type of risk is deemed to have been demonstrated if the request to secure a claim by means of a preliminary order rests on any of the following:

on a judgement issued in criminal proceedings which upheld the injured party's property-law claim and a motion for a criminal retrial has been lodged against the judgement;

on a decision on the basis of which enforcement would have to be carried out abroad, unless enforcement would have to be carried out in a Member State of the European Union;

on a judgement of recognition against which an appeal has been submitted (in this case, the court may, at the debtor's request, lay down a condition for the securing of the claim by means of a preliminary order to the effect that the creditor remit a security deposit for the damage that the debtor could incur as a result of the preliminary order);

on a settlement concluded before a court or administrative body which is contested as determined by law (in this case, the court may, at the debtor's request, lay down a condition for the securing of the claim by means of a preliminary order to the effect that the creditor remit a security deposit for the damage that the debtor could incur as a result of the preliminary order);

on a notarial record that is an executory title on a pecuniary claim that has not yet fallen due.

A court permits the securing of a claim by means of a preliminary order for an amount of legally prescribed maintenance not yet fallen due, compensation for lost maintenance due to the death of the person that provided it, and compensation for the damage caused by a reduction in loss of activity or a reduction in or loss of the ability to work only for sums that will fall due within one year.

In these cases, an assumption is made that risk has been demonstrated if enforcement of a claim for recovery of an amount that has fallen due has already been requested against the debtor, or if such enforcement has been proposed.

A court issues an **interim order to secure a pecuniary claim** under the following conditions: if the creditor can demonstrate the likelihood of the existence of a claim or that a claim against a debtor will arise, and if the creditor demonstrates the likely risk that, owing to disposal, concealment or other use of the property by the debtor, enforcement of the claim will be impossible or rendered considerably more difficult (subjective risk).

A court issues an **interim order to secure a non-pecuniary claim** under the following conditions: if the creditor can demonstrate the likelihood of the existence of a claim or that a claim against a debtor will arise, and if the creditor demonstrates the likelihood of one of the following preconditions being met: the risk that enforcement of the claim will be impossible or rendered considerably more difficult (objective risk), that the order is necessary to prevent the use of force or to avert the occurrence of irreparable damage, and that the debtor will not suffer more detrimental consequences than the creditor if the interim order issued is proved to be unfounded in the course of proceedings.

In both cases (interim orders to secure a pecuniary claim and interim orders to secure a non-pecuniary claim), a creditor is not obliged to prove that there is a risk, if they demonstrate that it is probable that the debtor would suffer only insignificant damage from the proposed order. In both cases, a risk shall be deemed to have been demonstrated if the claim is to be enforced abroad, unless it is to be enforced in another Member State of the European Union.

3 Object and nature of such measures?

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

Any of a debtor's property may be subject to a preliminary or interim order, e.g. cash deposits in bank accounts, movable property, registered vehicles, immovable property and other property rights insofar as they are not items exempt from enforcement under the law or there is no legally restricted right to enforcement on items (e.g. items that are not in circulation, mineral wealth, items required by the debtor in order to provide a public service, etc.).

3.2 What are the effects of such measures?

Preliminary orders: A court may specify the following preliminary orders: the seizure of movable property and entry of the seizure in the register, if such is kept; the seizure of pecuniary claims or claims to hand over items; the attachment of other property rights or material rights; the seizure of pecuniary claims on the debtor's account at a payment institution; the entry of a lien in the companies register on a partner's share in a company, or in the central register of book-entry securities on a book-entry security; the provisional entry of a lien on the debtor's immovable property or a right entered on the immovable property.

A court may permit the sale of seized movable items if they will perish or if there is a risk that their price will fall significantly, where the sale of seized items shall be carried out under the provisions of the ZIZ regarding enforcement on movable property.

If the court attaches a claim by means of a preliminary order, it may, at the request of the creditor or debtor, permit the prohibited claim to be transferred to the creditor for recovery where there is a risk that a delay would lead to the claim not being recovered or that the right to recourse against a third party would be lost.

The amount acquired through the sale of items or the recovery of a claim is kept by the court until the preliminary order ceases or until the creditor requests enforcement, but for no longer than 30 days from the day the claim becomes enforceable.

Interim order: *Interim orders to secure pecuniary claims* may be all measures capable of achieving the purpose of securing a claim and which can be, in terms of the objectives they pursue, of a merely protective nature. The law lists the following types of interim order for securing pecuniary claims by way of example: a prohibition on a debtor making free use of movable property, and the safekeeping of such property; a prohibition on a debtor transferring or mortgaging their real estate or rights *in rem* to real estate registered in their favour, with that prohibition being recorded in the land register; a prohibition on a debtor of the debtor paying claims or handing over property to the debtor, and a prohibition on a debtor receiving property, recovering claims or making free use of them; an instruction to a payment transactions organisation to refuse payment from the debtor's account to the debtor or another person on the debtor's instructions of the sum of money on which the interim order has been placed.

Interim orders to secure non-pecuniary claims may also be all measures capable of achieving the purpose of securing a claim and which can be, in terms of the objectives they pursue, of a protective or regulatory nature. The law lists the following types of interim order for securing non-pecuniary claims by way of

example: a prohibition on the transfer or mortgage of the movable property to which the claim refers and the ordering of the safekeeping of such property; a prohibition on a debtor transferring or mortgaging the real estate to which the claim refers, with that prohibition being recorded in the land register; a prohibition on the debtor doing anything that might cause damage to the creditor, or prohibiting them from changing anything in the property to which the claim refers and imposing a fine in the event of a violation of that prohibition; a prohibition on a debtor of the debtor handing over to the latter the property to which the claim refers; the payment of compensation for lost salary to an employee while a dispute is ongoing over the legality of a decision terminating their employment, where such compensation is necessary to maintain the employee and persons whom they are legally bound to maintain.
When a decision on an interim order is issued in civil or other proceedings, it has the effect of an enforcement decision; this allows intervention only in the debtor's sphere of interests, not in that of any third party. The issuing of an interim order does not therefore give rise to a lien on the item to be secured. Accordingly, where, for example, an interim order prohibits a debtor from making free use of the item to be secured, this does not prevent legal intervention by another person in respect of that item (e.g. in enforcement proceedings). Should the debtor disregard an interim order of this kind, the only consequence is that the creditor is entitled to contest legal acts that cause them damage, in accordance with the general rules of obligational law. Persons acquiring property which the debtor is not free to use are, in such cases, protected if they acquired it in good faith (they did not know and could not have known that such an act has caused damage to the creditor). If the person acquiring the property did not acquire it in good faith, the legal act ceases to have an effect solely in respect of the creditor (claimant) and insofar as is necessary to repay the creditor's claim.
Where the debtor infringes an interim order, they are also criminally liable for the offence of violating the rights of others. The court of execution may also impose a fine on a debtor who infringes an interim order, while the debtor has the right to claim compensation from the creditor for damage caused to them by an interim order that was unfounded or to which the creditor was not entitled.
An interim order may also impose a prohibition on payments being made to a debtor of the debtor (e.g. a bank); in this case the prohibition takes effect from the moment it is served on the debtor of the debtor. On receiving the prohibition, the latter may no longer effectively meet its obligations towards the debtor and may also be liable to pay compensation to the creditor. In procedures for issuing an interim order, the bank may disclose information on the existence and number of transaction accounts, or other claims that the debtor has on it, only at the court's request; information on the current account numbers of legal entities and on whether those accounts are frozen is nevertheless accessible to the public on the website of the Agency of the Republic of Slovenia for Public Legal Records and Related Services (Agencija Republike Slovenije za javnopravne evidence in storitve).

3.3 What is the validity of such measures?

A decision on a *preliminary order issued by a court must state, inter alia*, the amount of the secured claim, with interest and costs, the security ordered **and the period of time which the court shall allow for it**, where the preliminary order may last *no more than 15 days from the occurrence of the conditions for enforcement*.
The period of validity of an *interim order* is not defined by law; rather, it is determined by the court in the decision ordering the interim order. If an order is issued before the submission of an action or the commencement of another procedure, or if an order is issued to secure a claim that has not yet arisen, the court provides the creditor with a deadline by which it must commence a procedure or submit an action. If the creditor fails to submit an action or commence a procedure by this deadline, the court shall halt proceedings. Interim orders may remain in force after the day the court decision in relation to which they were issued is published.

