QUESTINONNAIRE

Version 2016

General guidelines

This questionnaire addresses the practical application of B IA before the national courts of member states with an emphasis on the interplay of Regulation and national rules regarding the enforcement procedure as a whole and the remedies in particular.

Please refer for existing information relating to B IA in the EU, among others to:

- Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,[1]
- Green Paper on the Review of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,[2]
- Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,[3]
- Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,[4]
- Study on residual jurisdiction (Review of the Member States' Rules concerning the 'Residual Jurisdiction' of their courts in Civil and Commercial Matters pursuant to the Brussels I and II Regulations),[5]
- Data Collection and Impact Analysis – Certain Aspects of a Possible Revision of Council Regulation No. 44/2001 on Jurisdiction and the Recognition and Enforcement

[1] OJ L 351/1, 20.12.2012. Available at:
http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R1215&from=EN
[2] COM(2009) 175 final. Available at:
http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009DC0175&from=EN
[3] COM(2010) 748. Available at:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0748:FIN:EN:PDF
[4] COM(2009) 174 final. Available at:
http://ec.europa.eu/civiljustice/news/docs/report_judgements_en.pdf
[5] http://ec.europa.eu/civiljustice/news/docs/study_residual_jurisdiction_en.pdf

of Judgments in Civil and Commercial Matters (‘Brussels I’);[6] with accompanying Appendix D[7] and Appendix E,[8]

- Report on the Application of Regulation Brussels I in the Member States (‘Heidelberg Report’),[9]
- Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) Note (Study by Ilaria Pretelli),[10]
- The Commission’s Civil Justice Documents compilation,[11]
- European Judicial network in civil and commercial matters,[12] where other rudimentary information regarding national order for payment and small claims procedure for most Member States can also be found,[13]
- European e-Justice Portal,[14]
- European Judicial Network Documents, e.g. Citizens' guide to cross-border civil litigation in the European Union, Practice guide for the application of the Regulation on the European Enforcement Order, Judicial cooperation in civil matters in the European Union etc., which can be found at the web page of European Judicial Network,[15]
- Study on European Payment Order, Study on making more efficient the enforcement of judicial decisions within the European Union etc. All of them are available at the web page of European Judicial Network[16] etc.

The structure of each individual report does not necessarily have to follow the list of questions enumerated below. The questions raised should be dealt with within the reports, however the authors are free to decide where this will be suitable. Following the structure of the questionnaire will make it easier to make comparisons between the various jurisdictions.

The list of questions is not regarded to be a conclusive one. It may well be that we did not foresee certain issues that present important aspects in certain jurisdictions. Please include such issues where suitable. On the other hand, questions that are of no relevance for your legal system can be left aside.

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[6] http://ec.europa.eu/justice/civil/files/study_cses_brussels_i_final_17_12_10_en.pdf
[7] http://ec.europa.eu/justice/civil/files/brussels_i_appendix_d_17_12_10_en.pdf
[8] http://ec.europa.eu/justice/civil/files/brussels_i_appendix_e_15_12_10_en.pdf
[9] B. Hess, T. Pfeiffer, P. Schlosser, Study JLS/C4/2005/03, 2007. Available at: http://ec.europa.eu/civiljustice/news/docs/study_application_brussels_1_en.pdf
[10] European Parliament Directorate-general for internal policies, I. Pretelli, 2011. Available at: http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JURI_NT(2011)453205
[11] http://ec.europa.eu/justice/civil/document/index_en.htm
[12] http://ec.europa.eu/civiljustice/simplif_accelerat_procedures/simplif_accelerat_procedures_ec_en.htm.
[13] For case of Slovenia see: http://ec.europa.eu/civiljustice/simplif_accelerat_procedures/simplif_accelerat_procedures_sln_en.htm.
[14] For European Order for Payment procedure see: https://e-justice.europa.eu/contentPresentation.do?idTaxonomy=41&lang=en&vmac=r9Klvk5c5yBXTTpIFcE3eO1ILsSHvqIyFn4mfXJsyLxOw1eIXN-A4iEn1ghxe4PUfmIXktLJDRjq1LeHcGY6HAAAAzMAAAC_.
For European Small Claims Procedure see: https://e-justice.europa.eu/contentPresentation.do?idTaxonomy=42&lang=en&vmac=qu-zZrpu8lja62kGDeATAFhREcgMT4qv4YmtKfdXNfmehAJtx1tqZZSY2wLGuXL2B4q74ERMigBc7S447YG47wAAHccAAALd.
[15] http://ec.europa.eu/civiljustice/publications/publications_en.htm .
[16] http://ec.europa.eu/civiljustice/publications/publications_en.htm .

