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Securing assets during a claim in EU countries

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European Judicial Network
(in civil and commercial
matters)



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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