4 Is there a possibility of appeal against the measure?

A debtor may lodge an objection to a decision on a preliminary order or a decision on an interim order within eight days of the decision being served. This shall be done at the court that issued the decision on the preliminary or interim order; that same court shall then decide on the objection itself.
A debtor or creditor may lodge an appeal against a court decision on an objection and against a decision rejecting a request to issue an interim order at the court that issued the decision within eight days of the decision being served. This appeal shall be decided by a court of second instance. Objection and appeals do not, as a rule, stay proceedings.

Related links

http://www.pisrs.si/Pis.web/
https://www.uradni-list.si/
http://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/preciscenaBesedilaZakonov
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Securing assets during a claim in EU countries - Slovakia

1 What are the different types of measures?

Slovak law recognises the concepts of 'urgent measures', 'precautionary measures', and the 'safeguarding of evidence'. The corresponding provisions can be found in Section 324 *et seq.* of Act No 160/2015, the Code of Civil Dispute Procedure, and – for special proceedings – in Section 360 *et seq.* of Act No 161/2015, the Code of Civil Non-Dispute Procedure.
Under a precautionary measure, a court may establish a charge on the debtor's belongings, rights or other assets in order to secure a monetary claim of the creditor where it is feared that enforcement will be compromised.
An urgent measure is ordered by a court where circumstances need to be regulated immediately or where it is feared that enforcement will be frustrated, and if the aim pursued cannot be achieved by a precautionary measure. Such a decision can also serve as a guarantee of the effectiveness of future enforcement of a judicial ruling.
The concept of the safeguarding of evidence enables evidence (of any type, whether from a witness, an expert, or similar) to be safeguarded prior to the proceedings on the basis of a motion – not on the court's initiative. It is anticipated that this motion may be brought by a person with the standing to apply for the initiation of proceedings in which the results of the safeguarding of evidence may be used.

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

2.1 The procedure

A district court with jurisdiction to adjudicate on a case is competent to order an urgent or precautionary measure.
A court orders an urgent or precautionary measure further to a motion. No motion is required where an urgent or precautionary measure pertains to proceedings that may be initiated by a court *ex officio*.
Mandatory legal representation is not prescribed by law.

Under the relevant law, a EUR 33 court fee is chargeable for a motion seeking the issuance or extinguishment of a measure.
There is no charge for the safeguarding of evidence. The state pays for the costs of evidence that are not covered by an advance. However, the court may order a party who does not qualify for exemption from court fees to deposit an advance on the costs of evidence, without thereby losing the entitlement to later reimbursement.
The law does not prescribe mandatory legal representation in this case either.
Evidence may be safeguarded in this way in both contentious and non-contentious proceedings.

2.2 The main conditions

A court may order urgent measures before, during and after proceedings. With precautionary measures, a charge is established by the issuance of an order for a precautionary measure.
Before, during and after the main proceedings, evidence may be safeguarded further to a motion where it is feared that it will subsequently not be possible at all, or only with great difficulty, to take evidence. The safeguarding of evidence is in the competence of a court with jurisdiction to adjudicate on a case or a court in whose area of jurisdiction the evidence that is at risk can be found. In addition to general provisions, the Code of Civil Dispute Procedure contains specific provisions on the safeguarding of evidence in intellectual property cases.

3 Object and nature of such measures?

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

A court may impose an urgent measure requiring, in particular, a party:
(a) to pay maintenance to the extent necessary;
(b) to place a child in the custody of the other parent or in the custody of a person designated by the court;
(c) to provide at least part of his or her pay, if in employment, where the applicant, for serious reasons, does not work;
(d) to place a sum of money or an asset in judicial safekeeping;
(e) not to dispose of certain assets or rights;
(f) to carry out, to refrain from, or to tolerate a particular activity;
(g) to temporarily refrain from entering a house or flat in which a close person or a person who is in that party's care or charge resides, and in respect of whom there is reasonable suspicion of violence;
(h) to refrain from conduct infringing or jeopardising an intellectual property right.

3.2 What are the effects of such measures?

The definitions of the types of urgent measures are intended as examples, which means that a court may also order urgent measures covering other areas.
An urgent or precautionary measure under which a party is to refrain from disposing of assets or rights constitutes a ban on the disposal of assets or rights where, for example, it is feared that the defendant could squander them (transfer them to another person, destroy or damage them, etc.).
A court may hand down a ruling on an urgent or precautionary measure without hearing the parties. In other words, the parties need not be heard prior to the ruling. This is a precept linked to the fact that a hearing could frustrate the purpose of the urgent and precautionary measure and to the fact that, as a matter of principle, evidence is not taken in such judicial activity. That is not to say that the court cannot order the parties to be heard. If it does, it must comply with all rules on procedural evidence-taking. If the court takes evidence solely in the form of instruments, such evidence is not taken at a public hearing. Instead, the court exercises power of discernment without interacting with the parties.
An urgent measure is enforceable upon service, unless otherwise provided for by special legislation.

3.3 What is the validity of such measures?

An urgent or protective measure is extinguished:
(a) upon expiry of the period for which it has been ordered;
(b) if it has been ordered after the initiation of main proceedings and the first-instance court or appellate court dismisses the action or discontinues the proceedings;
(c) if, in its ruling, the court sets a deadline for a motion to be brought in the main proceedings, but no such motion is made by that deadline;
(d) if the court upholds an action in the main proceedings;
(e) where no longer required under the enforcement status.

4 Is there a possibility of appeal against the measure?

An appeal against an order for an urgent or precautionary measure is permissible. The court competent to adjudicate on a remedy is the appellate court with due jurisdiction, i.e. the second-instance court superior to the first-instance court that ordered the urgent or precautionary measure.
Appeals are lodged within 15 days of service of the ruling at the court whose ruling is being appealed. The lodging of an appeal does not have suspensive effect.

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Securing assets during a claim in EU countries - Finland

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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Securing assets during a claim in EU countries - Sweden

1 What are the different types of measures?

There are basic provisions on precautionary measures in civil cases in Chapter 15 of the Swedish Code of Judicial Procedure ('rättegångsbalken'). The general rule is that no enforcement measure relating to a civil law claim can take place until a court has ruled on the case. The provisions concerning precautionary measures are an exception to this rule. Precautionary measures are generally aimed at ensuring that the losing party performs what is required of him or her following a future court decision.

The most common precautionary measure is *sequestration*, which means that an applicant can have any property that the other party holds taken possession of, or have the opposite party's right of disposal withdrawn in some other way.

According to Chapter 15, Section 1 of the Swedish Code of Judicial Procedure, sequestration may be granted to ensure the future enforcement of a judgment relating to a *claim*. As a general rule, a sequestration decision under this provision must be worded in such a way that property belonging to the

debtor is sequestered to cover the value of a certain specified amount claimed. In exceptional cases, the decision may, however, state what property may be subject to enforcement.
Sequestration may also be ordered to ensure the future enforcement of a judgment relating to a *superior right to certain property* (Chapter 15, Section 2 of the Swedish Code of Judicial Procedure). Examples of such judgments are those that include decisions to the effect that the plaintiff is declared to have a superior right to certain shares, as well as those where the defendant is obliged to hand over the shares immediately.
In Chapter 5, Section 3 of the Swedish Code of Judicial Procedure there is a general provision concerning the court's right to *prescribe a suitable measure* to safeguard the applicant's rights. This provision is applied in the case of injunctions, for example. A claim for confirmation that the defendant is not entitled to work with certain goods specified in a competition clause has also been deemed to fall within the scope of this provision.
In addition, according to Chapter 15, Section 4 of the Swedish Code of Judicial Procedure, the court may in cases of a superior right to certain property decree *the return of the dissipated asset, etc*.
It is moreover stated in Chapter 15, Section 5, subsection 3 of the Swedish Code of Judicial Procedure that an **interim** precautionary measure may be granted under certain conditions.
In addition to this, there are also separate provisions concerning precautionary measures within some special fields, e.g. patent law.

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

2.1 The procedure

Decisions on precautionary measures are issued by the court where the court proceedings are pending. If no court proceedings are pending, the applicable provisions concerning the court that has jurisdiction are largely the same as for civil cases in general.
The court cannot raise the question of precautionary measures of its own accord. It is therefore a requirement that the party who wants such a decision must submit a motion for this. If no court proceedings are pending, the motion must be submitted in writing.
There is no requirement for an applicant to be assisted or represented by a solicitor. Legal proceedings at Swedish courts are free of charge, with the exception of an application fee that is at present SEK 450 (about EUR 50).

