

4. Provisional measures allowing the satisfaction of the claim (interim payment/interim performance)

	The pre-conditions for the obtaining of provisional measures	Proceedings to obtain an order for provisional measures	Content and effect of provisional measures	Provisional measures and security	Enforcement of the protective measure	Provisional Measures and main proceedings	Relationship between interim proceedings and provisional enforcement?
Austria	<ul style="list-style-type: none"> - § 382 EO: interim maintenance between husband and wife and between parents and children - interim maintenance for a child is possible, if paternity test has taken place - pursuant § 382 a EO interim maintenance for a child, that does not live in the parents' house is possible, if an enforceable title does not exist yet - claim does not have to be due and a conditional claim can be secured; a future claim cannot be secured - interim measure is allowed in case of imminent danger or prevention of imminent irrecoverable disadvantage 	<ul style="list-style-type: none"> - competence: during contentious proceedings the court of the main proceedings (§387 I EO); during the execution proceedings the court where the execution proceeding is pending; provisional measure is to be order before or after main proceeding, but before execution the court of defendant's domicile; special competence for the court of main proceeding pursuant § 387 III EO for interim measures concerning interim maintenance pursuant § 382; judicial officer is competent in the case of § 382 a - claim, facts that give reason for the claim and urgency have to be made credible; proceeding of evidence is ruled by § 274 ZPO, but no application of the special provisions of a usual proceeding of evidence (274 II ZPO) - generally: ex-parte-decision; defendant has possibility of appeal, in this case oral proceeding 	<ul style="list-style-type: none"> - deposit of movables (§379 III Z 1 EO) with regard to pecuniary claims an other individual claims - with regard to a pecuniary claim or a claim of restitution prohibition on disposition against debtor an a third party debtor is possible - operation in personam against the debtor: not possible in pecuniary claim, but to secure other individual claims subsidiary (§ 386 I EO) - liens (-) - no creation of a situation, that is irrecoverable - appeal ("Rekurs") is possible for both sides; antinomy for defendant 	<ul style="list-style-type: none"> - security of the debtor can be ordered, especially in cases where the claim has not been made sufficiently credible an the imminent disadvantages can be compensated by money; in other cases court appreciate values - security can be ordered ex post, jurisdiction has court of the first instance, of appeal or antinomy 	<ul style="list-style-type: none"> - court enforces the measure ex officio, for real enforcement acts a bailiff supports court - execution is not subject to the general law of enforcement, provisional measure itself is basis for an enforcement sui generic; general law is applicable for prohibition/bid of actions (§ 382 I EO) - no further sanctions available - Pre-conditions: (1) service of the order on the debtor; (2) proof of performance of the security - pursuant § 396 EO: provisional measure has to enforced within 1 month; provision is just applicable, if enforcement depends on a security of creditor; if security is not given within this time, provisional measure lapses 	<ul style="list-style-type: none"> - reclaim of maintenance is possible, if payment was not satisfied if it was not used credulously - pursuant § 394 I EO negligence liability of the creditor if he has been deprived legally binding of his claim, his claim is not justified for other reasons or he missed the deadline; punishment, if creditor applied mischievously for an order 	

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Belgium	<p>Référé provision:</p> <ul style="list-style-type: none"> -the claim must be sufficiently evident so that the judge can operate an order - no prejudice to the procedure on the merits 	<p>The judge competent for injunctions (juge des référés) or court already engaged on the merits of the claim</p> <p>Injunctions are operated in an adversary (oral) procedure; exceptions possible if absolutely necessary (1025-34 CJ)</p> <p>Judge carries out a summary examination</p> <p>Conflict of law rules applied</p>	<p>Content of provisional measure is not determined by law, but the court determines each case on its individual particularities</p> <p>Decisions are drafted as an order and must be motivated</p> <p>Remedies:</p> <ul style="list-style-type: none"> -appeal -opposition in case of default judgments -third party opposition 	?	<p>General rules of enforcement apply; the bailiff is responsible for the enforcement</p> <ul style="list-style-type: none"> -proof of performance of the security is not a condition -in general there do not have to be respected any set periods of time 	<p>Debtor can demand initiation of main proceedings</p> <p>Court deliberating on the merits can change or overrule injunctions</p> <p>Liability of creditor if the p.m. was based on incorrect factual allegations of the debtor</p>	P.M. are p.e. by law

