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# Securing assets during a claim in EU countries

 Romania

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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 measure are precautionary and judicial seizure and precautionary attachment.* Precautionary measures are procedural freezing and conservation orders issued by the court on the debtor's assets to prevent the opposing party from destroying or disposing of goods or from reducing their assets.

Precautionary seizure means 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 the precautionary seizure of civil ships.

Judicial seizure consists of 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.

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

### 2.1 The procedure

A precautionary seizure order is issued by the court and enforced by the bailiff without any authorisation or formality other than registration. In addition, seizure shall take place without informing or giving prior notice to the debtor.

Orders may be issued only by the first instance court with jurisdiction over the matter (judicial seizure, precautionary attachment), the first instance court dealing with the case or by the court in whose jurisdiction the asset is located (judicial seizure). In such special proceedings the assistance of a lawyer is not mandatory. Precautionary seizure and precautionary attachment orders are enforced by a bailiff. The seizure officer may prepare all the documents for conservation and administration, receive any revenues and amounts due and pay both current debts and those established by an enforcement order. The only foreseeable costs are court stamp fees which, pursuant to Article 11(1)(b) of Government Emergency Order No 80 of 26 June 2013 on court stamp fees, are RON 100 for claims related to precautionary measures and RON 1 000 for claims regarding seizure of ships and aircraft. 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.

### 2.2 The main conditions

For *precautionary seizure and attachment orders*, a case must be pending. In the case of judicial seizure, an order 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 allow judicial seizure or precautionary attachment if this is necessary to uphold a party's rights and if 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 allowed even if an action on the merits concerning an asset that the debtor offers for his release has not begun; on assets regarding which the person concerned has reasonable grounds to fear that they will be removed/destroyed/altered by the owner; for movable assets representing 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 fears the 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 judgment, setting, where applicable, the value of the security deposit and the deadline for its payment. A request for judicial seizure is dealt with as a matter of urgency and the parties are summoned. If the request is admitted the court may oblige the complainant to pay a security deposit and any immovable assets are listed in the land register.

### 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 vehicles, 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 order for the 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, in bad faith, obtains a precautionary measure that is injurious to the defendant. The defendant/debtor may be subject to a penalty under criminal law for non-compliance with court judgments.

If the debtor lodges 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 for a judgment.

Likewise, if the main request underlying the granting of a precautionary measure has been set aside, rejected or has become obsolete by a final judgment or if the person who filed that request waived its trial, the debtor may request that the order be lifted by the court which granted it. The court issues a final judgment regarding the request, without summoning the parties.

#### 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 deadline 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 rejected, 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.

Appeals are always settled in the presence of the parties.

## 4 Is there a possibility of appeal against the measure?

For precautionary seizure and attachment, the judgment 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.

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