Please give representative reference to court decisions and literature. Please try to illustrate important issues by providing examples from court practice. If possible, please include empirical and statistical data.

Please do not repeat the full questions in your text. There is no limitation as to the length of the reports.

Languages of national reports: English.

Deadline: 1 November 2016.

In case of any questions, remarks or suggestions please contact project coordinator, prof. dr. Vesna Rijavec: vesna.rijavec@um.si; or Katja Drnovšek: katja.drnovsek@um.si

Terminology used in the questions

The use of a unified terminology can certainly ease the comparison between national reports. For the purposes of this questionnaire, the following definitions shall apply:

Action: Used in the sense of lawsuit, e.g. ‘bringing an action’ (starting a lawsuit, filing a suit).

Application: Request addressed to the court. Note: the term ‘motion’ is in B IA exclusively used for acts issued by the court.

Astreinte: Monetary penalties used as a means of enforcing judgments in certain civil law jurisdictions. A proper English term to describe ‘*astreinte*’ does not exist.

Authentic instrument: A document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:

(i) relates to the signature and the content of the instrument; and

(ii) has been established by a public authority or other authority empowered for that purpose

Cassation Complaint: Second appeal in the Romanic family of civil procedure (in the Germanic family one uses ‘Revision’ instead).

Civil Imprisonment: Imprisonment of a judgment debtor in order to force him to satisfy the judgment.

Claim / Defence on the Merits: Claim or defence which concerns the specific case at hand and not preliminary (procedural) issues. Opposite of preliminary defences.

Claimant: Before the Woolf Reforms designated as ‘Plaintiff’. In your contributions, please only use ‘claimant’ (the term which is also used in B IA).

Counsel: Generic term for the lawyer assisting a party. We would advise to use this terminology instead of ‘advocate’, ‘procurator’, etc.

Court of origin: The court which has given the judgment the recognition of which is invoked or the enforcement of which is sought.

Court settlement: A settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings.

Default: Omitting the execution of the required procedural act (e.g. where the summoned defendant does not appear).

Defaulter: Party in a civil action who does not execute the procedural act which should have been executed by him.

Enforcement: Use the term enforcement instead of execution.

Enforcement officer: Official involved in enforcing court rulings. Enforcement is part of the tasks of a ‘*huissier de justice*’ in France and other jurisdictions belonging to the Romanic family of civil procedure.

Ex officio / Sua Sponte: Both ‘*ex officio*’ and ‘*sua sponte*’ are used to indicate that the judge may act spontaneously without being asked to do so by the parties. In other words, we are dealing with powers of the judge which he may exercise at his own motion.

Final judgment: Judgement, which is binding to parties and against which generally, no ordinary legal remedy is permitted.

Hearing: Session before the court, held for the purpose of deciding issues of fact or of law. For civil law jurisdictions, we would suggest to avoid using the terminology ‘trial’ (which in English civil procedure refers to a specific stage in litigation).

Interlocutory Judgment: All judgments which do not decide the merits of the case.

Interlocutory Proceedings: Proceedings which are not aimed at acquiring a final judgment on the merits in the case but aim at an intermediate, non-final decision in a pending lawsuit.

