

Template for the EFFORTS Practice Guide for cross-border enforcement of judgments, court settlements and authentic instruments under the Reg. (EU) No 1215/2012

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I. Outgoing

When LT is the Member State of origin

A. Outgoing judgments

When a party wishes to invoke a judgment or seeks its enforcement in another Member State, s/he shall produce certain documents, depending on each specific case, that shall be obtained in the Member State of origin, according to the applicable procedures and rules: (1) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; (2) the certificate issued pursuant to Art. 53, either in the standard version or with mandatory information (see Art. 42(1)(b) and Art. 42(2)(b)-(c) BI bis Reg.); (3) a translation or a transliteration of the contents of the certificate or a translation of the judgment.

1. How and when to obtain a copy of the judgment which satisfies the conditions necessary to establish its authenticity. See Art. 37(1)(a) and Art. 42(1)(a)-(1)(b) BI bis Reg. Which kinds of copy satisfy the conditions necessary to establish the authenticity of a judgment? Which is the competent authority/desk to deliver it? How can the parties obtain such a copy (are there any procedural steps or conditions to be mentioned in particular)? Are there any applicable fees or other taxes and how should the applicant settle such payments?

Under Lithuanian legislation, a copy of the judgment with an indication that it is final and the certificate referred to in the Regulation shall be issued by the court that heard the case. No additional stamp duty shall be charged for this.

The translation into a foreign language shall be the responsibility of the creditor himself/herself, if he/she knows the Lithuanian language or is represented by a representative who knows Lithuanian. In case the creditor does not know the Lithuanian language and conducted the proceedings on his/her own, the court shall issue the judgment and the certificate translated into the language he/she understands at the expense of the State.

2. How and when to ask for the certificate issued pursuant to Article 53. See Art. 37(1)(b) and Art. 42(1)(b)-(2)(b) BI bis Reg. The certificate attached in the Annex I, concerning a judgment in civil and commercial matters, contains the indication of the

court of origin (name, address, and other relevant information), of the parties (identification of the claimant and of the defendant) and information regarding the judgment (date and reference number, if a default judgment, service of the judgment on the defendant, terms of the judgment and interests, information on the kinds of obligations contained in the judgment (monetary or otherwise), judgment ordering a provisional/protective measure, information on the costs and applicable interests). Which is the national court/authority competent to issue the certificate pursuant to Art. 53 BI bis Reg.? what are the rules governing the application and the procedure applicable to the issuance of the certificate? Are there any procedural steps or conditions to be mentioned in particular (e.g., is the procedure adversarial? Are there any applicable court fees or other taxes and how should the applicant settle such payments?)?

The certificate shall, at the request of the person, be issued by the court which rendered the judgment. An application for such a certificate shall be submitted under the general procedure, by post or through the Judicial Information System LITEKO. The application for a certificate shall not be subject to a stamp duty. It is not a new dispute, therefore, the certificate shall be issued at the end of the proceedings and after adjudicating the case on the merits once the judgment becomes final.

2 bis. Specific information for the enforcement. For the purposes of enforcement in a Member State of a judgment given in another Member State, the certificate shall certify that the judgment is enforceable and contain an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest. Furthermore, when the judgment orders a provisional, including protective, measure the certificate shall contain a description of the measure and certify that the court has jurisdiction as to the substance of the matter and that the judgment is enforceable in the Member State of origin. How could the creditor obtain a certificate containing such information? Is s/he allowed to apply for a new certificate or to file a request for rectification in cases where the information contained in the certificate is insufficient and/or inaccurate?

Arts. 2(a) and 42(2)(c): provisional measure ordered without the defendant being summoned to appear. When a provisional, including protective, measure was ordered without the defendant being summoned to appear, the creditor shall provide the competent authority of the Member State addressed also with proof of service of the judgment. In which cases, under your national law, provisional measures are ordered without the defendant being summoned to appear? How and when does service of the judgment take place and how does the creditor receive proof of it?

The certificate shall be issued after submitting a free-form application to the court. Certificates shall be rectified or supplemented by the court that issued the certificate at the applicant's request by applying *mutatis mutandis* the provisions of Article 276 of the Code of Civil Procedure of the Republic of Lithuania on rectification of writing mistakes and clear arithmetical errors in a judgment.

Pursuant to Article 147(1) of the Code of Civil Procedure of the Republic of Lithuania, the court shall decide on the application for provisional protective measures under the written procedure without delay, but not later than within three working days from the date of receipt of the application. In exceptional cases, where it is necessary to collect additional data necessary for the decision on the application of provisional protective measures, the court shall decide on the application of provisional protective measures within seven working days from the date of its receipt. Where the court believes that to be necessary, the defendant shall be notified about the hearing of the application to impose provisional protective measures. Evidence of service of the notices sent by the court to the parties to the proceedings shall be stored in the case file. The parties to the proceedings shall have the right to get them and to make their copies, which may also be certified by the court. Where necessary, the parties to the proceedings may submit a free-form application to the court requesting a certificate or letter from the court to confirm the service of any notices and other procedural documents on other parties to the proceedings.