2.2 The main conditions

In order for measures in accordance with Chapter 15, Sections 1-3 of the Swedish Code of Judicial Procedure ('rättegångsbalken') to be granted, it is a condition that the main issues themselves (e.g. a claim in accordance with Section 1) *can be the subject of a court case or examination by another similar procedure*. The latter includes arbitration procedures.
The Supreme Court ('Högsta domstolen') has ruled that sequestration or other precautionary measures in accordance with Chapter 15 of the Swedish Code of Judicial Procedure can also be granted with regard to *claims that must be tried by foreign court*s if the court's decision can be enforced in Sweden.
In order for sequestration in accordance with Chapter 15, Sections 1-3 of the Swedish Code of Judicial Procedure to be granted, the following conditions must also be fulfilled:
One requirement is that the applicant must demonstrate *probable grounds* for having a claim against another person and that these could be assumed to be the subject of a court case or examination by another similar procedure.
The applicant must also demonstrate that it can '*reasonably be feared'* that the other party will, by absconding, removing property or proceeding in another manner, evade responsibility for paying the debt (Section 1), that the other party will remove, significantly impair or otherwise dispose of the property to the detriment of the applicant (Section 2) or that the other party will, by engaging in certain activities or undertaking or neglecting to take certain action or otherwise, prevent or make it more difficult for the applicant to exercise his or her rights or significantly lessen the value of the property (Section 3).
In order for a measure to be granted in the **interim**, there also has to be a risk of harm in the event of delay. This expression refers to the enforcement of a decision being put at risk if the measure is not granted at once without hearing the other party. If the measure is granted in this manner, the decision is to be sent to the parties and the defendant is to be ordered to comment on the decision. If such comments are received, the court must immediately re-examine the question of whether the measure should stand.
Finally, the measure may be granted only if the applicant provides a *security* for any damage that could be inflicted upon the other party. If the applicant is not able to provide a security but, at the same time, demonstrates that he has special grounds for his or her claim, the court has the option of releasing him from the obligation to provide a security.

3 Object and nature of such measures?

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

The enforcement of decisions concerning *sequestration for claims* consists of seizing property up to a certain value. On the whole, the same principles apply to enforcement as to distraint. There will, however, be no question of selling the property.
In principle, any kind of property may be seized during enforcement. The property may be either movable or immovable.
Certain property may not be seized. This is the case with 'benefice property', which means *inter alia*:
clothes and other objects that are intended for the debtor's personal use, up to a reasonable value;
furniture, household appliances and other equipment necessary for a home and its running;
tools and other equipment necessary for the debtor's gainful employment or vocational training;
personal effects, e.g. medals and sporting prizes of such personal value to the debtor that it would be unfair to seize them.
Property may also be protected under separate regulations. This may be the case with damages, for instance.
Sequestration for claims may not be applied to pay, etc. until it has been paid and can be seized.

3.2 What are the effects of such measures?

When property has been sequestered *for debts*, the defendant may not transfer the property or dispose of it in any other manner to the detriment of the applicant. The Swedish Enforcement Authority ('Kronofogdemyndigheten') may, however, allow exceptions to the prohibition on disposal if there are special grounds. Any disposal that contravenes the prohibition may result in criminal liability.

What is the validity of such measures?

When a measure under Chapter 15, Sections 1-3 of the Swedish Code of Judicial Procedure has been granted, the applicant must bring a case in relation to the matter within one month of the decision, if no case has yet been brought. If the claim is to be examined by another procedure, the applicant must instead take measures as prescribed for that procedure.
If the measure is granted in the **interim**, the decision must be sent to the parties and the defendant must be ordered to comment on the decision. If such comments are received, the court must immediately re-examine the question of whether the measure should stand.
A measure must be revoked immediately if, after it has been granted, a security is provided that satisfies the purpose of the measure.

4 Is there a possibility of appeal against the measure?

A matter involving precautionary measures must be settled by decision both when it arises as a procedural issue in connection with the trying of a case and when the issue of precautionary measures is independent.

In both situations, the decision may be appealed against separately by the person that the decision goes against. A person who wishes to appeal against a decision by the district court (‘tingsrätt’) must do this in writing within three weeks of the date on which the decision was issued. If the decision has not been issued at a sitting, and it has not been announced at any sitting when the decision will be issued, the time limit for appeal will be counted from the date on which the appellant received the decision. The appeal must be placed before the court of appeal (‘hovrätt’) but must be submitted to the district court (‘tingsrätt’).

If the district court has rejected an application for precautionary measures in a civil case in accordance with Chapter 15 of the Swedish Code of Judicial Procedure (‘rättegångsbalken’) or has revoked a decision regarding such a measure, the court of appeal may immediately allow the measure to apply until further notice. If the district court has granted such a measure or declared that the decision may be enforced even though it is not yet final and absolute, the court of appeal may immediately decide that the district court’s decision may not be enforced until further notice.

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Securing assets during a claim in EU countries - England and Wales

1 What are the different types of measures?

In England and Wales, the courts under both CPR part 25.1(1) and its inherent jurisdiction have the power to order interim and/or precautionary measures which are designed to protect a party’s interests, either in an asset or over a cause of action. These remedies are available at any stage, or indeed prior to the commencement of litigation. These are equitable remedies, in that the court has discretion to make the appropriate order. The principles for granting them were established in the seminal case of *American Cyanamid Co vs Ethicon**[1]* Under part 25.1(1) the court may issue the following:-

Interim injunctions

Interim declarations

Orders over property so as to allow for the sale, preservation, inspection transfer of custody or payment on account of the property

Orders to allow for entry into land or buildings

Orders to give up goods

Freezing Orders or orders to direct that a party give information about the location of property or assets, those being the subject of the freezing order

Search Orders

Orders for disclosure of documents or inspection of property prior to a claim being commenced-these may be as against either opposing party or an as yet unrelated party

Orders for Interim payment on account for damages that he court has yet to award

Orders regarding payment into court pending the outcome of the proceedings

Orders to account for money

Orders in relation to intellectual property proceedings.

Case law, under the courts inherent jurisdiction has also created some interim measures, not the least of which are the *Norwich Pharmacal* orders and anti-suit injunctions. *Norwich Pharmacal* orders are designed to force a 3rd party to divulge the details of a wrongdoer so that the claimant may then bring a named action against them-often these orders are used in cases of corporate malfeasance. Anti-suit injunctions are designed to prevent a party from bringing a suit in a foreign country when do so would be vexatious or oppressive or outside the due process of law. In addition the court may issue a declaration as to the interpretation the law, or to a term of a contract that is itself the subject of litigation.

An injunction is a court order requiring a party to either take certain steps or refrain from taking certain steps. An interim injunction is such an order made before the trial of the claim. A claimant may seek to protect his or her position in the course of legal proceedings, or even before proceedings are begun, by seeking an interim injunction to prevent the defendant from acting in a way which will harm the claimant.

There are also two specific types of injunction which a claimant may seek where there is a risk that the defendant will take steps to destroy evidence or to frustrate any judgment obtained by the claimant. The first is a search order,; the second is a freezing injunction, which prohibits the defendant from dealing with assets or moving them out of the jurisdiction.

Where the claimant is seeking payment of a sum of money (e.g. a debt or damages), the court may order the defendant to make an interim payment on account of any sum which the defendant may ultimately be required to pay, in order to avoid hardship to the claimant as a result of any delay in obtaining judgment.

A defendant may face the risk that, even if the claim is dismissed and the claimant is ordered to pay costs, it will be impossible to enforce the costs order. To protect the defendant, the court may in certain circumstances order the claimant to provide security for costs, usually by paying a sum of money into court.

The High Court has the power to grant interim relief in support of proceedings in another jurisdiction if it is expedient to do so. It may also grant a “worldwide freezing injunction” which applies to assets in other jurisdictions.

