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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 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 'unattachable' (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 \(*Chambre Nationale des Huissiers de Justice*\)](#)

■ Last update: 08/10/2021

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