2 ter. Enforceability of the judgment. A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required. Under your national law, which are the requirements that a decision must fulfil in order to become enforceable? According to domestic law, are there any specific conditions or limitations regarding the kinds of obligations that can give rise to enforcement measures? Please mention any other matter that you may find relevant and that may have an impact on the enforceability of the judgment under your national law.

Art. 44(2): suspension of the enforceability. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the judgment is suspended in the Member State of origin. Considering that LT is the Member State of origin, which are the procedures and the conditions for the suspension of the enforceability of a judgment?

Art. 51(1): ordinary appeal against an enforceable judgment. The court of the Member State addressed to which an application for refusal of enforcement is submitted may stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired. Considering that LT is the Member State of origin, are enforceable judgments subject to ordinary appeal and which are the procedures to lodge it? What is the deadline for such an appeal (moment in which it starts to run and moment in which it expires)?

Under Article 587 of the Code of Civil Procedure of the Republic of Lithuania, enforcement instruments include:

- court judgments and arbitration awards, rulings, decisions and orders in civil proceedings, as well as in proceedings relating to administrative legal relations;
- court judgments, rulings and decisions in criminal proceedings to the extent they relate to the recovery of pecuniary nature, the enforcement of penalties for the restriction of activities of a legal entity and liquidation of a entity;
- court decisions in administrative proceedings to the extent they relate to the recovery of pecuniary nature;
- settlement agreements approved by the court;
- judgments of foreign courts and arbitral tribunals specified by international treaties and laws;
- decisions of authorities and officials in administrative offence cases to the extent they relate to the recovery of pecuniary nature;
- prosecutor's sanctions for the eviction of natural persons from residential premises and other prosecutor's decisions to the extent they relate to the recovery of pecuniary nature;
- enforcement records made by notaries on the basis of negotiable or non-negotiable promissory notes or cheques and notarial enforcement orders for the drawing up of an inventory of hereditaments (additions to the inventory of hereditaments);
- decisions of the Labour Disputes Commission;
- other decisions by authorities and officials, the enforcement of which under the civil procedure is determined by laws.

Enforcement instruments may be issued in respect of judgments within five years from the date on which the judgment becomes final. The time limit to submit enforcement orders for enforcement under judgments that must be enforced urgently shall be calculated from the first day after the judgment has been rendered. Enforcement instruments for reinstatement to work may be submitted within one

month after the date of the judgment. Where periodic payments shall be recovered under a judgment, the period of validity of the enforcement instruments shall be the period for which the payments have been awarded and the time limit of five years shall begin to run from the date on which each payment is due.

Decisions on the issues concerning non-recognition of judgments of other EU Member States, including those provided for in Article 44(1) of the Regulation, are within the jurisdiction of the Court of Appeal of Lithuania in Lithuania. These matters are decided by the Court of Appeal of Lithuania by rulings, applying *mutatis mutandis* rules on the application of provisional protective measures.

A judgment of the court of first instance becomes an enforceable instrument only after the time limit for appeal has expired (30 days from the date and publication of the judgment). Therefore, a procedural decision is not an enforceable instrument until this time limit has not expired. A judgment of the appeal instance court is an enforceable instrument and is no longer subject to an ordinary appeal, but may be subject to an appeal in cassation. An appeal in cassation shall be lodged within 3 months after the date of the judgment. The filing and acceptance of an appeal in cassation shall not in itself stay the validity and enforcement of the judgment of the court of appeal, unless the cassation court suspends the enforcement of the judgment appealed under the cassation procedure.

In exceptional cases, final judgments may also be reviewed in Lithuania in another extraordinary form of judicial review – based on applications for the reopening of proceedings. Such applications may be submitted within 5 years after the judgments become final, however, no later than 3 months from the date on which the applicant became aware or should have become aware of the grounds for the reopening of the proceedings. The grounds for the reopening of proceedings are very limited and are set out in the Code of Civil Procedure of the Republic of Lithuania as a finite list (e.g. when the circumstances, which were not and could not have been known to the court and the parties during the case hearing and which affect the substance of the judgment come to light, when the judgment ruled on the rights and obligations of persons who were not parties to the proceedings, etc.). The court dealing with the issue of reopening of the proceedings shall have the right to suspend the enforcement of a final judgment.

2 quater. Art. 55: judgment ordering payment of a penalty. A judgment given in a Member State which orders a payment by way of a penalty shall be enforceable in the Member State addressed only if the amount of the payment has been finally determined by the court of origin. Which are the types of judgment ordering payment by way of a penalty under your national law? How

does the court determine the amount? Which court has competence to issue such measures? Which is the applicable procedure? Are there any procedural steps or conditions, in particular, that the creditor should be aware of?