[1] [1975] 1.504

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

2.1 The procedure

Injunctions (including Search Orders and Freezing Injunctions)

Under part 25, any application for interim relief must be made to the court that is hearing the case or will be, once the case is issued. Some types of injunctions, especially those with an international element, must only be issued in the High Court whilst others can be issued in the County Court. With the High Court they may be issued in the ordinary way or via the various divisional interim applications courts or their out-of-hours services-this is often relevant with injunctions to stop the press from running a story, or to stop Home Office deportations.

The general requirements for the application are that it be by way of an Application Notice (N244), and that the notice be accompanied by the claim form, a witness statement in support of the application, affidavits in evidence, and a draft order. The draft order must contain a cross undertaking[2] in damages, an undertaking to serve the respondents with the application, evidence and any order made. This is key if the matter is *ex parte*. In the case of emergency injunctions there will need to be an undertaking to pay the relevant fees as soon as possible; additionally an undertaking to launch formal proceedings as soon as possible may be required.

Once issued, the matter will be heard by a judge who will make the necessary order, arranging for the order to be sealed and returned to the applicant. Service on the other side rests with the applying party.

Search orders are very invasive and as such they carry special requirements. They must normally be served by a “supervising solicitor” who is familiar with search orders and independent of the applicant’s solicitors. The supervising solicitor must explain the search order to the respondent and advise the

respondent of his or her right to seek legal advice. The supervising solicitor will carry out or supervise the search, and report on the search to the applicant's solicitors. Search orders are effective from the time of service and after the expiry of reasonable to take legal advice.
Freezing Orders are orders which stop a party from removing assets located in the jurisdiction or restraining them from dealing with assets located anywhere in the world. Uniquely they take effect from the time they are made, making service of the order of paramount importance.
In both cases the failure to comply with the order gives rise to contempt of court proceedings.

Interim Payments and Security for Costs

Interim payments and security for costs may be provided by agreement between the parties, but in the absence of agreement it is necessary to apply to the court. The application is made by filing an application notice supported by written evidence. The application must be served on the respondent, who may file evidence in reply. If the court makes the order, it will determine the form and amount of the security or payment which must be made.

Costs of obtaining orders

There is no fixed scale of costs for obtaining any of the orders described above. There are, however, specific court fees for issuing an application for an order which depend on whether the application is made with notice to the respondent or without notice. Full details of these fees can be found on the website of the Ministry of Justice.
The applicant is liable to pay the fees of his or her solicitors (and in the case of a search order, those of the supervising solicitor), although the respondent may ultimately be ordered to pay those costs.
[2] Undertakings are promises to the court. The punishment for failure to execute an undertaking may be severe

2.2 The main conditions

As mentioned above, all of the remedies described in this section are discretionary and the court will not grant them if it considers that they would be inappropriate or disproportionate in the circumstances. The courts tend to exercise greater caution in relation to search orders and freezing injunctions because they are particularly severe measures.

Interim Injunctions

In deciding whether to grant an interim injunction,[3] the court will first consider whether the action raises a "serious question to be tried" (rather than being "frivolous or vexatious"). If it does not, the injunction will be refused.
If there is a serious question to be tried, the court will then consider the "balance of convenience". This involves asking whether it would be worse to require the claimant to go without the injunction until trial, or to make the defendant suffer the injunction. In deciding this question, the court will consider the following matters in the following order:
Would an award of damages be an adequate remedy for the claimant if the claimant were to win at trial? If damages would be adequate, the injunction will be refused. If they would not (e.g. because the harm to the claimant would be irreparable or non-pecuniary), the remaining questions must be considered.
Would the claimant's cross-undertaking in damages give the defendant adequate protection if the defendant were to win at trial? If damages would adequately protect the defendant, that normally counts in favour of the injunction.
Where the other factors appear evenly balanced, the court will maintain the status quo. Other social or economic factors may be considered, such as the impact of granting or refusing the injunction on employment or on the availability of medicines.
As a last resort, the court may consider the relative merits of the parties' cases, but only if it is possible to form a clear view that one party's case is much stronger than the other's.

Search Orders

A search order may be made for the purpose of securing the preservation of evidence or property relevant to legal proceedings. The conditions for obtaining a search order are stricter than for other types of injunctions, and the court will not make an order unless the applicant shows that all of the following conditions are satisfied:
There is an extremely strong *prima facie* case against the defendant.
The activities of the defendant which give rise to the proceedings cause serious actual or potential harm to the claimant.
There is clear evidence that the defendant has incriminating documents or material.
There is a "real possibility" or a "probability" that the relevant documents or material will disappear if the order is not made.

Freezing Injunctions

The court has the power to grant a freezing injunction where it is "just and convenient" to do so. A freezing injunction will not be ordered unless the claimant can show that all of the following conditions are satisfied:
The claimant has a substantive cause of action over which the courts of England & Wales have jurisdiction.
The claimant has a "good arguable case" against the defendant.
There are grounds for believing that the defendant has assets within the jurisdiction.
There is a "real risk" that the defendant will deal with the assets in a way which means any judgment cannot be enforced (e.g. by disposing of the assets or removing them from the jurisdiction).
The court will exercise particular caution before granting freezing injunctions in support of foreign proceedings, especially if the freezing injunction would overlap or conflict with any freezing order made by the foreign court in which the main proceedings are taking place, or if the foreign court has refused to freeze assets.
The court will not grant a worldwide freezing injunction if the respondent has sufficient assets within the jurisdiction, and must consider whether a worldwide injunction could be enforced in the countries where the respondent has assets.

Norwich Pharmacal Orders

Case law has created these orders which require a respondent to disclose certain documents or information to the claimant. While akin to pre-action and non-party disclosure the scope of disclosure is wider, as it covers "information" as opposed to documents. These orders are available at any time during the litigation and may indeed be applied for post judgment. In addition to the general equitable principles, the further criteria is that a wrong must have been carried out, and that there is a wrongdoer, which, if known will be subject to litigation by the applying party. The order is necessary to assist in achieving justice and there is no other way of getting it. The respondent is either the wrongdoer, or is associated with or affiliated to and has information about the wrongdoer. These orders are applied for in the High Court and are of international application; the substance of the disclosure may be used in foreign litigation without the permission of the court, which is departure from general principles of litigation.

Anti-Suit Injunctions

These are injunctions which prohibit the respondent from conducting litigation in a foreign court. In addition to the general principles of equitable relief, there is other criteria. Primarily it must be in the interests of justice to ban the litigation; generally because it is vexatious or would be in breach of a contractual

clause, such as breach of a clause of exclusive jurisdiction to use the Courts of England and Wales. Additionally the litigation must be in a court that is outside the Brussels 1 Regulation. Were the court able to stop litigation in those courts, the principle of mutual trust as between court systems would be undermined The exception to this rule is if the matter relates to a private arbitration-no such fear exists.

Interim Payments

The court may order the defendant to make an interim payment only if the defendant has admitted liability to pay money to the claimant, if judgment has already been given in favour of the claimant for a sum of money which is to be assessed later, or if the court is satisfied that at trial the claimant will recover a "substantial amount of money" (or in a claim for possession of land, a payment in respect of the defendant's occupation of the land). In personal injury cases, a payment may only be ordered if the defendant's liability will be met by an insurer or the defendant is a public body.

Security for Costs

The most common cases in which the court may order the claimant to provide security are where :

The claimant is resident outside the European Union and the European Free Trade Area (Iceland, Liechtenstein, Norway and Switzerland) and it would be difficult to enforce a costs order in the claimant's country of residence.

The claimant is a company or other incorporated body and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so. (In deciding whether to order security, the court will take into account whether the claimant's lack of money or funds has been caused by the defendant's conduct.)

The claimant has changed address with a view to evading the consequences of the litigation; or has failed to give a correct address in the claim form.

The claimant has taken steps in relation to his or her assets that would make it difficult to enforce an order for costs against him or her.

The court will only make the order if satisfied that it is just to do so in all the circumstances. It will consider whether the application for security is being used to stifle a genuine claim, and whether the claim has a reasonably good prospect of success.

The court also has the power to order that security must be provided by:

a non-party who is funding the claim in return for a share of the fruits of the proceedings, or who has assigned the right to bring the claim to the claimant in order to avoid the risk of facing a costs order;

any party to proceedings who has, without good reason, failed to comply with court rules.

[3] These are a distillation and refinement of the *American Cyanamid* principles.

3 Object and nature of such measures?

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

Interim Injunctions

An injunction may require a party to take or refrain from taking steps in relation to any type of asset.

