Securing assets during a claim in EU countries

Polónia

1 What are the different types of measures?

The type of measure depends on the nature of the claim to be secured. Under Article 747 of the Code of Civil Procedure (‘*kodeks postępowania cywilnego*’), pecuniary claims are secured through:

the seizure of movable assets, wages and salaries, claims from a bank account or other claims, or another property right;

the encumbrance of the obligated party’s real estate with a compulsory mortgage;

the establishment of a prohibition on the disposal or encumbrance of real estate for which there is no land and mortgage register or for which the land and mortgage register has been lost or destroyed;

the encumbrance of a vessel or a vessel under construction with a maritime mortgage;

the establishment of a prohibition on the disposal of the cooperative ownership right to premises;

the establishment of receivership over an enterprise or agricultural holding of the obligated party or an establishment forming part of an enterprise or a part thereof, or a part of an agricultural holding of the obligated party.

If an injunction is sought with respect to claims other than pecuniary claims, the court grants the injunction it considers appropriate in the circumstances, not excluding measures designed to secure pecuniary claims (Article 755 of the Code of Civil Procedure). In particular, the court may:

regulate the rights and obligations of the parties to or participants in proceedings for the duration of the proceedings;

prohibit the disposal of things or rights involved in the proceedings;

stay enforcement or other proceedings aimed at enforcing a decision;

decide on the custody of minors and contacts with a child;

order that an appropriate caveat be entered in the land and mortgage register or another appropriate register.

The interests of the parties to or participants in proceedings should be taken into account when selecting the form in which the injunction is granted, so as to ensure proper legal protection for the qualifying party and not to burden the obligated party excessively.

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

2.1 The procedure

Injunction proceedings are instituted:

at the request of a party to or participant in proceedings lodged with the court competent to examine the case in first instance. If that court cannot be identified, the competent court is the court of the place where the injunction is to be implemented or, in the absence of that basis or if the injunction is to be implemented within the jurisdiction of different courts, Warsaw District Court (‘*sąd rejonowy dla m.st. Warszawy*’). An application for an injunction lodged during proceedings is considered by the court of the instance in which the case is pending, except where this is the Supreme Court (‘*Sąd Najwyższy*’). In such cases, the court of first instance decides whether or not the injunction should be granted (Article 734 of the Code of Civil Procedure);

ex officio in cases where proceedings may be instituted *ex officio* (Article 732 of the Code of Civil Procedure).

Applications for an injunction are lodged in writing. They should meet the requirements for pleadings and specify the form in which the injunction is granted and, in the case of a pecuniary claim, the amount of the injunction (which must not exceed the amount of the claim, plus interest to the date on which the injunction is granted and the associated costs, and may also include the projected costs of proceedings) and the circumstances justifying the application. If an application for an injunction is lodged before proceedings are instituted, a summary should be provided of the subject-matter of the case (Article 736 of the Code of Civil Procedure).

Security may be provided before proceedings are instituted or during proceedings. After the qualifying party has obtained an enforceable title, an injunction may be granted only if it is designed to secure a claim for which the performance deadline has not yet expired (Article 730(2) of the Code of Civil Procedure).

When an injunction is granted before proceedings are instituted, the court sets a deadline by which the letter instituting proceedings should be lodged, failing which the injunction will be annulled. This deadline must not be longer than two weeks (Article 733 of the Code of Civil Procedure).

Applications for an injunction must be examined without delay, within one week of the date on which they are lodged with the court, unless special provisions stipulate otherwise. If an act of law provides for applications to be examined at a hearing, that hearing should be scheduled within one month of the date on which the application was lodged (Article 737 of the Code of Civil Procedure).

Injunctions are granted on the basis of a court judgment.

2.2 The main conditions

An injunction may be requested in all civil cases examined by a court or court of arbitration (Article 730 of the Code of Civil Procedure).

The conditions for granting an injunction are as follows: the claim and the legal interest in granting an injunction must be substantiated. There is a legal interest in granting an injunction if it will be impossible or very difficult to implement the judgment handed down in the case or it will otherwise be impossible or very difficult to achieve the aim of the proceedings if the injunction is not granted (Article 7301 of the Code of Civil Procedure).

