

Enforcement of Foreign Judgments

Fundamental Principles [Belgium]

2020



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I. APPLYING FOR INTERIM AND PRECAUTIONARY MEASURES

- 1. Is it possible to apply for an interim measure in order to ensure the effective enforcement of a court decision?**

Answer: Yes. It is possible to apply for interim measures in order to prevent the debtor from putting his assets out of reach of an enforcement or in order to get an injunction for a provisional payment.

The rules for these interim measures are found in the Belgian Code of Civil Procedure.

- 2. Is it mandatory to pay court fees for this type of application?**

Answer: Yes.

An amount of €165.00 is due for every case that is registered on the general role of the court, in the register of requests, or in the register of claims for interim relief. Since 1 February 2019, the cost is no longer payable at the introduction of the claim/request, but rather at the end of the proceedings.

- 3. What is the ordinary/average length of time for this kind of procedure?**

Answer: This varies. It is possible to seek interim relief very quickly for very urgent matters without notice to the other party if necessary, in days or even hours. Where the application is contested, the proceedings can last for several months.

A request for a precautionary measure can be dealt with within 2 weeks, depending on the urgency, the judge, and the circumstances.

II. TYPES OF INTERIM AND PRECAUTIONARY MEASURES

- 1. For which types of interim measures are the parties allowed to apply? (e.g., injunction, freezing orders, caveat, restraining order, etc)**

Answer: It is possible to apply for different interim measures depending on the situation and the needs. An injunction for the payment of a provision or the appointment of a receiver who will be required

to keep the designated assets of the debtor under custody are necessary for ensuring the effective enforcement of a court decision. It is however possible to apply for any measure that is urgent and not final in order to have a party do something or stop that party from doing something.

Other precautionary measures include seizing the assets of the debtor (real estate, machines, cars...) or other assets held by third parties (e.g. banks or other debtors of the debtor).

III. PROCEDURE

1. Competent Court

a) Which court has jurisdiction to grant these interim and precautionary measures?

Answer: For interim measures, the case must be referred to the President of the competent court (Business Court, Court of First Instance, or Labour Court).

For requests for seizures, the Court of First Instance is the competent court (Judge of Seizures).

2. When can the application for interim and precautionary measures be submitted?

Is it possible to apply for it at the time the underlying lawsuit is filed? If YES: Are there any special requirements when so doing?

Answer: It is possible to apply for it at the same time the underlying lawsuit is filed.

The special requirements for an interim measure are the urgency and the provisional nature of the matter. The measure can never be something final that cannot be revoked afterwards by the judge ruling on the merits of the case.

Instead of applying for an interim measures in a summary proceeding before the president of the competent court, it is possible to request some provisional measures at the beginning of the underlying lawsuit, so before the same court. The proceedings then take place in two steps.

Precautionary measures such as seizures can also be requested at the same time. This is however a totally separate proceeding before another judge.

3. Is it possible to apply for interim precautionary measures before filing the underlying lawsuit? If YES: Are there any special requirements when so doing? (e.g., deadline to submit the lawsuit)

Answer: It is possible to apply for interim precautionary measures before filing a lawsuit, especially when there is a very urgent situation. The judge who issues a final decision regarding the interim measure will introduce the lawsuit on the merits of the case within a certain period as a condition for the maintenance of the interim measure.

There are no special requirements when so doing. The two legal conditions are the urgency and the provisional nature of the measure. The measure can never be something final that cannot be revoked afterwards by the judge ruling on the merits of the case.

If the applicant wants to obtain an injunction for a provisional payment, which is rather exceptional, he has moreover to prove that the claim is not at all the subject of a serious dispute.

4. Is it possible to apply for interim precautionary measures after filing the main claim? If YES: Are there any special requirements when so doing?

Answer: Yes. So long as there are circumstances justifying the application, an application can be made at any time in the proceedings. The two conditions mentioned above are always required.

5. Criteria used by the court for granting these measures

What requirements must be fulfilled in order to apply for an interim measure? (e.g. *periculum in mora*, *fumus boni iuris*, security, etc)

Answer: For Interim measures, there must be a valid cause of action and a justified, real interest of the applicant. The two conditions for the validity of the claim in summary proceedings are the urgency and the provisional nature of the claim. It must be demonstrated that unless the court makes the requested order, the debtor could take steps to undermine the effectiveness of the foreign judgment which the applicant is seeking to enforce.

For conservatory attachments (seizures), the creditor must establish that the request is urgent, meaning that the solvency of the debtor is compromised and the subsequent enforcement is put at risk. As a creditor you must provide proof.

Furthermore, as a creditor, you must actually be able to prove that you have a claim against the debtor.

The claim must also meet a number of conditions:

1. The claim must be certain (e.g. not only possible); the judge of seizures will check whether the claim seems *prima facie* well founded.
2. The claim must be claimable: the creditor has the right to demand the fulfilment of the claim.
3. The claim must be of a fixed amount. The debt must be determined or measurable. If the debt is not established, the judge of seizures will make a provisional estimate.

This does not mean that the debt cannot be the object of a dispute.

6. Procedure

a) Which are the main steps of the procedure after filing the interim measure application? (e.g. holding a hearing, presenting evidence, etc.)

Answer: If the creditor applies for an interim measure before the President of the Court, a writ of summons needs to be served upon the adverse party. The case is introduced at a so-called introduction hearing, where the case can be pleaded if the applicant can demonstrate a real urgency. Otherwise, it is possible to lodge written submissions with evidence and the case will be pleaded at a later hearing, some weeks or sometimes months after the introduction. The court decision will follow some weeks later and this decision is immediately enforceable.