In the judgments ordering penalties in Lithuania, courts state specific amounts of the penalties imposed. Where penalties or procedural interest are awarded to be calculated for each day from the date of the application to the court until the judgment has been fully enforced, the court shall specify the specific amount of money or the percentage of any other fixed amount awarded by the court and shall state the period for which the penalty or the procedural interest shall be calculated. The final calculation of periodic penalties or procedural interest, which shall be calculated until full enforcement of the judgment based on the amounts and for the period specified in the operative part of the judgment, shall be normally carried out by judicial officers, as officials authorised by the State to enforce judgments and able to declare the fact of the full enforcement of the judgment according to the results of the enforcement procedure, as well as carry out the relevant accurate calculations of periodic payments.

3. How and when to obtain a translation or a transliteration of the contents of the certificate or a translation of the judgment. See Art. 37(2) and 42(3)-(4) BI bis Reg.

Translation or transliteration of the contents of the certificate. The court or authority before which the judgment is invoked or the competent enforcement authority may, where necessary, require the applicant to provide, in accordance with Art. 57, a translation or a transliteration of the contents of the certificate ⁽¹⁾. Do the parties have the possibility to ask the court of origin for a translated copy of the certificate directly in their application for a certificate? If the answer is yes, which is the competent authority/desk and how could the parties do so? If the answer is no, who are the persons qualified to do such translations in LT ⁽²⁾? Which are the costs that the parties sustain for such translation or transliteration?

Translation of the judgment. The court or authority before which the judgment is invoked may require the party to provide a translation of the judgment instead of a translation of the contents of the certificate if it is unable to proceed without

¹ Please note that the translation or the transliteration of the certificate issued pursuant to Art. 53 shall be into the official language of the Member State addressed under Art. 57(1) as well as any other official language or languages of the institutions of the Union that the Member State concerned has indicated it can accept under Art. 57(2) BI bis Reg.

² Please note that it is not specified that the translation shall be asked in the Member State of origin or in the Member State addressed: both should be possible.

such a translation. In addition, the competent enforcement authority may require the applicant to provide a translation of the judgment only if it is unable to proceed without such a translation. In LT⁽³⁾, who are the persons qualified to do translations of a judgment? Which are the costs that the creditor sustains for such translation?

Procedural documents of the court shall be drawn up and issued in the official Lithuanian language.

When a party who does not know the Lithuanian language pursues the proceedings on his/her own and has no obligation to have a representative, the court shall translate final procedural decisions and certificates into a language that the person understands at the expense of the State. In other cases, the party to the proceedings shall take care of translations on his/her own.

The translations shall be carried out by qualified translators who shall certify the translations. There are no sworn translators in Lithuania.

³ Please note that it is not specified that the translation shall be asked in the Member State of origin or in the Member State addressed: both should be possible.

B. Outgoing authentic instruments and court settlements

Authentic instruments

When a party seeks the enforcement of an authentic instrument in another Member State, s/he shall produce (1) an enforceable authentic instrument that satisfies the conditions necessary to establish its authenticity in the Member State of origin and (2) the certificate issued under Art. 60.

1. How and when to obtain an authentic instrument which satisfies the conditions necessary to establish its authenticity. Which kinds of enforceable authentic instruments exist under your national law? Amongst these, which ones satisfy the conditions necessary to establish their authenticity? Under which conditions?

1 *bis*. **Enforceability of the authentic instrument.** An authentic instrument which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required (Art. 58). Under your national law, which are the enforceable authentic instruments? According to domestic law, are there any specific conditions or limitations regarding the kinds of obligations contained in an authentic instrument that can give rise to enforcement measures? Please mention any other matter to the enforceability of authentic instruments under your national law that you may find relevant.

Art. 44(2): suspension of the enforceability. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the authentic instrument is suspended in the Member State of origin. Considering that LT is the Member State of origin, which are the procedures and the conditions for the suspension of the enforceability of an authentic instrument?

Authentic instruments within the meaning of the Regulation at issue mean promissory notes protested and non-protested by notaries in Lithuania as the country of origin, cheques, mortgage/pledge transactions with enforcement records made by notaries.

The enforcement of an authentic instrument may be suspended by the notary who issued it. Its enforcement may also be suspended by a court if the validity of the authentic instrument or other related matters are challenged before the court and the

court decides to apply such provisional protective measures.

2. How and when to ask for the certificate issued pursuant to Article 60 for authentic instruments. Which is the national authority competent to issue the certificate pursuant to Art. 60? what are the rules governing the application and the procedure applicable to the issuance of the certificate? Are there any procedural steps or conditions to be mentioned in particular? Are there any applicable court fees or other taxes and how should the applicant settle such payments?