Search Orders

A search order requires the defendant to permit entry to his or her premises, but does not allow the applicant to force entry. The order must specify the premises which may be searched and list the items which the people conducting the search may inspect, copy and remove. The order may only cover evidence which may be relevant in the proceedings, or property which may be the subject-matter of the proceedings or as to which a question may arise in the proceedings.

The standard form order requires the respondent to hand over all the items listed in the order. Where relevant evidence may be held on computers, access must be given to all computers on the premises so that they can be searched, and copies must be provided of all relevant items found.

Freezing Injunctions

The court may make a freezing injunction in relation to the respondent's property which prohibits the respondent from reducing his or her assets within the jurisdiction below a specified value, or an order freezing specific assets. The respondent will still be allowed to spend stipulated sums on living expenses and legal advice and representation, and the order may permit the respondent to deal with assets in the ordinary course of business.

The standard form of freezing injunction is a "maximum sum" order which states that it applies to all the respondent's assets up to a stated value. It covers any asset which the respondent has the power to deal with as his or her own, including assets held or controlled by a third party in accordance with the respondent's instructions.

A general or "maximum sum" order will cover any assets, including movable and immovable property, vehicles, money and securities. The order will also extend to any assets which are acquired after it is made. It may specify particular properties, business assets and bank accounts which are frozen. A joint bank account will not be frozen unless specifically covered in the order.

3.2 What are the effects of such measures?

The defendant is warned that a failure to comply with an interim injunction is a contempt of court for which the defendant can be imprisoned, fined or have assets sequestrated.

It is not necessarily a contempt of court for a third party to allow the respondent to dispose of assets in breach of a freezing injunction. However, if a third party who has been notified of the freezing injunction knowingly assists the respondent in disposing of assets which are frozen, that party commits a contempt. The applicant should therefore provide copies of the freezing injunction to third parties such as the respondent's bankers, accountants and solicitors. (The standard form of order assumes this will be done and warns third parties of the possible penalties. It also includes undertakings by the applicant to meet the reasonable costs incurred by third parties in complying with the order, and to indemnify them against liabilities incurred in doing so.)

Even if they have been notified of the order, banks and other third parties may still exercise rights of security and set-off which were created before the freezing injunction was made.

A freezing injunction does not give the claimant any property rights in relation to the frozen assets. The right to bring proceedings for contempt is generally the claimant's only remedy. A contract made in breach of an injunction is illegal and may therefore be unenforceable by a party who knows that it will breach the order. In addition, the court may sometimes be able to grant a separate injunction preventing the defendant from performing a contract with a third party. However, ownership may still be transferred under an illegal contract, and once such a contract has been performed it is not normally possible to recover the assets transferred.

3.3 What is the validity of such measures?

When an order for an interim injunction is made in the presence of the parties, it may state that it is effective until trial, judgment or a further order of the court, or until a specified date. (If an injunction is effective "until further order" it will not lapse when the court gives judgment, but only when it makes an order which expressly or impliedly discharges the injunction.)

An interim injunction made without notice to the respondent will normally last for a limited period, seldom longer than 7 days, and another court order will be needed to continue it. When granting an injunction without notice, the court normally fixes a "return date" for a further hearing at which the respondent may attend and contest the continuation of the order. The standard form freezing injunction states that it applies until the return date or further order.

4 Is there a possibility of appeal against the measure?

The defendant or any third party who is directly affected by an interim injunction may apply to the court at any time to have the order varied or discharged (although an application in relation to a search order which has already been executed should normally wait until the trial). It is not necessary to wait until the return date to contest an order made without notice. The defendant must give prior notice of the application to the claimant's solicitors. The application should usually be made to the court that granted the order, and will often be heard by the same judge.
The grounds on which the respondent may make such an application include: failure to satisfy one of the conditions of the order, a material change in circumstances which removes the justification for the order, the oppressive effect of the order, unreasonable interference with the rights of innocent third parties, and delay by the claimant in pursuing the claim. Where the injunction was obtained without notice to the respondent, the grounds for discharging or varying the order also include failure by the applicant to disclose material facts to the court in obtaining the order, and insufficient evidence to justify giving interim relief without notice.
If the court sets aside the order, the respondent is then entitled to rely on the applicant's cross-undertaking in damages and claim compensation. The court will order an "inquiry as to damages" to ascertain the respondent's losses, although this may be deferred until the trial or later.
The court also has the powers to discharge or vary orders for interim payments and security for costs, and to order that all or part of the money paid under the order should be repaid.

Related links

Ministry of Justice

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Securing assets during a claim in EU countries - Northern Ireland

1 What are the different types of measures?

Prohibitory or Negative Injunction - An order not to do or to stop doing something. This is the most common type of order.
Mandatory or Positive Injunction - An order to do an act or to undo the damage of a previous act.
Quia Timet Injunction - An order to do or not to do an act in order to prevent damage that has not yet happened.
Mareva Injunction - An order preventing a defendant from removing or disposing of his assets to make judgment for damages unenforceable. The order may provide for the allowance of the defendant's living, business or legal expenses.
An undertaking in lieu of Injunction - This is often offered by the respondent to the application for an injunction and if accepted by the applicant should be recorded in writing or by the court.
Order for inspection and preservation of property - This has two purposes:
to preserve property which is the subject of the action so that the winning party will be able to recover the property or its value intact and
to make property available for inspection in order to gather evidence in the action. The Court may also make an order permitting entry on the lands of a party for the purpose of carrying out the order.
Anton Pillar Order - This authorises the plaintiff, his solicitor or other responsible agent to seize items without advance warning to the defendant for a preservative or evidential purpose.

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

2.1 The procedure

Interim relief can be applied for at any time after proceedings have been issued and before they have been determined. In urgent cases interim relief may be granted before proceedings have been commenced on condition that proceedings are issued immediately.
The procedure for applying for interim relief is set out in rules of court. The general rules of court which apply to the High Court are the Rules of the Court of Judicature(NI) 1980 and those which apply to the County Court are the County Court Rules (NI) 1981.
An application is usually made by "Notice of Motion" or "Summons" to the division of the High Court or to the County Court where the main action is pending. The notice or summons must state the remedy sought and the rules of court under which the application is brought, must be supported by an affidavit (often sworn by the applicant's solicitor) and a draft order should be provided.
The notice or summons together with the affidavit and any other relevant documents must be served on the defendant at least two clear days before the application is listed for hearing although in urgent cases the court may grant leave for the time for service to be abridged.
In the High Court a master (a type of judicial officer) usually hears the application although in some types of proceedings (specified in the Rules of the Court of Judicature (Northern Ireland) 1980) interim applications have to be heard by a judge.
The County Court has full interim powers in relation to cases falling within its jurisdiction. Applications in the County Court for an interlocutory injunction must be heard by a county court judge.
An application can be made "ex parte" without the service of a notice or summons on the person against whom it is sought in the following circumstances:
If the case is one of extreme urgency
If prior notice would lead the defendant to frustrate the purpose of the order
By convention, for example, applications before proceedings have been commenced are usually made ex parte
If statute or court rules authorise or direct it.
An ex parte application is made in a special form called an "ex parte docket" and the applicant has a duty to make full and fair disclosure of all relevant facts. Applications for ex parte orders (except applications for ex parte injunctions) are usually decided by the judge or master without a hearing. The costs of an ex parte application are usually reserved for the hearing.

2.2 The main conditions

Injunctive relief is discretionary. A court may grant an injunction at any stage of proceedings where it appears just and convenient to do so. The court exercises its discretion to grant injunctive relief in accordance with the guidelines set out in the case of American Cyanamid v Ethicon [1975] AC 396. First the plaintiff must show there is a serious issue to be tried in the proceedings. The judge will then consider whether the plaintiff's rights can be compensated in damages. The judge may go on to consider the balance of convenience between the parties and if that is equal then preservation or restoration of the status quo before the alleged wrong was committed is preferred. A stronger need must be demonstrated if the application is for a mandatory injunction and an injunction will not be granted unless the plaintiff gives an undertaking to pay damages to the defendant in the event of his action being unsuccessful or the injunction proving unnecessary.
In an application for a Mareva injunction the plaintiff must show:
a good arguable case for an existing cause of action claiming some monetary remedy

evidence that the defendant has assets which he may remove or conceal
evidence of a risk that the defendant will dispose of assets before judgment can be enforced.
An application to inspect property can be made in relation to property which is the subject of the proceedings or as to which a question may arise. The right to inspection is not dependent on the strength of the applicant's case.
In an application for an Anton Pillar order the plaintiff must show there is a real possibility that the defendant will destroy documents or things prejudicial to his defence or publish material in which the plaintiff has a right of confidence.

