

Home>Money/monetary claims>Securing assets during a claim in EU countries

Securing assets during a claim in EU countries

Greece

1 What are the different types of measures?

Interim and precautionary measures, more generally termed 'provisional remedies' (*asfalistiká métra*), are measures ordered by a court where full proceedings on the substance of the case are pending or about to open and there is a claim that needs judicial protection in the meantime. Interim judicial protection of this kind is intended to ensure that it will in fact be possible to satisfy the claim that is about to be assessed on its merits. The measures that can be ordered are: the lodging of security (*engyodosia*); registration of a notice of mortgage on the debtor's property (*engrafi prosimeiosis ypothikis*); precautionary attachment (*syntiritiki katáschesi*); judicial sequestration (*dikastiki mesengýisi*); the provisional award of claims (*prosorini epidikasi apaitiseon*); an injunction regulating matters on a provisional basis (*prosorini rythmisi katástasis*); the sealing (*sfrágisi*), unsealing (*aposfrágisi*), inventorying (*apografi*) and public deposit (*dimósia katáthesi*) of property; and measures to safeguard possession (*asfalistiká métra nomis*).

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

2.1 The procedure

Measures of this kind must always be ordered by a court of law.

General jurisdiction to order such measures lies with the single-member court of first instance (*monomelés protodikeio*). However, the single-member court of first instance can lose this general jurisdiction to the district civil court (*eirinodikeio*) in cases of provisional regulation of rights of possession or use, and in cases where under the general provisions of the Code of Civil Procedure the district civil court has jurisdiction to hear the main claim. The district civil court has exclusive jurisdiction in cases where a notice of mortgage is to be registered or withdrawn by agreement between the parties. Provisional remedies may also be ordered by the multi-member court of first instance (*polymelés protodikeio*) if it is hearing the main action; in such cases its jurisdiction is concurrent with that of the single-member court of first instance. The court with territorial jurisdiction is usually the court that has territorial jurisdiction to hear the main action, but provisional remedies may also be ordered by the court nearest to the location where they are to be implemented. The court decision ordering these measures is served on the party liable to perform them and is enforced by a bailiff (*dikastikós epimelitis*). If enforcement is prevented, the bailiff may request assistance from the police. Costs are difficult to determine, as lawyers' and bailiffs' fees vary. An indicative cost would be approximately EUR 250.00.

2.2 The main conditions

The court will order provisional remedies measures if:

- (a) there is an urgent need or imminent danger, in order to protect or preserve a legitimate interest or to regulate a situation, and
- (b) there are reasonable grounds for believing that the right in respect of which the provisional remedy is sought does indeed exist.

Preliminary evidence must be presented showing that there are reasonable grounds for the measure: full proof is not needed, and it is enough that there is incomplete proof that provides a lesser degree of certainty as to the facts that need to be established; the court can grant protection once it considers that the facts alleged are probable. The court will grant protection only where there is an urgent need or an imminent danger that the debtor may be separated from the attachable property belonging to him or her in such a way that it will be impossible to enforce the claim at a later stage if the creditor is awarded an enforceable title at the conclusion of the main proceedings.

3 Object and nature of such measures?

3.1 What types of assets can be subject to such measures?

Any of the debtor's assets of any kind can be made subject to such measures, whether they are in his or her own possession or in the possession of a third party, as long as they are transferable under the rules of private law and are not legally exempt from enforcement. In particular, such measures may be imposed on immovable property, and on movable property that is not considered to be non-attachable, including ships, aircraft, road vehicles, bank deposits and dematerialised shares.

3.2 What are the effects of such measures?

Once an interim court order is granted in respect of the assets, e.g. an order for precautionary attachment or an order for registration of notice of a mortgage on immovable property, the debtor is prevented from transferring the assets to third parties. Failure to comply with the order carries a minimum penalty of six months' imprisonment under Section 232A of the Criminal Code.

Legislative Decree (*nomothetikó diátagma*) No 1059/1971 introduced a confidentiality obligation in respect of bank deposits, and provided for a minimum penalty of six months' imprisonment for directors, managers or employees of banks found to be in violation of that obligation. This is not an obstacle to precautionary attachment, as the court order imposing attachment need not specify which deposits or dematerialised shares are to be attached. The order prevents the banks from transferring the assets, but it does not infringe the confidentiality obligation, because the banks are not asked to disclose the existence of any deposits. Any other third parties in possession of property that is attached are required to declare whether the claims or rights being attached actually exist, and whether any other attachment has taken place over the property held in their possession, and if so up to what value.

3.3 What is the validity of such measures?

According to the law, these measures are valid:

- (a) until a final judgment has been given in the main proceedings against the party who applied for the order, and the judgment is no longer open to appeal;
- (b) until a final judgment has been given for the party who applied for the order, and that judgment has been enforced;
- (c) until a settlement is reached between the parties to the main proceedings;
- (d) for 30 days after the date the proceedings were discontinued or otherwise struck out by the court;
- (e) until the order imposing the measure is revoked or revised either by the court that originally made the order, in reliance upon new evidence, or by the court hearing the main claim, which need not rely upon new evidence; or
- (f) if the order specifies a period within which the applicant is to bring the main claim before a court, and the applicant fails to do so within that period.

If either party fails to appear at the hearing on the application, although duly summoned in good time, the hearing will take place in the absence of that party. But the court will hear the case as if all parties were present, because failure to appear in proceedings for provisional remedies is not deemed to constitute an admission of the facts alleged in the application. The court may re-enter a case for hearing only if the defaulting party asks it to revoke or revise its ruling and relies on new evidence that would have led the court to a different conclusion had the court been aware of it.

4 Is there a possibility of appeal against the measure?

Orders for provisional remedies are not ordinarily open to appeal, the only exception being those imposing a provisional regulation of rights of possession and use, which, according to the explicit wording of the law, may be appealed before the competent multi-member court of first instance within 10 days of service. The public prosecutor at the Supreme Court (*Áreios Págos*) may lodge an appeal on points of law against any court order, for reasons of public interest. The Supreme Court then considers the case and either upholds or quashes the contested order. That ruling has merely provisional effect. As already mentioned, either party to the proceedings may ask the court that made the order to revoke or revise its ruling. Any third party who was not summoned and who did not attend the proceedings may also file a request to that effect, as long as they have a legitimate interest.

Last update: 14/02/2017

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.