The certificate shall, at the request of the person, be issued by the notary who issued the authentic document. A notary fee shall be charged for that.

Court settlements

When a party seeks the enforcement of a court settlement in another Member State, s/he shall produce (1) an enforceable court settlement that satisfies the conditions necessary to establish its authenticity in the Member State of origin and (2) the certificate issued under Art. 60.

1. How and when to obtain a court settlement which satisfies the conditions necessary to establish its authenticity. Which kinds of court settlements exist under your national law? Amongst these, which ones satisfy the conditions necessary to establish their authenticity? Under which conditions?

1 bis. Enforceability of the court settlement. A court settlement which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required (Art. 59). Under your national law, which are the enforceable court settlements? According to domestic law, are there any specific conditions or limitations regarding the kinds of obligations contained in a court settlement that can give rise to enforcement measures? Please mention any other matter to the enforceability of court settlements under your national law that you may find relevant.

Art. 44(2): suspension of the enforceability. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the court settlement is suspended in the Member State of origin. Considering that LT is the Member State of origin, which are the procedures and the conditions for the suspension of the enforceability of a court settlement?

In Lithuania, court settlements are approved by court rulings. The operative (final) parts of such rulings (similarly to the operative parts of other procedural judicial documents) set out the enforceable terms of the settlement agreements approved by the court.

The final rulings regarding the approval of settlement agreements acquire the force of a final judgment under Lithuanian law and other final court decisions shall be enforced.

Non-final rulings concerning the approval of settlement agreements may be

appealed to higher courts under the ordinary appeal procedure (within 7 days from the date of service of the ruling on the appellant); the rulings reviewed under the appeal procedure may be appealed to the Supreme Court of Lithuania under the cassation procedure within 3 months from the date of rendering of the ruling of the appeal instance court. The lodging of an appeal has a suspensive effect and automatically suspends enforcement. The lodging of an appeal in cassation does not automatically suspend the enforcement of the contested ruling, however, the Supreme Court of Lithuania may suspend the enforcement of this procedural decision at the request of the appellant in cassation.

The proceedings which end with court rulings on the approval of court settlements may be reopened as any other proceedings that end with final judgments subject to the same conditions as described above.

2. How and when to ask for the certificate issued pursuant to Article 60 for court settlements. Which is the national authority competent to issue the certificate pursuant to Art. 60? What are the rules governing the application and the procedure applicable to the issuance of the certificate? Are there any procedural steps or conditions to be mentioned in particular? Are there any applicable court fees or other taxes and how should the applicant settle such payments?

The certificate shall, at the request of the person, be issued by the court which rendered the ruling on the court settlement. Such a certificate shall be requested under the general procedure by post or through the Judicial Information System LITEKO. The application for a certificate shall not be subject to a stamp duty. It is not a new dispute, therefore, the certificate shall be issued at the end of the proceedings and after adjudicating the case on the merits.

II. Incoming

When LT is the Member State addressed

When a party wishes to invoke a judgment in the Member State addressed or seeks its enforcement, s/he shall invoke it before the courts of the Member State addressed or follow the procedure for the enforcement of judgments of the Member State addressed. The procedure for the enforcement of claims in LT is dealt with in the Annex “Enforcement procedure”. In addition to national rules, the Regulation provides that enforcement must be preceded by (1) service of the judgment and of the certificate. Furthermore, the creditor may avail her/himself of: (2) the right to apply for a decision that there are no grounds for refusal of recognition as referred to in Art. 45; (3) the power to proceed to any protective measures which exist under the law of LT; (4) the request for adaptation of a measure or an order which is not known in the law of LT. On the other hand, the person against whom enforcement is sought (or, in case of the refusal of recognition, any interested party) may fight the recognition or the enforcement of the judgment issued in another Member State, either filing a claim for opposition to enforcement under national rules (which also will be dealt with in the Annex “Enforcement procedure”) or (5) filing a claim for refusal of recognition or enforcement, also with the power to apply for the measures under Art. 44(1). The person against whom enforcement is sought may also (6) apply for the suspension of the enforcement proceedings pursuant to the grounds of suspension provided for by national law (to the extent that they are not incompatible with the Regulation, see Art. 41(2)) or in cases where the enforceability of the judgment has been suspended in the Member State of origin in accordance with Art. 44(2) BI bis Reg.

1. Service of the judgment and the certificate prior to the enforcement. Alongside the conditions and the procedural steps applicable under the law of the Member State addressed, the Regulation requires the creditor to take a number of steps before proceeding with the enforcement. First, the certificate issued pursuant to Art. 53 BI bis Reg. shall be served on the person against whom the enforcement is sought prior to the first enforcement measure (Art. 43(1)). The certificate should be served on that person within a reasonable time before the first enforcement measure (Whereas (32)). (On how to perform service please see the following indent). Which is the first enforcement measure in LT? (4) Does your national law provide for service of the certificate within a “reasonable time” before the first enforcement measure?