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Denmark	<p>no measures for interim payments/performance</p> <p>- "forbud" can have effect of satisfaction, if an action is prohibited, that cannot be made up for after main proceeding; pre-conditions for "forbud": See 3.</p>	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

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Finland	<p>-no provisions for interim payments/performance</p> <p>-in some cases petitioners have tried to use special protective measures in Chaper 7, Section 3, Code of Judicial Procedure for this purpose</p>	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

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France	<p>Référé-provision + référé-obligation de faire ou pas faire, 809 II NCPC:</p> <ul style="list-style-type: none"> -Creditor must proof evident existence of claim -No substantive contestation of the claim, claim must be due (?) -Title is not required - Risk of prejudice (debated) -Urgency not required 	<p>Jurisdiction: Special judge of the court competent to decide on the merits</p> <ul style="list-style-type: none"> -Ex parte proceeding? Possible in case of special urgency if circumstances of case demand that measure is ordered ex parte (812 NCPC); anticipatory brief possible; competent: if case is pending: president of chamber / single judge deciding on the case; else president of court that is competent to decide on the merits; -Provisional measures can only be changed afterwards in case of new circumstances (488 NCPC) -Oral proceedings (exception: ex parte proc.) -Conflict of law rules applicable In general, creditor has to proof the conditions of column 1; exceptions: measures of reinstatement: no proof of urgency necessary For ex parte proceeding proof of special urgency and the circumstances that justify a non adversary procedure 	<p>Content:</p> <ul style="list-style-type: none"> -provisional condemnation to an interim payment OR -condemnation to fulfil obligation to act or to omit (e.g. specific performance) Partial condemnation possible Decision must be motivated Remedies: <ul style="list-style-type: none"> -appeal -opposition in case of default judgment (490 NCPC); -in case of ex parte proceeding: appeal; application of interested third party to court rendering order (496 NCPC) 	<p>P.m. are nor subject to posting of security (?)</p>	<p>Référé-provision:</p> <ul style="list-style-type: none"> -Enforced in rem by bailiff; additional penalty payments (astreinte) possible -Condemnation is enforceable like any other judgment (P.M. are p.e. by law (514 NCPC) <p>Référé-obligation:</p> <ul style="list-style-type: none"> -Enforced in personam, additional (?) penalty payments (astreinte) 	<p>Order does not prejudice case on the merits (488 NCPC).</p> <p><i>The debtor can contest and initiate main proceedings</i></p> <p><i>Court deciding on the merits can modify / abrogate p.m.</i></p> <p><i>Liability only according to Code Civil (fault required)</i></p> <p>(?)</p>	<p>P.M. are p.e. by law (514 NCPC)</p>

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Germany	<p>-whether the claim has to be due or whether the future claim can be secured, is not clear, because of no legal provision.</p> <p>-urgency is in some cases required.</p> <p>- The further condition: The existence of the risk or the claimant in danger.</p> <p>-In some cases, to avoid unreasonable large damage of asset is required.</p>	<ol style="list-style-type: none"> 1. Jurisdiction: the court hearing the main proceedings or the court at the place of enforcement measures. 2. A collegial panel determines the application. 3. Standard of proof: For the claim, reason of the claim and other preconditions is the principle 'reduce of evidence' applicable, namely explanation principle. 4. In Principle, the judge makes the decision through adversary proceeding. In the court hearing the main proceedings, adversary proceeding is necessary; in other courts, it is possible. The debtor can address to the court a protective writing. 	<ol style="list-style-type: none"> 1. The content is determined by legislation (Art. 938 ZPO). The judge can freely make decision. The content is to order the debtor to pay a sum of money or to deliver goods or to act or not to act. 2. The form of the provisional measure is decision or judgment. In principle it is judgment. 3. If the application is rejected the creditor may lodge an appeal (sofortige Beschwerde). Against the decision a 'contradiction' (Widerspruch) can be lodged; against the judgment the normal appeal (Berufung) can be lodged. 	<p>In general, the creditor has to offer security. But in the case ordering to pay money the creditor has not to do so.</p>	<ol style="list-style-type: none"> 1. The court is responsible for enforcement. 2. It is subject to the general law of enforcement. 3. The order can be enforced before the service of the order to the debtor and the third party debtor. 4. Sometimes the effect of the provisional measure is subject to the execution of the order within a set period of time (a month). If this period is missed, the order can be enforced no longer. 	<ol style="list-style-type: none"> 1. The court, which issued the order, can revoke the order, if to maintain the effect of order is expensive and the creditor does not offered the necessary costs in advance (Art.926). 2. The debtor may claim damages incurred by the order (Art.945). 	

