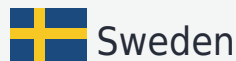


[Home](#) > ... > [Money/monetary Claims](#) > [Securing Assets During a Claim In EU Countries](#) > Sweden

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?

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can have any property that the other party holds taken possession of, or have the opposite party's right of disposal withdrawn in some other way.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 2800.

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 courts* 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.

3.3 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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