3 Object and nature of such measures?

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

An application for an injunction must be incidental to and dependent on an enforceable legal right or cause of action. However the injunction is not for the purpose of enforcing the applicant's rights rather it is to maintain or restore the status quo pending the determination of the action.
A Mareva injunction can be granted in relation to present or future assets within Northern Ireland (whether or not they are the subject of or connected to the action) whether or not the respondent is domiciled or present in Northern Ireland.
An order for inspection or preservation of property can only be obtained in relation to physical property. This is not the appropriate procedure for inspection of the contents of a document which is available under the rules relating to discovery of documents.

3.2 What are the effects of such measures?

An order can be enforced by committal proceedings. The order must have been served on the respondent before it can be enforced by committal. An undertaking is enforceable like an injunction.
Third parties such as the defendant's wife, solicitor or bank who have notice of a Mareva injunction are liable to preserve the assets of the defendant that are in their possession. However a Mareva injunction has effect only against the defendant and does not give the plaintiff any priority over creditors.
An order for inspection and preservation of property can only be made against a party to the proceedings so its effect will be subject to the consent of a person in whose possession the property is.
An Anton Pillar order is not a search warrant so cannot be executed by force but if the order is worded to command the defendant to allow the search the defendant's refusal to allow inspection is contempt and may lead the Court to infer that he or she has something to hide.

3.3 What is the validity of such measures?

The order may be:
Interlocutory – to last until the trial
Interim – to last for a limited period

4 Is there a possibility of appeal against the measure?

Either party may appeal a master's order or decision to a judge. An appeal must be issued within five days and must be served on the other parties at least two clear days before the appeal is listed for hearing. The five day limit can be extended at the court's discretion however the court must be persuaded that there is a good reason to do so. However a party cannot appeal against an undertaking. The refusal of an ex parte application can be appealed by the applicant however the respondent makes an application to set the order aside rather than to appeal it.
The appeal is a complete rehearing although the appellant presents his case first. Whilst new evidence may be adduced the judge will be reluctant to admit new evidence unless there is a good reason for doing so.
An interlocutory order made by the County Court can be appealed to a judge of the High Court by re-hearing or by a case stated to the Court of Appeal.

Related links

Northern Ireland Courts and Tribunals Service

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Securing assets during a claim in EU countries - Scotland

1 What are the different types of measures?

Diligence on the dependence

Diligence on the dependence is a protective measure which is used while a court action is ongoing, or shortly before it commences. It allows a pursuer (creditor) to preserve the defender's assets so that they will be available to satisfy any decree (judgment) granted in a court action in favour of the pursuer.
There are two types of diligence on the dependence. The first, arrestment on the dependence, is a method whereby a pursuer in an action for payment of money can effectively "freeze" any money or assets of the defender in the hands of third party. That third party is then prohibited from making payment of the money or transferring the asset. The second, inhibition on the dependence, prevents a defender from transferring or disposing of any heritable property in their ownership. It is used in relation to land or buildings, rather than money or moveable property, and prevents a defender from dealing with their property in a way which might prejudice the claim of a pursuer, for example; by selling the property then disposing of the proceeds.
Arrestment on the dependence and inhibition on the dependence can both be converted into a normal diligence in execution if decree is granted in favour of the pursuer in the court action.

Interim attachment

Interim attachment is a provisional diligence, similar to diligence on the dependence, which allows a pursuer to attach the defender's moveable property whilst a court action progresses. It effectively restricts a defender's ability to deal with attached moveable property in their possession pending the outcome of the action. However interim attachment cannot be used in a dwelling house, and certain items are exempt. Further once a decree is obtained it does not convert to attachment in execution; a charge for payment and further attachment is required before attached articles can be auctioned.

Interim interdict

Interdict is an order of the court which prevents a person from doing something, such as parting with property, so can be used to preserve a defender's existing state of affairs. Interim interdict has the same legal force as an interdict but is generally granted at an early stage of court proceedings once an application for interdict is made, and before enquiry into the facts. As a result, it is more susceptible to challenge or recall.

Preservation of documents and other property

A court may make an order for the interim preservation of documents and other property (including land) which will enable a party to preserve real evidence or to procure evidence.

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

2.1 The procedure

Diligence on the dependence

Diligence on the dependence can only proceed on an order of a court. Both the Court of Session and Sheriff Court can grant warrant for arrestment or inhibition on the dependence, or for interim attachment. Arrestment on the dependence and interim attachment are competent only where the action seeks payment of a sum of money, other than expenses. Warrant for inhibition on the dependence is competent where the action contains a similar conclusion, or is seeking a specific implement of an obligation to convey heritable property to the pursuer, or grant a real right in security over heritable property.

In a Sheriff Court action, the pursuer usually seeks a warrant for diligence on the dependence by applying for it in the initial writ. An initial writ embodies the pursuer's claim. Diligence on the dependence can apply at any time up to the issue of a final decree in the pursuer's favour. Service of the arrestment, inhibition or attachment is then usually executed by a sheriff officer (an officer of the court appointed to serve documents and enforce orders).

In the Court of Session (the supreme civil court in Scotland), warrants for diligence on the dependence are obtained by application. The Lord Ordinary (any judge in the Outer House of the Court of Session) may then grant an order for the diligence. The schedules of arrestment, inhibition or attachment are usually executed by a Messenger-at-Arms (an officer of the Court of Session appointed to serve documents and enforce court orders).

Preservation of documents and other property

Before the court may grant an order where the proceedings to which the documents or property relate have not yet been commenced, it is necessary for the applicant to show that civil proceedings are likely to be brought and that in such proceedings questions may arise about the relevant documents or other property. In an action which has been commenced, the order will only be granted where the applicant shows that it is required to enable him to make specific that which is already averred (that is to prove what he has stated in his case). If the application is granted, the order will specify the manner in which compliance is required. Thereafter a certified copy of the order has to be served on the parties against whom it is made.

2.2 The main conditions

Diligence on the dependence

Diligence on the dependence is discretionary and the courts will not grant warrant to do so unless satisfied by the provisions set out in the Debtors (Scotland) Act 1987, and that it is reasonable to do so in all the circumstances. The onus will be on the pursuer to satisfy the court that the order should be made.

Interim interdict

The Sheriff has to be satisfied about the urgency of the matter and the cogency of the case before granting interim interdict. It must be appropriate having regard to all the circumstances, and the Sheriff will need to be satisfied that more inconvenience will be caused to the pursuer if the interim interdict were not to be granted, than would be caused to the defender if it is granted.

Preservation of documents and other property

Before the court may grant the order, it is necessary for the applicant to show that civil proceedings are likely to be brought and that, in such proceedings, questions may relevantly arise regarding the documents or other property. If civil proceedings have already been brought, the order will be granted only where the applicant shows that it is required (see 2.1 above).

3 Object and nature of such measures?

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

Diligence on the dependence

An arrestment in effect "freezes" goods or money owned by the defender, but which are in the hands of a third party. That third party is referred to as the arrestee. Arrested funds or goods cannot be taken into a creditor's possession or sold prior to decree being granted. If a decree is granted in favour of the pursuer funds may be subject to automatic release, however an action of furthcoming must be raised for the release of goods.

Inhibition is a personal diligence which prevents a defender from disposing of, or granting security over, their interest in heritable property which they own, to the prejudice of creditors. Inhibitions are used against heritable property in the ownership of the defender rather than the property owed to him by a third party.

An interim attachment can attach corporeal moveable property, subject to certain exceptions. Included in the exceptions is any article kept within the defender's dwelling house, items required for the defender's trade or business, perishable goods, and, subject to a prescribed value; the defender's vehicle.

Interim interdict

An interim interdict prohibits a defender from carrying out a specific action with immediate effect. It can have the effect of preventing a defender or third party from taking steps in relation to any kind of asset.