The purpose of an injunction cannot be to satisfy a claim, unless an act of law stipulates otherwise (Article 731 of the Code of Civil Procedure).

The court may make implementation of an injunction conditional on the lodging of a deposit by the qualifying party to secure the obligated party’s claims resulting from implementation of the injunction, except where the qualifying party is the Treasury and where security is provided for claims for maintenance, disability pensions or amounts owed to an employee in cases relating to labour law in a part not exceeding their full monthly remuneration (Article 739 of the Code of Civil Procedure).

3 Object and nature of such measures?

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

An injunction may be granted for:

movable assets;

wages and salaries;

claims from a bank account or other claims, or another property right;

real estate;
vessels or vessels under construction;
the cooperative ownership right to premises;
an enterprise or agricultural holding, an establishment forming part of an enterprise or a part thereof, or a part of an agricultural holding.
An injunction cannot cover items, debts or rights excluded from enforcement. Perishable goods may serve as security if the obligated party has no other property with which to secure the entitled party's claims and the goods can be sold promptly.

3.2 What are the effects of such measures?

The main purpose of injunction proceedings is to ensure that the entitled party (usually the creditor) is protected against the potential adverse effects of delay in cases pending before the court (or involving settlement out of court) and to improve the entitled party's situation in enforcement proceedings if the subject of court proceedings and the injunction is an enforceable claim. To a limited extent, an injunction may also allow the entitled party to obtain pecuniary benefits.
An injunction may also be a response to action taken by the obligated party to the detriment of the entitled party.
The effects of an injunction on the obligated party vary according to the form which it takes:
if movable assets are seized, the management of the movable assets after seizure has no impact on the further course of proceedings, and enforcement proceedings for the movable assets seized may also be conducted against the buyer;
if the bank account of an enterprise or owner of an agricultural holding is seized as security, the obligated party may collect only the amounts specified by the court for the payment of current wages and salaries, together with payroll tax and other statutory amounts, as well as overheads;
limited use can be made of other debts and property rights seized (the use is determined by the court);
a bailiff sells all the items seized along with the rights to financial instruments recorded on a securities account or other account within the meaning of the rules on financial instrument trading, and the amount obtained is deposited on the court's deposit account;
a prohibition on the disposal or encumbrance of real estate and the cooperative ownership right to premises is established;
a vessel or a vessel under construction is encumbered with a maritime mortgage;
the obligated party is deprived of management rights and receivership is established, and the income from receivership serves as security;
in maintenance cases, the obligated party is required to pay a specified sum to the entitled party periodically or on a one-off basis.

3.3 What is the validity of such measures?

The obligated party may request at any time that a legally binding decision to provide security be revoked or amended if the reason for the security ceases to exist or changes (Articles 742, 7541(3) and 757 of the Code of Civil Procedure).
Security is annulled if:
the obligated party deposits the amount of security requested by the entitled party in the application for an injunction on the Minister for Finance's deposit account;
a claim or application is returned or rejected following a final judgment;
a claim or application is dismissed or proceedings are discontinued;
the entitled party does not apply for the entire claim in proceedings or applies for claims other than that secured before proceedings were instituted;
a judgment allowing a secured claim becomes final (the security is annulled one month after the judgment becomes final);
the entitled party does not apply for further enforcement measures within two weeks of a judgment allowing a claim becoming final in cases in which security was provided through the seizure of movable assets, wages and salaries, claims from a bank account or other claims, another property right or through the establishment of receivership over an enterprise or agricultural holding of the obligated party or an establishment forming part of an enterprise or a part thereof, or a part of an agricultural holding of the obligated party.
Security is also annulled (Article 754 1 of the Code of Civil Procedure):
two months after the judgment allowing a secured claim becomes final or after a decision to reject an appeal or other judicial remedy brought by the obligated party against a judgment granting a secured claim becomes final;
if the entitled party does not apply for further enforcement measures within one month after the judgment granting a secured claim becomes final or after a decision to reject an appeal or other judicial remedy brought by the obligated party against a judgment granting a secured claim becomes final in the case of an injunction involving *inter alia* the seizure of movable assets.

4 Is there a possibility of appeal against the measure?

Both the entitled party and the obligated party may lodge a complaint against the decision of the court of first instance regarding security (Article 741 of the Code of Civil Procedure).

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