Generally, service of the certificate and of the judgment before the enforcement takes place could be classified as cross-border service, i.e., “service from one

⁴ Please consider that “[i]n this context, the first enforcement measure should mean the first enforcement measure after such service” (Whereas (32)).

Member State to another Member State”, according to the definition given by the Service Regulation ⁽⁵⁾, applicable from 1 July 2022. However, in case the person against whom recognition or enforcement is sought is domiciled in the Member State of enforcement, such service could be out of the scope of application of the Service Regulation and therefore national rules on service could be applicable. In the event that the person against whom enforcement is sought is domiciled in LT and LT is the Member State addressed for the enforcement, how does the creditor proceed with service of the certificate and/or of the judgment according to LT national law?

The creditor (claimant) shall not be obliged to apply directly to the debtor for a voluntary enforcement of the judgment before starting coercive enforcement. It is possible to apply immediately to judicial officers for enforcement with the enforcement documents.

Written enforcement instruments of non-pecuniary nature, which are not related to the recovery of pecuniary amounts or which, in addition to the recovery of pecuniary amounts, also provide for enforcement actions of non-pecuniary nature, shall be submitted for enforcement to the judicial officer in whose territory the place of enforcement is situated, either by post or at the judicial officer's office. Electronic enforcement instruments in the ADOC format recognised by the Information System of Judicial Officers of the Republic of Lithuania may also be submitted for enforcement through the Information System of Judicial Officers. Documents in a digital format not recognised by this system shall be submitted directly to the judicial officer.

Electronic enforcement instruments in the ADOC format recognised by the Information System of Judicial Officers of Lithuania for the recovery of pecuniary amounts shall be submitted through the Information System of Judicial Officers. In other cases when enforcement instruments do not comply with the format recognised by the Information System of Judicial Officers and are in writing or in another digital format not recognised by the system, such instruments for the recovery of pecuniary amounts shall be submitted to the Chamber of Judicial Officers of Lithuania. Such enforcement instruments shall be digitised at the Chamber of Judicial Officers of Lithuania, signed with an electronic signature by an employee of the Chamber of Judicial Officers of Lithuania, uploaded to the Information System of Judicial Officers and further enforced as electronic

⁵ Whereas (6) of the Reg. (EU) 2020/1784 of the European parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast).

enforcement instruments. Enforcement instruments for the recovery of pecuniary amounts are distributed to judicial officers by the Information System of Judicial Officers.

Upon receipt of an enforcement instrument and a free-form application from the creditor, if no obstacles for the acceptance of the enforcement instrument and commencement of the enforcement proceedings have been identified, the judicial officer shall draw up a warrant to accept the enforcement instrument and open an enforcement file. Before the start of enforcement actions, the creditor shall pay to the judicial officer the administrative fee for the enforcement of the judgment as provided for in the Instruction for the Enforcement of Judgments. Upon successful enforcement of the enforcement instrument, such costs shall be recovered from the debtor. The warrant to accept the enforcement instrument for enforcement and the calculation of the enforcement costs, and, in cases provided for by law, also a warning letter to comply with the decision, shall be sent to the debtor. In case the debtor's whereabouts are unknown, the debtor is absconding or the service of the warning letter to comply the judgment is impossible for other objective reasons, the warning letter to comply with the judgment shall be published on the website www.antstoliai.lt. The information that the warning letter has been sent or served shall be indicated by the judicial officer in the Information System of Judicial Officers.

A judicial officer shall start enforcement actions: in urgent enforcement cases, no later than on the next working day after the enforcement instrument has been accepted for enforcement; in other cases, no later than within three working days after the enforcement instrument has been accepted for enforcement.

After accepting the enforcement instrument for enforcement, the judicial officer shall issue a warrant to enforce the enforcement instrument and, in the cases provided for by law, also a warning letter to comply with the judgment. Such warrant of the judicial officer shall explain to the debtor that the debt and the enforcement costs will be recovered coercively, and shall also inform about the service of subsequent procedural documents by means of electronic communications. This warrant shall be sent to the debtor by registered mail.

1 *bis*. **Language.** Where the person against whom enforcement is sought is domiciled in a Member State other than the Member State of origin, s/he may

request a translation *of the judgment* ⁽⁶⁾ if the judgment is not written in or accompanied by a translation into the official language of the Member State in which s/he is domiciled or a language that s/he understands (Art. 43(2)). In the event that the person against whom enforcement is sought is domiciled in LT and LT is the Member State addressed for the enforcement, which are the official languages of LT in which the judgment must be translated?

Where such translation is requested, no measures of enforcement may be taken other than protective measures until that translation has been provided to the person against whom enforcement is sought (Art. 43(2)). Please refer to section (3) below.