Preservation of documents and other property

The Court of Session and Sheriff Court have wide powers to order the preservation, custody and detention of documents and other property (including land) which may be relevant in any existing or future court proceedings. The court can order the production and recovery of any such property, as well as taking samples, and can carry out any experiment thereon.

3.2 What are the effects of such measures?

Diligence on the dependence

Arrestment on the dependence has the effect of "freezing" goods or funds owned by the defender and held by a third party. If the third party disposes of the assets that have been arrested, then they are liable to the pursuer for their value. If the pursuer is successful in their action, they have a preferable right over the property arrested. Arrestment on the dependence freezes but does not transfer ownership to the pursuer.

An inhibition on the dependence does not give the pursuer a real right over the property, and they cannot take action to take possession of the property or sell it. The effect of this diligence is to preserve the property as part of the defender's estate and therefore prevent them from disposing of, or granting security over, their interest in property. Any voluntary legal act affecting the property after the effective date of the inhibition can be set aside by the pursuer to the extent that his interests are prejudiced.

Interim interdict

Where a defender fails to comply with an interdict the pursuer may take proceedings against them for breach of interdict. Should the charge being admitted or proved, the penalties that the defender may face include a fine or potential imprisonment.

Preservation of documents and other property

Failure to comply with the order could result in decree by default, in the main proceedings, being granted against a non-complying party, Additionally, it could result in proceedings for contempt of court being taken against anyone holding a document or property specified in the interdict.

3.3 What is the validity of such measures?

Diligence on the dependence

In the case of arrestment, if the defender is successful, then the arrestment on the dependence falls when the final decree is issued. If the pursuer wins the case, the arrestment is enforceable for up to three years from the date of decree.

An inhibition prevents a defender from disposing with or granting security over their heritable property. Inhibition on the dependence automatically converts into inhibition upon granting of the decree. The inhibitory effect lasts for five years but can be extended.

Where an interim attachment is executed this will have effect for six months or until it is recalled. If the action against the defender fails, then this will also cause the interim attachment to end.

Interim interdict

An interim interdict continues until it is recalled or until the action is finally disposed of. If the interdict is time specific, then it will continue until the time limit specified expires.

Preservation of documents and other property

The order falls on the final disposition of the action.

4 Is there a possibility of appeal against the measure?

Diligence on the dependence

A defender may obtain interdict preventing the use of arrestment on the dependence in two situations. Firstly, where it can be instantly verified that the arrestment would be wrong, in the sense that it was executed without warrant, or irregularly, or maliciously and without probable cause. The second situation is where the defender has lodged in court the principal sum sued for.

Where warrant has been granted for diligence on the dependence the defender, or anyone else having an interest can seek its recall or restriction. A recall removes the warrant altogether and any diligence flowing from it. If an arrestment or inhibition on the dependence, or interim attachment, executed following the grant of the warrant is deemed incompetent, then the arrestment, inhibition or attachment must be recalled.

If the warrant was in fact valid, but the arrestment, inhibition or interim attachment was either ineffective or irregular, then diligence may be restricted.

When the defender is seeking to recall or restrict the diligence on the dependence, it is for the pursuer to satisfy the court that the diligence should not be recalled or restricted. The court may also request that the defender finds caution (security) that, on decree being pronounced against him, there will be made available to the pursuer the arrested fund or its value or, more commonly, the whole debt sued for.

Interim interdict

An order granting or refusing interim interdict made in the Sheriff Court may be appealed without leave to the Sheriff Principal (the senior Sheriff in the local area) or with leave to the Court of Session.

An order granting or refusing interim interdict made in the Court of Session may be appealed against within fourteen days of the order being granted.

Preservation of documents and other property

An order granting an application for preservation of documents or property made in the Sheriff Court may be appealed within fourteen days of issuing of the order.

In the Court of Session, any person receiving the petition for preservation of the documents or property may appear and oppose the petition should they wish to do so. On executing the order, the Commissioner appointed by the court to do so will inform the recipient of his right to seek legal advice. Where the purpose of seeking this advice is to help him decide whether to ask the court to vary the order, the Commissioner will not begin to search for, take possession of or preserve the listed items.

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Securing assets during a claim in EU countries - Gibraltar

1 What are the different types of measures?

An injunction is a court order requiring a party to either take certain steps or refrain from taking certain steps. An interim injunction is such an order made before the trial of the claim. A claimant may seek to protect his or her position in the course of legal proceedings, or even before proceedings are begun, by seeking an interim injunction to prevent the defendant from acting in a way which will harm the claimant.

There are also two specific types of injunction which a claimant may seek where there is a risk that the defendant will take steps to destroy evidence or to frustrate any judgment obtained by the claimant. The first is a search order, which requires the defendant to permit a search of his or her premises for documents or property; the second is a freezing injunction, which prohibits the defendant from dealing with assets or moving them out of the jurisdiction.

Where the claimant is seeking payment of a sum of money (e.g. a debt or damages), the court may order the defendant to make an interim payment on account of any sum which the defendant may ultimately be required to pay, in order to avoid hardship to the claimant as a result of any delay in obtaining judgment.

A defendant may face the risk that, even if the claim is dismissed and the claimant is ordered to pay costs, it will be impossible to enforce the costs order. To protect the defendant, the court may in certain circumstances order the claimant to provide security for costs, usually by paying a sum of money into court.

The Supreme Court has the power to grant interim relief in support of proceedings in another jurisdiction if it is expedient to do so. It may also grant a “worldwide freezing injunction” which applies to assets in other jurisdictions.

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

2.1 The procedure

Injunctions (including Search Orders and Freezing Injunctions)

Injunctions are orders of the court. In the absence of a search order or freezing injunction, the defendant is generally under no obligation to permit a search of his or her premises or to refrain from dissipating his or her assets. An application for a search order or freezing injunction is made in the Supreme Court. An applicant must make full and frank disclosure of all material facts of which the court should be made aware (particularly where the application is made without notice). A draft order should also be provided, specifying precisely the steps which are required.

For interim injunctions the applicant is normally required to give a “cross-undertaking in damages” - a promise to compensate the respondent for any losses caused by the injunction if it subsequently turns out that it should not have been granted (e.g. because the applicant loses at trial).

Applications may be made without giving notice to the respondent if there are good reasons not to give notice. They may also be made before the claimant has issued the claim form commencing the main proceedings. There is no formal requirement that the applicant should be represented by a lawyer at the hearing of the application, but an applicant will normally need legal advice and representation in order to make such an application.

Once the court grants the order, it must be drawn up and served on the respondent. Court officers do not play any part in serving or enforcing interim injunctions. However, search orders must be carried out in accordance with special procedures. They must normally be served by a “supervising solicitor” who is familiar with search orders and independent of the applicant’s solicitors. The supervising solicitor must explain the search order to the respondent and

advise the respondent of his or her right to seek legal advice. The supervising solicitor will carry out or supervise the search, and report on the search to the applicant's solicitors.

Interim Payments and Security for Costs

Interim payments and security for costs may be provided by agreement between the parties, but in the absence of agreement it is necessary to apply to the court. The application is made by filing an application notice supported by written evidence. The application must be served on the respondent, who may file evidence in reply. If the court makes the order, it will determine the form and amount of the security or payment which must be made.

Costs of obtaining orders

There is no fixed scale of costs for obtaining any of the orders described above. There are, however, specific court fees for issuing an application for an order which depend on whether the application is made with notice to the respondent or without notice. Full details of these fees can be obtained from the Supreme Court Registry, 277 Main Street, Gibraltar, telephone number (+350) 200 75608.

The applicant is liable to pay the fees of his or her solicitors (and in the case of a search order, those of the supervising solicitor), although the respondent may ultimately be ordered to pay those costs.

2.2 The main conditions

All of the remedies described in this section are discretionary and the court will not grant them if it considers that they would be inappropriate or disproportionate in the circumstances. The courts tend to exercise greater caution in relation to search orders and freezing injunctions because they are particularly severe measures.

Interim Injunctions

In deciding whether to grant an interim injunction, the court will first consider whether the action raises a "serious question to be tried" (rather than being "frivolous or vexatious"). If it does not, the injunction will be refused.

If there is a serious question to be tried, the court will then consider the "balance of convenience". This involves asking whether it would be worse to require the claimant to go without the injunction until trial, or to make the defendant suffer the injunction. In deciding this question, the court will consider the following matters in the following order:

Would an award of damages be an adequate remedy for the claimant if the claimant were to win at trial? If damages would be adequate, the injunction will be refused. If they would not (e.g. because the harm to the claimant would be irreparable or non-pecuniary), the remaining questions must be considered.

