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Securing assets during a claim in EU countries

France

1 What are the different types of measures?

The court hearing applications for interim measures (urgent procedures, deposit payments, evictions, prohibitory measures under penalty, protection of evidence) is entitled to order such measures at any time as a matter of urgency.

There is no restrictive list of provisional measures; all urgent measures can be claimed before the courts hearing applications for such measures to which there is no compelling objection or which are justified by the existence of a dispute (deposit payment, eviction of an occupant without title, expertise or determination of damage, etc.). Moreover, the court in such proceedings may urgently order all measures that are deemed necessary either to prevent imminent damage (*inter alia*, consolidation work) or to put an end to a manifestly unlawful nuisance.

There is a special regime for precautionary measures (protective seizures and judicial guarantees), which allow the creditor, usually with the authorization of the court, to deny the debtor access to all or part of their assets, and to apply a special right of security on such property in order to secure the payment of receivables not yet recognized by a judgment, but the recovery of which appears threatened.

These precautionary measures may take one of the following two forms:

Precautionary attachment as a precautionary measure, allowing for the attachment of tangible assets (furniture, vehicles, etc.), intangible assets (a sum of money, rights of partners, securities, etc.) or receivables (bank accounts, lease payments etc.);

judicial liens on real estate, goodwill, shares of partners 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

Provisional measures: the application must be brought before the court by a writ (served by an accredited bailiff (*huissier de justice*). This involves urgent, adversarial proceedings.

Precautionary measures: In principle, prior authorization by the court is required. However, the creditor is exempted from such authorization when it relies on an enforceable order or a court decision which is not yet enforceable. The same applies in 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 provisional measures, the jurisdiction of the court is determined on the basis of the nature of the request. Ordinary jurisdiction is exercised by the president of the regional court (*tribunal de grande instance*). However, the judges of the district courts (*tribunaux d'instance*), the presidents of the commercial courts (*tribunaux de commerce*), the employment tribunals (*conseils des prud'hommes*) and the agricultural rent tribunals (*tribunaux paritaires des baux ruraux*) may also issue summary judgments within the limits of their jurisdiction.

In the case of precautionary measures, jurisdiction lies with the judge presiding the regional court of the place of enforcement. The court with jurisdiction is the one at the debtor's place of residence.

The parties may defend themselves directly before the court of the place of enforcement or the court hearing the application. However, the parties may opt to be assisted or represented by a lawyer.

Precautionary attachment must be carried out by an accredited 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 the Decree No 96-1080 of 12 December 1996, the remuneration of bailiffs includes a lump sum, expressed cumulatively or alternatively, according to the case in question, in fixed or proportional rights, including the right to prosecution, where appropriate.

With regard to precautionary measures, proportional recovery duties calculated on the recovered amounts will only be due if the bailiffs are ordered to recover the amounts due. Furthermore, the nomenclature annexed to the aforementioned decree excludes the possibility of additional, freely negotiated remuneration, with the exception of the protective seizure of rights of partners and securities.

2.2 The main conditions

The court does not carry out the measure, it only authorizes it. The measure is carried out by the bailiff at the request of the beneficiary of the authorization.

If the prior authorization 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 receivables (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 "unseizable" (such as the goods necessary for day-to-day life or to perform a profession) may be the subject of precautionary attachment. The same applies to receivables; however, wages cannot constitute the subject of precautionary measures (even if they can be attached under a court decision or other enforceable title, in accordance with the procedure for the attachment of remunerations).

3.2 What are the effects of such measures?

Assets attached as a precautionary measure are made unavailable. The debtor is left with enjoyment of the assets, under their responsibility, but they cannot be alienated. If the debtor misappropriates the attached property, they commit an offence punishable by a fine or imprisonment.

Attached amounts of money are kept in an account.

The assets covered by a judicial lien may be sold by the debtor, but the creditor has a right to follow them and a right to be paid from the sales price of the goods in question.

Property seized as a precautionary measure is placed under the responsibility of the debtor who is made its "custodian". The seizure is not enforceable against third parties. As opposed to this, judicial liens, the existence of which must be publicised (commercial or property), are opposable to all parties. The bank (and all third parties in general) which receives a request for precautionary attachment in respect of one of its clients has an obligation immediately to disclose to the bailiff all of its obligations to the debtor (all the accounts opened in the name of the debtor and all amounts registered in the debtor's account). If the bank refuses to provide this information without legitimate reason, it 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 authorizing court. Otherwise the authorization becomes null and void.

If the creditor has not yet initiated a procedure for the recognition of its claim, it must be done within the month in which the measure is taken. Otherwise the measure becomes null and void.

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 to challenge the measure or the authorization. Also, the court has the right to set the date of 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 attachment has not been executed after the creditor obtained a court decision on its claim.

4 Is there a possibility of appeal against the measure?

The ruling may be challenged by the debtor at the same time as the measure itself.

The court of the place of enforcement, with the jurisdiction to grant the authorization for precautionary measures, hears challenges to the ruling as well. Its decisions are subject to appeal to the court of appeal.

Since the debtor becomes aware of the authorization of the measure at the same time as the measure itself, challenging the ruling is subject to the same rules as challenging the measure, being admissible only as long as the measure has not been put into effect.

The appeal does not interrupt the effect of the precautionary measure, which continues as long as the court has not ordered release or found the measure to be null and void.

Associated links

[Legifrance website](#)

[Website of the Ministry of Justice \(Ministère de la Justice\)](#)

[Website of the French National Chamber of Bailiffs \(Chambre Nationale des Huissiers de Justice\)](#)

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