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Greece	<p>-adjudication of a claim (Art. 728 CCP)</p> <p>- CCP provides for specific categories of pecuniary claims, that can be provisionally adjudicated, if the general pre-requisites exist</p> <p>- urgency: related to the financial inabilities or shortcomings of the creditor, which justify the provisional adjudication of his claim</p>	Rules regarding regulatory measures (synopses 3.) apply accordingly	-pursuant Art. 729 II CCP the provisional adjudication cannot exceed the half of the main claim except for e.g. cases involving maintenance, medical expenses...	-provisional adjudication cannot be ordered upon condition of a security from the part of the creditor (728 IV CCP)	Rules regarding regulatory measures (synopses 3.) apply accordingly	- applicant has to file his main claim within 30 days, if creditor fails: provisional adjudication ceases to exist ex nunc and ipso iure	

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Ireland	- there is no basis for provisional measures allowing the satisfaction of the claim	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

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Italy	<p>-neither does the claim have to be due nor does the plaintiff have to present an enforceable title; it is sufficient that the claim is "likely to be existent"</p> <p>-for any conservatory measure it is necessary that the plaintiff proves the risk of an imminent and irreparable prejudice as well as urgency</p> <p>-with regard to non property damages this proof is sufficient; for property damages a balancing consideration of values is necessary</p> <p>-the competition from other creditors is not sufficient to satisfy the conditions above</p>	<p>-jurisdiction for provisional measures has the court that is competent for the procedure on the merits, even if the procedure on the merits is not yet pending; if several jurisdictions are given, the plaintiff has the right to chose</p> <p>-there are special rules p. e. on arbitration procedures</p> <p>-the competence for provisional measures is determined according to the general rules; nevertheless it is mostly a single judge who orders such a measure</p> <p>-the plaintiff must present any kind of proof with regard to the claim and the urgency of the measure, but without having to respect any formalities</p> <p>-an ex-parte decision can only take place if the notification of the debtor itself endangers the enforceability of the claim</p> <p>-besides this exception, an adversary oral procedure takes place;</p> <p>-in the case of an ex-parte decision the judge must set up a hearing within the following 15 days within the scope of which the ordered measure must be confirmed</p> <p>-in this procedure, the judge must undertake a summary examination with regard to the claim; he has to determine the applicable law according to the principles of conflict of laws</p>	<p>-the content of provisional measures is determined by law</p> <p>-the judge determines each case on its individual particularities</p> <p>-the effect is not the one of a judgement on the merits, but is only of a provisional nature</p> <p>-provisional measures operate in rem</p> <p>-the creditor does not obtain a lien</p>		<p>-the execution is operated under the direction of the court in cooperation with the bailiff:</p> <p>-- for measures that order payments the competence lies with the court at the place where the enforcement is operated and therefore at the place where the assets are located</p> <p>-- apart from that, the competence lies with the court that has ordered the measure</p> <p>-theoretically the law provides the right to the judges to determine each case on its individual particularities, but in reality the enforcement of provisional measures generally follows the ordinary law of enforcement</p>		<p>-there are considerable differences between the provisional enforceability and protective measures: since the provisional enforceability does not aim at the protection of the creditor, it is not necessary that urgency or danger of prejudice are available</p>

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Luxemburg	<p>If a</p> <ul style="list-style-type: none"> -monetary claim -can not seriously be denied, <p>the court can order the payment of a provision (ordonnance de référé provision, 933 II NCPC)</p> <p>Claim must be due</p>	<p>Competent: president of court that is competent to decide on the merits of the case</p> <p>Application of creditor; creditor has to proof that his claim can not be seriously denied</p> <p>Court must be absolutely convinced of existence of claim; even then discretion of court</p> <p>Ex parte proceeding possible if debtor is domiciled in Luxemburg; on appeal (contredit) debtor will be heard by the same court</p> <p>No anticipatory briefs</p>	<p>Order must be motivated, order can be appealed</p> <p>(in case of ex parte proceedings: "contredit", same court)</p> <p>No delays</p>	?	Condemnation is enforceable like any other judgment	?	Condemnation is enforceable like any other judgment

