

Enforcement of Foreign Judgments

Interim and Precautionary Measures [Bulgaria]

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**MULTILAW LITIGATION AND
DISPUTE RESOLUTION
PRACTICE GROUP**

**ENFORCEMENT OF FOREIGN
JUDGMENTS PROJECT**



M U L T I L A W

**INTERIM AND PRECAUTIONARY
MEASURES: QUESTIONS**

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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

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

Answer: Yes, the court fee is EUR 20.

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

Answer: Between one and five business days.

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: The most common measure is attachment (freezing) of bank accounts. Injunction over receivables from third parties, injunction over movable assets and company shares, as well as injunctions on real estate are also widely spread. Depending on the circumstances, suspension of registration procedures (for example suspension of enforcement, or more rarely – suspension of registering company changes in the Company Register) may also be allowed.

All types of measures are related to the property of the defendant, only.

In general, the enforcement of the measures shall not implement enforcement of the future judgment (i.e. if the claim refers to restricting the defendant from undertaking a certain action, the interim measure cannot be a means for attaining such a restriction). Restraining orders or caveats are not allowed by Bulgarian courts within the interim measures procedure.

The court could allow any type of interim measure which it considers appropriate depending on the particular dispute and is not limited to the interim measures explicitly provided by law.

III. PROCEDURE

1. Competent Court

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

Answer: The court in the region where the applicant is domiciled or where the real estate subject to injunction is located. The type and the amount of the future claim will determine whether regional court or district court is competent.

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: Yes. A separate motion shall be filed to the court hearing the underlying lawsuit. Its contents must refer to the pending statement of claim and substantiate that the claims are probably well-grounded.

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: Yes. The court shall determine a deadline for filing the claim on the merits. The term could not be longer than 1 month. If the claim is not filed within this term, the interim measures are subject to revocation.

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. There are no special requirements. However, if the defendant has already been notified of the pending lawsuit, it might be easier for them to find out of the filed motion for interim measures (by checking the court file). Thus, the surprise effect might be lost.

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: Both *periculum in mora* and *fumus boni iuris* are necessary prerequisites. Furthermore, convincing written evidence shall be submitted with the court. Nevertheless, interim measures may be allowed even without such written evidence provided that the applicant pays a security deposit.

In practice, security deposit is usually required by the court irrespective of the written evidence submitted. The amount of the security is usually 10-15% of the value of the secured claims.

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: The applicant shall submit all written evidence altogether with the motion. Further collection of evidence is not allowed. The court will render a ruling in a day or two without summoning the parties. If a security shall be paid, the interim measures order is issued after the security is paid.

Depending on their type, the allowed interim measures are imposed either by a bailiff or through entry of the court order with the respective registers kept for the relevant assets of the debtor.

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: The other party is not heard as a rule (with no exceptions). It is notified of the procedure after the interim measures are effected.

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

Answer: Not applicable.

7. Opposition of the defendant

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

Answer: Yes. An opposition (appeal) could be filed in one week term as of notification to the debtor (the notification is made by the bailiff, the Real Estate Agency, or by the court, depending on the type of the interim measures).

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

Answer: Yes. The defendant could propose another measure throughout the claim procedure. The defendant could also propose to pay a monetary guarantee to a bank account of the court equal to the amount subject to the allowed interim measures. In such case the court is obliged to remove the interim measures when the guarantee is paid.

8. Appeal

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

Answer: Yes.

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

Answer: The enforcement is conducted prior to defendant's notification, so an appeal by the defendant would not suspend the enforcement. If the defendant appeals, the interim measures could be revoked only after a court ruling for their revocation has entered into force.

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: As a rule, defendant's cooperation is not necessary for enforcement of the interim measures.

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

Answer: The claimant could request additional interim measures if the initial ones are not sufficient to cover the total claim. They could also

request substitution of the measures if the initial ones turn out to be inefficient.

The defendant could also request substitution if they can offer other assets sufficient for covering the claim.

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

Answer: If the claim on the merits has not been filed within the specified term, or the claim procedure was terminated, or the claim has been dismissed, the interim measures are subject to revocation.

The measures could also be revoked at any time with both parties' consent.

The defendant could request measures' removal if they prove that the prerequisites for measures' admission are no longer present.

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

Answer: The costs are pre-paid by the applicant (the claimant). The costs are awarded by the final court decision on the merits to the successful party.

V. ARBITRATION

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

Answer: Yes. The procedure is no different from the ordinary interim measures procedure. The measures could be allowed prior to the arbitration procedure, while it is pending, or after the award has been rendered.

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

Answer: Yes, arbitrators are allowed to order an interim measure, unless the parties have explicitly agreed otherwise. However, interim measures allowed by arbitrators would be binding and effective only to the parties to the arbitral proceedings/arbitration, but cannot be opposed to third parties (e.g. the claimant cannot ask for the

freezing of bank accounts due to the involvement of a third party - the bank).

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, the procedure does not differ from the one referred to above. The general rules apply to enforcement of arbitration awards and foreign court judgments, as well. The applicant shall submit relevant written evidence with regard to the procedure and the act subject to enforcement.

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