Would the claimant's cross-undertaking in damages give the defendant adequate protection if the defendant were to win at trial? If damages would adequately protect the defendant, that normally counts in favour of the injunction.

Where the other factors appear evenly balanced, the court will maintain the status quo. This factor normally counts in favour of the injunction.

Other social or economic factors may be considered, such as the impact of granting or refusing the injunction on employment or on the availability of medicines.

As a last resort, the court may consider the relative merits of the parties' cases, but only if it is possible to form a clear view that one party's case is much stronger than the other's.

Search Orders

A search order may be made for the purpose of securing the preservation of evidence or property relevant to legal proceedings. The conditions for obtaining a search order are stricter than for other types of injunctions, and the court will not make an order unless the applicant shows that all of the following conditions are satisfied:

There is an extremely strong prima facie case against the defendant.

The activities of the defendant which give rise to the proceedings cause serious actual or potential harm to the claimant.

There is clear evidence that the defendant has incriminating documents or material.

There is a "real possibility" or a "probability" that the relevant documents or material will disappear if the order is not made.

Freezing Injunctions

The court has the power to grant a freezing injunction where it is "just and convenient" to do so. A freezing injunction will not be ordered unless the claimant can show that all of the following conditions are satisfied:

The claimant has a substantive cause of action over which the courts of Gibraltar have jurisdiction.

The claimant has a "good arguable case" against the defendant.

There are grounds for believing that the defendant has assets within the jurisdiction.

There is a "real risk" that the defendant will deal with the assets in a way which means any judgment cannot be enforced (e.g. by disposing of the assets or removing them from the jurisdiction).

The court will exercise particular caution before granting freezing injunctions in support of foreign proceedings, especially if the freezing injunction would overlap or conflict with any freezing order made by the foreign court in which the main proceedings are taking place, or if the foreign court has refused to freeze assets.

The court will not grant a worldwide freezing injunction if the respondent has sufficient assets within the jurisdiction, and must consider whether a worldwide injunction could be enforced in the countries where the respondent has assets.

Interim Payments

The court may order the defendant to make an interim payment only if the defendant has admitted liability to pay money to the claimant, if judgment has already been given in favour of the claimant for a sum of money which is to be assessed later, or if the court is satisfied that at trial the claimant will recover a "substantial amount of money" (or in a claim for possession of land, a payment in respect of the defendant's occupation of the land). In personal injury cases, a payment may only be ordered if the defendant's liability will be met by an insurer or the defendant is a public body.

Security for Costs

The most common cases in which the court may order the claimant to provide security are where:

The claimant is resident outside the European Union and the European Free Trade Area (Iceland, Liechtenstein, Norway and Switzerland) and it would be difficult to enforce a costs order in the claimant's country of residence.

The claimant is a company or other incorporated body and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so. (In deciding whether to order security, the court will take into account whether the claimant's lack of money or funds has been caused by the defendant's conduct.)

The claimant has changed address with a view to evading the consequences of the litigation; or has failed to give a correct address in the claim form.

The claimant has taken steps in relation to his or her assets that would make it difficult to enforce an order for costs against him or her.

The court will only make the order if satisfied that it is just to do so in all the circumstances. It will consider whether the application for security is being used to stifle a genuine claim, and whether the claim has a reasonably good prospect of success.

The court also has the power to order that security must be provided by:
a non-party who is funding the claim in return for a share of the fruits of the proceedings, or who has assigned the right to bring the claim to the claimant in order to avoid the risk of facing a costs order;
any party to proceedings who has, without good reason, failed to comply with court rules.

3 Object and nature of such measures?

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

Interim Injunctions

An injunction may require a party to take or refrain from taking steps in relation to any type of asset.

Search Orders

A search order requires the defendant to permit entry to his or her premises, but does not allow the applicant to force entry. The order must specify the premises which may be searched and list the items which the people conducting the search may inspect, copy and remove. The order may only cover evidence which may be relevant in the proceedings, or property which may be the subject-matter of the proceedings or as to which a question may arise in the proceedings.
The standard form order requires the respondent to hand over all the items listed in the order. Where relevant evidence may be held on computers, access must be given to all computers on the premises so that they can be searched, and copies must be provided of all relevant items found.

Freezing Injunctions

The court may make a freezing injunction in relation to the respondent's property which prohibits the respondent from reducing his or her assets within the jurisdiction below a specified value, or an order freezing specific assets. The respondent will still be allowed to spend stipulated sums on living expenses and legal advice and representation, and the order may permit the respondent to deal with assets in the ordinary course of business.
The standard form of freezing injunction is a "maximum sum" order which states that it applies to all the respondent's assets up to a stated value. It covers any asset which the respondent has the power to deal with as his or her own, including assets held or controlled by a third party in accordance with the respondent's instructions.
A general or "maximum sum" order will cover any assets, including movable and immovable property, vehicles, money and securities. The order will also extend to any assets which are acquired after it is made. It may specify particular properties, business assets and bank accounts which are frozen. A joint bank account will not be frozen unless specifically covered in the order.

3.2 What are the effects of such measures?

The defendant is warned that a failure to comply with an interim injunction is a contempt of court for which the defendant can be imprisoned, fined or have assets sequestrated.
It is not necessarily a contempt of court for a third party to allow the respondent to dispose of assets in breach of a freezing injunction. However, if a third party who has been notified of the freezing injunction knowingly assists the respondent in disposing of assets which are frozen, that party commits a contempt. The applicant should therefore provide copies of the freezing injunction to third parties such as the respondent's bankers, accountants and solicitors. (The standard form of order assumes this will be done and warns third parties of the possible penalties. It also includes undertakings by the applicant to meet the reasonable costs incurred by third parties in complying with the order, and to indemnify them against liabilities incurred in doing so.)
Even if they have been notified of the order, banks and other third parties may still exercise rights of security and set-off which were created before the freezing injunction was made.
A freezing injunction does not give the claimant any property rights in relation to the frozen assets. The right to bring proceedings for contempt is generally the claimant's only remedy. A contract made in breach of an injunction is illegal and may therefore be unenforceable by a party who knows that it will breach the order. In addition, the court may sometimes be able to grant a separate injunction preventing the defendant from performing a contract with a third party. However, ownership may still be transferred under an illegal contract, and once such a contract has been performed it is not normally possible to recover the assets transferred.

3.3 What is the validity of such measures?

When an order for an interim injunction is made in the presence of the parties, it may state that it is effective until trial, judgment or a further order of the court, or until a specified date. (If an injunction is effective "until further order" it will not lapse when the court gives judgment, but only when it makes an order which expressly or impliedly discharges the injunction.)
An interim injunction made without notice to the respondent will normally last for a limited period, seldom longer than 7 days, and another court order will be needed to continue it. When granting an injunction without notice, the court normally fixes a "return date" for a further hearing at which the respondent may attend and contest the continuation of the order. The standard form freezing injunction states that it applies until the return date or further order.

4 Is there a possibility of appeal against the measure?

The defendant or any third party who is directly affected by an interim injunction may apply to the court at any time to have the order varied or discharged (although an application in relation to a search order which has already been executed should normally wait until the trial). It is not necessary to wait until the return date to contest an order made without notice. The defendant must give prior notice of the application to the claimant's solicitors. The application should usually be made to the court that granted the order, and will often be heard by the same judge.
The grounds on which the respondent may make such an application include: failure to satisfy one of the conditions of the order, a material change in circumstances which removes the justification for the order, the oppressive effect of the order, unreasonable interference with the rights of innocent third parties, and delay by the claimant in pursuing the claim. Where the injunction was obtained without notice to the respondent, the grounds for discharging or varying the order also include failure by the applicant to disclose material facts to the court in obtaining the order, and insufficient evidence to justify giving interim relief without notice.
If the court sets aside the order, the respondent is then entitled to rely on the applicant's cross-undertaking in damages and claim compensation. The court will order an "inquiry as to damages" to ascertain the respondent's losses, although this may be deferred until the trial or later.
The court also has the power to discharge or vary orders for interim payments and security for costs, and to order that all or part of the money paid under the order should be repaid.

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