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Netherlands	<p>-the claim has to be due. In special cases the claimant in kort geding may request an injunction against a threatened wrong. The creditor must not present an enforceable title.</p> <p>-urgency is required.</p> <p>For a provisional measure in kort geding:</p> <ol style="list-style-type: none"> 1. There is an urgent interest at stake; 2. The interests of both parties have to be balanced; 3. The balancing of interests justifies the decision in kort geding. 	<p>1. Jurisdiction: In principle the 'voorzieningenrechter' of the district court may hear all kinds of claims. Ordinary rules for the court's relative competence are applicable (Art. 99-109 CCP). Supplementary jurisdiction is given to the 'voorzieningenrechter' at the place 'where the immediate decision is required'.</p> <p>Since 1-1-2002 a 'kantonrechter's kort geding' has been created (Art. 254 ss 4 CCP) which gives absolute competence to the Kantonrechter to decide in kort geding.</p> <p>2. A Single judge can determine the application.</p> <p>3. The kort geding is an adversarial oral procedure. Normally the debtor is merely heard at the oral session.</p> <p>4. In relation to the claim it is recommended that written evidence be adduced. The standard of proof is not very stringent. The evidence must be sufficiently clear for the judge to convince himself of the existence of the claim during the oral session. In relation to urgency normally it suffices to state in the writ that there is urgency. In relation to further preconditions the writ has to mention not only the formal data, but also the facts on which the claim is based as well as the remedies the defendant might introduce.</p>	<p>1. The Content is not determined by the legislation. The 'voorzieningenrechter' of the district court decides on the content of the measure, taking into account the requested provisions and the circumstances. The guiding principle for reaching a decision is 'necessity or well-balance'.</p> <p>2. As the content of the temporary measure, blocking of assets and prohibition on disposition of the seized goods against debtor/third party debtors are required.</p> <p>3. The form of the provisional measure is an ordinary judgment (Art. 229-231 CCP). There are reasons provided for the ruling, but they might be less detailed.</p> <p>4. In general, the provisional measure is no time-limit.</p> <p>5. Remedies for claimant and defendant are:</p> <p>-objection (verzet: to a default judgment, Art. 143-148 CCP) within 4 weeks;</p> <p>-appeal (Art. 339 ss2 CCP) within 4 weeks;</p> <p>-cassation (Art. 402 ss2 CCP) within 8 weeks.</p>	As a rule, security will be required.	<ol style="list-style-type: none"> 1. The bailiff is responsible for enforcement. 2. It is subject to the general law of enforcement. 3. The precondition for enforcement: service of the order to the debtor. Art. 430 ss3 CCP requires the service of the judgment before starting the execution. 4. The effect of the provisional measure is not subject to enforcement by the creditor within a certain period of time. 	Although the kort geding procedure is a provisional measure, in 95% of cases no procedure on merits will follow. Parties tend to accept the provisional measure as if it were the procedure a final decision	

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Portugal	<p>Applicant has to “proof” in a summary way (Glaubhaftmachung) acclaimed right (fumus boni iuris) and that he will suffer prejudices that can not be mended easily;</p> <p>Claim must be due</p> <p>-Provisional alimony payments (399 CPC): no special conditions</p> <p>-Provisional damages (403 CPC): no special conditions</p> <p>-General measures (ordonnance de référé) of anticipatory nature: special urgency required (?)</p>	Answers to part 2 apply accordingly	Answers to part 2 apply accordingly		Answers to part 2 apply accordingly	Answers to part 2 apply accordingly	No relationship

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Spain	Not available in Spain	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