Judgment: Any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court.

For the purposes of Chapter III, ‘judgment’ includes provisional, including protective, measures ordered by a court or tribunal which by virtue of this Regulation has jurisdiction as to the substance of the matter. It does not include a provisional, including protective, measure which is ordered by such a court or tribunal without the defendant being summoned to appear, unless the judgment containing the measure is served on the defendant prior to enforcement;

Judicial Case Management: An approach to litigation in which the judge or the court is given powers to influence the progress of litigation, usually in order to increase efficiency and reduce costs.

Main Hearing: In German: *Haupttermin*.

Means of recourse against judgments: General terminology to indicate all possible means to attack judgments, e.g. ordinary appeal, opposition, cassation, revision etc.

Member State of origin (MSO): The Member State in which in which the judgment has been given, the court settlement has been approved or concluded or the authentic instrument has been drawn up or registered.

Member State addressed (MSA): The Member State in which the recognition of the judgment is invoked or in which the enforcement of the judgment, the court settlement or the authentic instrument is sought.

Opposition: Act of disputing a procedural act or result, e.g. a default judgment.

Preclusion: The fact that a party is barred (precluded) from taking specific steps in the procedure since the period for taking these steps has expired (‘*Reihenfolgeprinzip*’).

Preliminary defences: ‘Exceptions’; (usually) procedural defences. Opposite of defences on the merits.

Process server: Official serving the summons on the opponent party. This is part of the tasks of a ‘*huissier de justice*’ in France and other jurisdictions belonging to the Romanic family of civil procedure.

Second instance appeal: First appeal, not to be confused with a Cassation Complaint or Revision (i.e. second appeal or third instance appeal).

Statement of Case: General terminology for the documents containing the claim, defence, reply, rejoinder etc. Before the Woolf reforms these documents were indicated as ‘pleadings’. In French: ‘conclusions’.

Statement of Claim: Document containing the claim.

Statement of Defence: Document containing the defence.

Questionnaire for national reports

Part 1: Main features of the national enforcement procedures for recovery of monetary claims (general overview)

1.1. Briefly present domestic legal sources on enforcement.

Constitution of the Republic of Lithuania and international legislation establish a person's right to judicial protection[17]. In some cases we can speak about a complete exercise of the right to judicial protection only when court not only makes a court judgement, but also the judgement is implemented. The implementation of court judgement is recognised according to Article 6(1) of the integral part of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 [18]and Constitutions of most countries establish the right to judicial protection. The country that has accepted the duty to ensure the protection of rights of material subjects, shall implement it by ensuring to every legal subject the protection of its violated rights and interests and a forced execution of a court judgement made during the civil process. The mechanism of this coercion is in the hands of the government. The process of enforcing court judgements determines the implementation of the constitutional right to judicial protection and an effective protection of subjective rights or interests protected by law of injured or disputed persons. Otherwise, both the right to judicial protection and the court judgement would be declaratory, and that at the same time reduces society's confidence in courts and their authority.

Upon recognising the enforcement of court judgements as an integral part of the right to judicial protection, it is important to ensure that the process of enforcement went in compliance with all rules established by law and legal principles. Norms regulating the enforcement process in Lithuania, as in many other European countries, are incorporated in to code of civil procedures. The procedure for applying the provisions of the enforcement procedure established in Part VI of CPC of the Republic of Lithuania (Article 583(1) of CPC of the Republic of Lithuania) shall be prescribed by the Judgement Enforcement Instruction[19]. The source of enforcement process is the Law on Enforcement officers of the Republic of Lithuania. Separate issues of the enforcement process are also regulated by other legislation: Registry Law on Acts of Property

[17] European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms // State Gazette. 1995. No. 40 987; Constitution of the Republic of Lithuania // State Gazette. 1992. No. 33 1014; Code of the Civil Procedure of the Republic of Lithuania // State Gazette. 2002. No. 36 1340; Law on Courts of the Republic of Lithuania // State Gazette. 2002. No. 17 649.