In exceptional cases, it is possible to file a request for an interim measure in a unilateral request upon which the President of the Court will decide in a very short term.

In the case of an interim injunction made without notice, there will be a return hearing, at which the court will decide whether the interim measure should continue. If the order is made in the absence of a party then a prompt *inter partes* return hearing will take place. There can be multiple hearings.

Proceedings for conservatory attachments (seizures) are always initiated via a unilateral petition. The reason is that the

proceedings must remain secret in order to keep the measure efficient. There is no hearing. As soon as the application has been lodged at the registry, the court must render its decision within eight days, in which it fully or partially authorises or refuses the attachment. This decision contains the amount in principal, interest, and costs and is served together with the attachment operation. A conservatory third-party attachment can also be done without the authorisation of the judge by having it served by a bailiff. It must also be based on an authentic or private deed, such as an invoice.

b) Is it possible for the Court to order an interim measure without hearing the other party? (*in audita parte debitoris*). If YES, under what circumstances can the parties apply for it?

Answer: Yes. As mentioned above, it can be done in the event of absolute necessity.

c) What are the main steps of the procedure in this case?

Answer: Filing with the court a unilateral request, duly motivated and supported with documents, and exhibits to prove the absolute necessity as well as the validity of the claim. At times, the lawyer may see the judge in his office in order to provide further explanations. There is no hearing.

7. Opposition of the defendant

a) Is it possible for the defendant to oppose interim and precautionary measures?

Answer: Yes. Either at the time of application, if it is made with notice, or otherwise by lodging an objection against the ordered interim or precautionary measure by means of a writ of summons.

b) Is it possible for the defendant to ask the court for the substitution of the interim measure for a guarantee?

Answer: Yes, if such a guarantee should offer the same security as the court order would, the court will allow such a substitution.

8. Appeal

a) Are appeals allowed from the court decision ordering the measures or rejecting the defendant's opposition to them?

Answer: Yes.

With regard to conservatory attachments, the order to grant an authorisation to seize the assets is immediately enforceable as well as the decision of the judge of seizure to withdraw an authorisation after the opposition of the debtor. In that case, an appeal is no longer useful.

b) Is it possible to enforce the interim measure once an appeal is filed?

Answer: Yes, this does not affect the enforcement of the interim measure in the meantime.

IV. EFFECTS AND VALIDITY OF INTERIM AND PRECAUTIONARY MEASURES.

1. Is it possible to enforce the interim measure when the other party obstructs it?

Answer: Yes, with the help of a bailiff, sometimes assisted by the police.

2. Is it possible to modify a previous interim measure?

Answer: Yes. New proceedings will have to be initiated before the court.

3. When is it possible to raise an interim measure?

Answer: At any time. Particularly as circumstances or evidence change.

Upon a judgment being handed down in favour of the defendant.

Upon both parties consenting to lifting the order (which may be as part of the settlement of the wider proceedings) and the court approving the same.

4. Are there any rules concerning the costs (e.g., lawyers' fees, etc.) related to the application?

Answer: The rule in Belgian is that the party losing the proceedings has to pay the costs.

The amount covering the lawyers' fees is established in a Royal Decree and depends on the value of the claim. There is a scale with several levels and always a basic amount, a minimum

amount and a maximum amount. For cases not valuable in money, the basic amount is €1, 440.00, with a minimum of €90.00 and a maximum of €12,000.00.

V. ARBITRATION

1. Is it possible to apply for an interim measure in order to ensure the effective enforcement of an arbitration award in your country? If YES: what is the enforcement procedure?

Answer: Yes. Article 1683 of the Belgian Code of Civil Procedure clearly provides that: *The lodging of a legal claim before or during an arbitration procedure, with the aim of obtaining provisional or protective measures and the granting of such measures, does not constitute a violation or waiver of the arbitration agreement.*

Without prejudice to the powers conferred on the courts by virtue of Article 1683, and unless the parties have agreed otherwise, the court may, at the request of a party, order the provisional or precautionary measures it deems necessary. However, the arbitral tribunal cannot allow a conservatory attachment.

A provisional or protective measure taken by an arbitral tribunal has binding force and, unless the tribunal gives other indications, it is declared enforceable by the court of first instance, regardless of the country in which it was delivered, subject to the provisions of Article 1697 of the Code of Civil Procedure. The claim is filed and processed on unilateral petition. The court of first instance decides in first and last instance.

The party that requests or has obtained the recognition or the declaration of enforceability of a provisional or protective measure shall immediately inform the arbitral tribunal of a withdrawal, suspension, or modification of that measure.

The court of first instance from which the recognition or the declaration of enforceability of a provisional or precautionary measure is sought, may require the applicant to provide an appropriate guarantee if the arbitral tribunal has not yet ruled on the guarantee or if such a decision is necessary to protect the rights of the defendant and third parties.

2. Are the arbitrators, entitled to order an interim measure?

Answer: As mentioned above, without prejudice to the powers conferred on the courts by virtue of Article 1683 of the Belgian Code on

Civil Procedure, and unless the parties have agreed otherwise, the court may, at the request of a party, order the provisional or precautionary measures it deems necessary.

VI. FOREIGN PROCEDURE & ARBITRATION

- 1. Is it possible to apply for an interim measure before your country's courts in order to assure the effective enforcement of a foreign court decision or arbitration award? If YES: how is this procedure executed?**

Answer: Yes. Procedure as above.

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