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Sweden	<p>-The claim should be due before or during the proceedings. A future claim can not be secured. The creditor has not to present an enforceable title.</p> <p>-The applicant must show that it is reasonable to suspect that the opposing party, by absconding, removing property, or other action, will evade payment of the debt.</p>	<p>1. Jurisdiction: The court was the one where the proceedings are pending.</p> <p>2. A single Judge determines the application.</p> <p>3. It must be shown that one of the parties has unlawfully disturbed the opposing party's possession, or has taken any other unlawful measure regarding the property; It is not stipulated to which extent the creditor should produce evidence.</p> <p>4. As a general rule, the opposing party must be given an opportunity to respond to an application on a provisional attachment/security measure before the court makes a decision. If the applicant shows that delay places the applicant's claim at risk the court can make the decision immediately and without hearing the debtor. It is not stipulated whether written or oral. It can be both written and oral. The debtor can not address to the court a protective writing.</p> <p>5. For maintenance in family cases: Before the court makes a decision on interim payments the opposing party has a right to be heard. The writ is served to the debtor.</p>	<p>1. The property is restored to the applicant. It dose not operate in personam against the debtor.</p> <p>2. The form of the provisional measure is an order. The decision is to be motivated.</p> <p>3. An appeal can be made to a high court.</p> <p>4. The provisional measure is not valid for a specific limited time.</p> <p>5. For maintenance in family cases: If enforcement of the order is necessary an application has to be made to The Enforcement Authority. The court's order can be enforced as being legally valid.</p>	<p>The applicant does not have to post a security to obtain a decision on interim payments. For maintenance in family cases, too.</p>	<p>1. The Enforcement authority is responsible for enforcement.</p> <p>2. The execution of the provisional measures is subject to the general law of enforcement.</p> <p>3. The court order does not have to be served before the enforcement. The enforcement of the decision normally takes place immediately, without notifying the debtor.</p> <p>4. The effect of the provisional measure is not subject to enforcement within a certain period of time.</p>	<p>The court hearing the main proceeding can revoke or amend the order or order the return of the seized items.</p>	

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<p>United Kingdom</p> <p>England/Wales</p>	<p>-The claim that is to be secured does not have to be due. And a future claim can also be secured.</p> <p>-An application for an order for an interim payment cannot be made until the period for filing an acknowledgement of service has expired (CPR, r. 25.6 (1)).</p> <p>An interim payment may be ordered only if:</p> <p>(1) The defendant has admitted liability to pay damages or some other sum of money;</p> <p>(2) An obtained judgment against defendant;</p> <p>(3) The court is satisfied that the claimant would certainly obtain the correspond judgment;</p> <p>(4) The claimant is seeking possession of land and the court is satisfied that defendant would be held liable to pay.</p> <p>In personal injuries cases:</p> <p>(1) Defendant is insured in respect of the claim, Or (2) Defendant's liability will be met by: an insurer or an insurer acting or defendant is a public body.</p>	<p>1. Jurisdiction: any court (County or High Court). And the court will decide on the merits.</p> <p>2. Single judge or the competent court or another organ can determine on the application.</p> <p>3. The general rule is that applications must be supported by evidence.</p> <p>4. The debtor has a right to be heard. Applications for interim payments are made without notice, and must be served at least 14 clear days before hearing the application. The debtor can not address to the court a protective writing.</p> <p>5. Standard of proof: the court must be 'satisfied' the defendant 'would be held liable' if the claim went to trial before ordering an interim payment.</p>	<p>1. The Content is not determined by the legislation.</p> <p>2. The content of the temporary measure is not blocking of assets or prohibition on disposition of the seized goods; it operates in personam against the debtor.</p> <p>3. The form of the temporary injunction is an order. There are no reasons provided for the ruling.</p> <p>4. When deciding on an order for interim payment the court "must take into account" any relevant set-off or counterclaim and any contributory negligence (CPR r. 25.7 (5)).</p> <p>5. The provisional measure is not valid for a specific limited time.</p>	<p>The provisional measure is not subject to surety (security/guarantee)</p>	<p>1. The court is responsible for enforcement.</p> <p>2. It is subject to the general law of enforcement.</p> <p>3. The pre-condition for enforcement: service of the order to the debtor.</p> <p>And</p> <p>4. The court will stipulate in the order when exactly the claimant is to receive the payment.</p> <p>5. Non-performance results in the defendant being guilty of contempt.</p> <p>* The debtor must wait for the final judgment of the main proceedings before contesting any interim payment orders made against him/her.</p>		

