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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?

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*))

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*) (Section 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, as well as on the 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*) 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 case-by-case 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:

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

Sum in dispute	up to €	Sum in dispute	up to €
500	40.00	50 000	638.00
1 000	61.00	65 000	778.00
1 500	82.00	80 000	918.00
2 000	103.00	95 000	1 058.00
3 000	125.50	110 000	1 198.00
4 000	148.00	125 000	1 338.00
5 000	170.50	140 000	1 478.00
6 000	193.00	155 000	1 618.00
7 000	215.50	170 000	1 758.00
8 000	238.00	185 000	1 898.00
9 000	260.50	200 000	2 038.00
10 000	283.00	230 000	2 248.00
13 000	313.50	260 000	2 458.00
16 000	344.00	290 000	2 668.00
19 000	374.50	320 000	2 878.00
22 000	405.00	350 000	3 088.00
25 000	435.50	380 000	3 298.00

30 000	476.00	410 000	3 508.00
35 000	516.50	440 000	3 718.00
40 000	557.00	470 000	3 928.00
45 000	597.50	500 000	4 138.00

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.

In line with item 102 of the list of costs for the Act on enforcement agents' costs (*Gerichtsvollzieherkostengesetz*), the bailiff charges a fee of €3.60 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 €12 (item 100 of the list of costs for the Act on enforcement agents' costs), 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 (item 711 of the list of costs for the Act on enforcement agents' costs). 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 of Civil Procedure) is €19.20, for performing an official act (item 200 of the list of costs for the Act on enforcement agents' costs).

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 title 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 €31.20 is chargeable for enforcement by the bailiff against movable property in line with item 205 of the list of costs for the Act on enforcement agents' costs. If the bailiff's working time is greater than three hours, a further charge of €24.00 is payable for each additional hour or part of an hour (item 500 of the list of costs for the Act on enforcement agents' costs). 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 €24.00 is levied for proceedings concerning the application itself in line with item 2111 of the list of costs for the Act on enforcement agents' costs, 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 (Section 867 of the Code of Civil Procedure), or the property may be subjected to forced sale by auction or to forced administration (Section 869 of the Code of Civil Procedure). The Act on costs for non-contentious jurisdiction for courts and notaries (Court and Notary Costs Act) (*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:

Annex 2 (relating to Section 34(3)) of the Court and Notary Costs Act

Transaction value	Fee	Transaction value	Fee	Transaction value	Fee
up to ... €	Table B	up to €...	Table B	up to €...	Table B
	€...		€...		€...

500	15.00	200 000	435.00	1 550 000	2 615.00
1 000	19.00	230 000	485.00	1 600 000	2 695.00
1 500	23.00	260 000	535.00	1 650 000	2 775.00
2 000	27.00	290 000	585.00	1 700 000	2 855.00
3 000	33.00	320 000	635.00	1 750 000	2 935.00
4 000	39.00	350 000	685.00	1 800 000	3 015.00
5 000	45.00	380 000	735.00	1 850 000	3 095.00
6 000	51.00	410 000	785.00	1 900 000	3 175.00
7 000	57.00	440 000	835.00	1 950 000	3 255.00
8 000	63.00	470 000	885.00	2 000 000	3 335.00
9 000	69.00	500 000	935.00	2 050 000	3 415.00
10 000	75.00	550 000	1 015.00	2 100 000	3 495.00
13 000	83.00	600 000	1 095.00	2 150 000	3 575.00
16 000	91.00	650 000	1 175.00	2 200 000	3 655.00
19 000	99.00	700 000	1 255.00	2 250 000	3 735.00
22 000	107.00	750 000	1 335.00	2 300 000	3 815.00
25 000	115.00	800 000	1 415.00	2 350 000	3 895.00
30 000	125.00	850 000	1 495.00	2 400 000	3 975.00
35 000	135.00	900 000	1 575.00	2 450 000	4 055.00
40 000	145.00	950 000	1 655.00	2 500 000	4 135.00
45 000	155.00	1 000 000	1 735.00	2 550 000	4 215.00
50 000	165.00	1 050 000	1 815.00	2 600 000	4 295.00
65 000	192.00	1 100 000	1 895.00	2 650 000	4 375.00
80 000	219.00	1 150 000	1 975.00	2 700 000	4 455.00
95 000	246.00	1 200 000	2 055.00	2 750 000	4 535.00
110 000	273.00	1 250 000	2 135.00	2 800 000	4 615.00
125 000	300.00	1 300 000	2 215.00	2 850 000	4 695.00
140 000	327.00	1 350 000	2 295.00	2 900 000	4 775.00
155 000	354.00	1 400 000	2 375.00	2 950 000	4 855.00
170 000	381.00	1 450 000	2 455.00	3 000 000	4 935.00
185 000	408.00	1 500 000	2 535.00		

A fee of €120.00 is chargeable for an application for an order imposing forced sale by auction or forced administration of real estate (item 2210 of the list of costs for the Act on enforcement agents' costs).

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 €31.20 is payable for the official act involved in line with item 211 of the list of costs for the Act on enforcement agents' costs. 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 €163.00 in line with item 240 of the list of costs for the Act on enforcement agents' costs. In addition, the bailiff's incidental expenses are chargeable in line with Part 7 of the Act on enforcement agents' costs, 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 €24.00 is payable for each additional hour or part of an hour (item 500 of the list of costs for the Act on enforcement agents' costs).

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. An interim injunction may also provide temporary status for a contested legal relationship, for example in order to avert significant disadvantages or prevent impending violence. 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 of the Code of Civil Procedure). 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 of the Code of Civil Procedure).

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 of the Code of Civil Procedure). 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) of the Code of Civil Procedure). 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*), 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 of the Code of Civil Procedure (authorisation by the court for the creditor to undertake reasonable action) or under Sections 888 and 890 of the Code of Civil Procedure (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 or if the court of first instance has granted leave to appeal in its judgment (Section 511(2) of the Code of Civil Procedure).

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 of Civil Procedure). 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 of the Code of Civil Procedure).

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 of Civil Procedure.

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