The official language in Lithuania is the Lithuanian language. Documents shall be submitted to judicial officers, courts and other Lithuanian authorities in the Lithuanian language or with translations into the Lithuanian language certified by qualified translators. If the debtor against whom enforcement proceedings are being carried out does not understand Lithuanian, the documents shall be submitted with translations to the language that he/she understands.

1 *ter.* Art. 41(3): authorized representative in the Member State addressed. Is the party seeking enforcement of a judgment, irrespective of her/his nationality or domicile, required to have an authorised representative in LT?

No.

2. Protective measures. An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed. Which are the “protective measures” ⁽⁷⁾ available to the

⁶ *Creditors should be aware that translation of the certificate, unlike the translation of the judgment, is not strictly required at this stage of the enforcement but may be requested just afterwards by the enforcement authorities, according to Art. 42(3).*

⁷ Please consider the notion of protective measures fostered in the Regulation. A reference to “protective measures” is often accompanied to the reference to “provisional measures”, for example in the Whereas no. 25: “*The notion of provisional, including protective, measures should include, for example, protective orders aimed at obtaining information or preserving evidence as referred to in Articles 6 and 7 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (11). It should not include measures which are not of a protective nature, such as measures ordering the hearing of a witness. This should be without prejudice to the application of Council*

creditor in LT? How does the creditor apply for protective measures? Which is the competent authority and the applicable procedure? Is the granting of protective measures subject to any specific conditions under national law?

The following measures may be applied by Lithuanian courts as provisional protective measures to enforce judgments:

- (1) attachment of the defendant's immovable property;
- (2) entry in the public register on prohibition to transfer the title;
- (3) attachment of movable property, pecuniary funds or property rights belonging to the defendant and in the possession of the defendant or third parties;
- (4) detention of the defendant's property item;
- (5) appointment of an administrator of defendant's property;
- (6) prohibition for the defendant to engage in certain transactions or take certain actions;
- (7) prohibition for other persons to convey property to the defendant or fulfil other obligations;
- (8) in exceptional cases, prohibition for the defendant to leave the permanent residence and/or prohibition to remove the child from the permanent residence without the court's authorisation;
- (9) suspension of the realisation of assets when there is a claim to lift the attachment on those assets;
- (10) suspension of recovery in enforcement proceedings;
- (11) award of temporary maintenance or imposition of temporary restrictions;
- (12) an order to take action to prevent the damage from occurring or increasing;
- (13) other measures provided for in laws or applied by the court where the failure to impose such measures would make the enforcement of the judgment more difficult or impossible.

The above-referred measures may be applied by the court at any stage of the proceedings, including the enforcement stage. They can also be used in order to ensure the enforcement of foreign judgments or arbitral awards.

Once the judicial officer starts enforcement actions, he/she shall take all lawful and statutory measures to enforce the judgment, taking into account the nature of the

Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters". However, in some cases, the Regulation refers to "protective measures" without reference to "provisional measures", as it is in Art. 40 hereby considered, and in Art. 43(2) second indent. Thus, the two notions are autonomous one from the other. A "protective measure" may be issued with a provisional order of the court as a "provisional measure of a protective nature", but protective measures are also issued as measures relating to the enforcement.

judgment and other relevant circumstances.

In order to enforce judgments of a pecuniary nature, judicial officers in Lithuania have the right to attach property on their own (without recourse to the court). If there is a risk during enforcement that the debtor can conceal the assets, after sending a warning letter to the debtor to comply with the judgment, the judicial officer shall attach the debtor's assets or funds and shall issue a reasoned warrant stating the circumstances which make it probable that the assets or funds can be concealed.

A decision on attachment is made by a judicial officer during enforcement. A judicial officer may attach property on his/her own initiative or at the request of the creditor.

3. **Adaptation.** If a judgment contains a measure or an order which is not known in the law of the Member State addressed, that measure or order shall, to the extent possible, be adapted to a measure or an order known in the law of that Member State which has equivalent effects attached to it and which pursues similar aims and interests (Art. 54). How, and by whom, the adaptation is to be carried out should be determined by each Member State (Whereas (28)). Are there typical examples, also from the collection of case-law, of measures issued in another Member State not known in the law LT that need adaptation to be mentioned?

How and when shall the creditor seek adaptation under Art. 54? Which is the competent authority and the applicable procedure? Is the procedure adversarial?

How could the parties file a challenge under Art. 54(2)?

These issues are not directly regulated in Lithuanian laws. By the analogy of law, the Court of Appeal of Lithuania should have the competence to decide on such issues at the request of the claimant (creditor) as a court of first instance, because the Code of Civil Procedure and other laws grant the right to this court to decide on similar issues concerning the recognition of foreign (including European Union) judgments, refusal to recognise them, issuance of enforcement orders based on foreign judgments recognised in Lithuania, recognition and scheduling of judgments of foreign courts.

The Court of Appeal of Lithuania decides on the issues of this kind, on which the parties may differ in their opinions, by adopting rulings according to the adversarial procedure. The law does not provide for any limitation on the right to appeal against such rulings under the cassation procedure to the Supreme Court of Lithuania.

4. Claim for refusal of recognition or enforcement. On the application of the party against whom enforcement is sought (or, in case of refusal of recognition, of any interested party), the recognition or the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist. The party challenging the enforcement of a judgment given in another Member State should, to the extent possible and in accordance with the legal system of LT, be able to invoke, in the same procedure, in addition to the grounds for refusal provided for in this Regulation, the grounds for refusal available under national law and within the time-limits laid down in that law. The recognition of a judgment should, however, be refused only if one or more of the grounds for refusal provided for in this Regulation are present (Whereas (30)).

Procedure. The application for refusal of enforcement shall be submitted to the court which the Member State concerned has communicated to the Commission pursuant to point (a) of Article 75 as the court to which the application is to be submitted (Art. 47(1)). Which is the court competent to receive the application for refusal of recognition and which is the court competent to submit the application for refusal of enforcement? Which is the applicable procedure? Are there any procedural steps or conditions to be mentioned in particular? Are there any applicable court fees or other taxes and how should the applicant settle such payments? Are there any implementing rules on the rule on the application for refusal of enforcement to be decided upon “without delay” (Art. 48)?

Applications in relation to the refusal to allow enforcement of a judgment or part of the judgment of the Member State of the European Union are heard by the Court of Appeal of Lithuania. Such application shall conform to the general requirements set for procedural documents, including the requirement to submit the application and its annexes in the official Lithuanian language or attach the translation of these documents into the Lithuanian language. If the applicant resides outside the Republic of Lithuania and has not designated a representative in the proceedings or an authorised person for the service of procedural documents who resides (has a professional domicile) in the Republic of Lithuania (Article 805 of the Code of Civil Procedure of the Republic of Lithuania), the application shall state an address in the Republic of Lithuania or an address of telecommunication terminal equipment to which procedural documents would be served to the applicant.

Such applications are exempt from the stamp duty.

4 bis. Authorised representative in the Member State addressed. The party seeking the refusal of a judgment given in another Member State shall not be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties. Is the party seeking the refusal of recognition or enforcement of a judgment, irrespective of her/his nationality or domicile, required to have an authorised representative in LT?

Appointment of such authorised representative is not mandatory. However, if the applicant resides outside the Republic of Lithuania and has not designated a representative in the proceedings or an authorised person for the service of procedural documents who resides (has a professional domicile) in the Republic of Lithuania (Article 805 of the Code of Civil Procedure of the Republic of Lithuania), the application shall state an address in the Republic of Lithuania or an address of telecommunication terminal equipment to which procedural documents would be served to the applicant.

4 ter. Grounds for refusal. National grounds for refusal of enforcement shall also apply in so far as they are not incompatible with the grounds referred to in Art. 45 (Art. 41(2)) ⁽⁸⁾. Which are the national grounds for refusal LT? Please mention possible issues of incompatibility under Art. 41(2)

There are no additional grounds; the grounds set out in the relevant EU regulation apply directly.

4 quater. Appeal. The decision on the application for refusal may be appealed against by either party. The appeal is to be lodged with the court which the Member State concerned has communicated to the Commission pursuant to point (b) of Article 75 as the court with which such an appeal is to be lodged.

⁸ For guidance see, amongst others: “This means that domestic grounds relating to, for example, the disproportionality of enforcement means, prohibitions on seizing certain (primary) goods or abuse of rights, or indeed set-off, may generally be allowed. However, for example disputes on the service of documents or a violation of jurisdiction rules beyond those set out in the Regulation, or a re-examination of the facts or the applicable law are not allowed.”, X. KRAMER, *Cross-border enforcement and the Brussels I-bis Regulation: towards a new balance between mutual trust and national control over fundamental rights*, in *Netherlands International Law Review*, 2013, p. 360.

The decision given on the appeal may only be contested by an appeal where the courts with which any further appeal is to be lodged have been communicated by the Member State concerned to the Commission pursuant to point (c) of Article 75. Which is the competent court with which the appeal on the decision on the claim for refusal is to be lodged? Which is the applicable procedure? Are there any procedural steps or conditions to be mentioned in particular? Are there any applicable court fees or other taxes and how should the claimant settle such payments?

In LT, is it possible to lodge a further appeal (Art. 50)? Which is the applicable procedure? Are there any procedural steps or conditions to be mentioned in particular? Are there any applicable court fees or other taxes and how should the claimant settle such payments?

An appeal shall be submitted directly to the Supreme Court of Lithuania. No stamp duty is payable on such an appeal.

The Supreme Court of Lithuania is the highest judicial instance and its procedural decisions are final and not subject to appeal.

4 quinquies. Measures under Art. 44(1) BI bis Reg. Considering the measures listed in Art. 44(1), how is the application for such measures presented to the court? Which measures do your national courts have the power to issue (please compare specifically with letters (a), (b) and (c)) upon the request of the person against whom enforcement is sought?

There is no separate regulation on this procedure. The general rules shall apply as those applicable when requesting provisional protective measures. The court may apply all three types of provisional protective measures.

5. Claim for a decision that there are no grounds for refusal of recognition. According to Art. 36(2), the application for a decision that there are no grounds for refusal of recognition as referred to in Art. 45 is presented in accordance with the procedure provided for in Subsection 2 of Section 3 of the Regulation. Please refer to section (4). However, please mention here any other condition or procedural issue relating to the claim that *there are no grounds for refusal* of recognition that may differ from the rules for the claim *for refusal* that have been dealt with in section (4).

There are no specific rules.

6. **Suspension of the enforcement.** National grounds of suspension of enforcement shall also apply in so far as they are not incompatible with the grounds referred to in Art. 45 (Art. 41(2)). Which are the grounds of suspension of enforcement in your national law? Are there any grounds that could be incompatible with the grounds referred to in Art. 45?

6 *bis*. **Enforceability suspended in the Member State of origin.** Considering the suspension of the enforcement proceedings under Art. 44(2), which is the “competent authority” in LT? How shall the person against whom enforcement is sought ask for such suspension? How do the suspended enforcement proceedings resume their course when the enforceability of the judgment is reinstated? Are there any procedural rules or court practices to be mentioned regarding suspension of the enforcement proceedings in [BE, DE, FR, HR, IT, LT, LU]?

There are no rules on the suspension of enforcement when enforcement is suspended in the Member State of origin, therefore, it is likely that such a decision should be taken either by a judicial officer on the basis of the Regulation directly or by the district court in the territory of the judicial officer's activities.

If it is requested to suspend enforcement in Lithuania, such application shall be submitted to the court hearing the case – to the Court of Appeal of Lithuania or to the Supreme Court of Lithuania, depending on the stage of the case before the Lithuanian courts. In the procedural decision on suspension of enforcement, courts usually set a time limit for the suspension of the enforcement, which is most often described as a certain event. As far as the revocation of the suspension of enforcement is concerned, an application may be submitted to the court hearing the case. If the case has already been heard, such application should be submitted to the court that heard the case at first instance – the Court of Appeal of Lithuania.

7. **Measures for the indirect enforcement (payment orders).** Art. 55 establishes the rules for recognition of a judgment given in a Member State which orders a payment by way of a penalty. However, it does not cover the case in which the incoming judgment has not a payment order attached to it. It may be possible that the competent authorities of the Member State of the enforcement have the power to issue measures of indirect enforcement. In LT, are there measures for indirect enforcement available?

Which court has competence to issue such measures? Which is the applicable procedure? Are there any procedural steps or conditions, in particular, that the creditor should be aware of?

If a judgment ordering that the debtor perform or cease certain acts not relating to the transfer of property or funds has not been complied with, the judicial officer enforcing the judgment shall draw up a statement to that effect in the form set out in the Instruction for the Enforcement of Judgments.

If the judgment specifies the effects of failure to comply with the judgment, the drawn up statement shall be forwarded to the district court of the place where the judicial officer's office is situated and the court shall issue a ruling to apply the effects specified in the judgment since the debtor has not carried out specific actions.

If the judgment does not specify the effects of failure to comply with the judgment, the judicial officer may raise the question in the statement whether it is necessary to change the procedure for enforcing the judgment.

If a judgment ordering the debtor to perform or cease certain actions which only the debtor may perform or cease is not complied with within the time limit set by the court, the judicial officer shall forward the statement to the district court of the place where the judicial officer's office is located. The issue of non-compliance with the judgment or mandatory order shall be resolved at a hearing. The time and place of the hearing shall be notified to the creditor and the debtor, however, their failure to appear shall not prevent the examination why the judgment or the mandatory order has not been complied with. If the court finds that the judgment or mandatory order has not been complied with by the debtor, it may impose a fine of up to EUR 300 for each day of delay in complying with the judgment or mandatory order, in favour of the creditor. If the debtor infringes the time limits for compliance with the judgment twice or more times, the court shall impose the above-referred fine on the debtor again. Payment of such a fine shall not exempt the debtor from the obligation to perform or cease the acts specified in the judgment or in the mandatory order.

In case a legal entity fails to comply with a judgment ordering it to perform or cease certain acts not related to the transfer of property or funds or with a mandatory order, the court may impose the above-referred measures on the manager of the legal entity or on any other person responsible for the compliance with the judgment or the mandatory order.

A separate appeal may be submitted against rulings on such issues to an appeal instance court and rulings of the latter may be appealed against under the cassation

procedure to the Supreme Court of Lithuania.