[18] Baltutytė E. Application aspect of Article 6 of European Convention for the Protection of Human Rights and Fundamental Freedoms // Lietuvos CPK įgyvendinimo problemos: nacionaliniai ir tarptautiniai aspektai. – Vilnius: Legal Information Centre, 2007. Pp. 38.-45.

[19] Order by the Minister of Justice of 07 August 2015 No. 1R-222 “Regarding the Amendment of the Order by Minister of Justice of 27 October 2005 No. 1R-352 “Regarding the Confirmation of the Judgement Enforcement Instruction” (TAR, 2015-08-10, No. 2015-12177)

Arrest[20]; provisions of the Enforcement officers' Information System[21]; Provisions of Information Systems of Cash Restrictions[22] and other legislation, mostly intended to regulate the Enforcement officer's and assistant Enforcement officer's activity.

1.2. Was there a recent reform or is there an ongoing reform in progress? If yes, please comment the changes introduced by the reform or proposed solutions.

The section of CPC of the Republic of Lithuania of 1964 (was valid until 31 December 2002) that regulated the enforcement process was amended a lot of times after the restoration of the Lithuanian Independence on 11 March 1990. These amendments were made because public relations were changing fundamentally, market tendencies were starting to be applied to them, and the legal norms of that CPC were not applicable. Legal norms regulating the enforcement process did not comply with the needs of that time, therefore, together with the reform of an entire legal system, the reform of enforcement of court judgements had to also take place. New legal forms regulating the enforcement process were implemented in 2002 in the CPC of the Republic of Lithuania, and the institutional reform of Enforcement officers was carried out according to the outline of this reform [23]. The following main goals were established to the institutional reform of Enforcement officers: 1) establish to Enforcement officers a status of persons providing professional services; 2) create a modern and effective procedure of enforcing decisions made by courts and other institutions; 3) legally confirm the principal provision that the costs of enforcing the decisions made with regard to the dispute of individual persons shall be covered not by the government, but by the parties of the dispute.

Until 01 January 2003 there was a system of governmental offices of court Enforcement officers in Lithuania. Each district court had a Enforcement officer office that had 2-36 Enforcement officers. In total, before the reform there were around 300 governmental court Enforcement officers in Lithuania. On 01 January 2003 the Enforcement officer reform was implemented, the goal of which was to create an effective system of enforcing decisions made by court and other institutions and ensure the prevention of failure to pay debts. The reform was implemented upon establishing the Law of the Republic of Lithuania on Enforcement officers in 2002 and the Code of Civil Procedures of the Republic of Lithuania in 2002. The functions of enforcing court judgements after the reform are performed by private persons providing professional services – Enforcement officers.

Prior to the reform, around 3 million EUR out of state budget were spent annually to support governmental court Enforcement officers but the system of enforcing decisions was ineffective: court Enforcement officers would recover only around 9 percent to the

[20] Registry Law on Acts of Property Arrest of the Republic of Lithuania (Gazette 1999, No. 101-2897; 2012, No. 6-182).
[21] Order by the Minister of Justice of the Republic of Lithuania of 30 December 2002 No. 400 “Regarding the Provisions of Public Procurement of Bailiffs, Policy of Public Procurement of Bailiffs, Policy of Inspecting Bailiffs' Activities, Provisions of Bailiffs' Information System, Committee Provisions of Bailiffs' Assessment, and Confirmation of Bailiffs' Assessment Rules” (Gazette 2003, No. 2-75).
[22] Order by the Minister of Justice of the Republic of Lithuania of 19 April 2012 No. 1R-126 “Regarding the Confirmation of Provisions of the Information System of Cash Restrictions” (Gazette 2012, No. 48-2359).
[23] Decisions of the Government of the Republic of Lithuania of 27/12/1999 No. 1484 “Regarding the Confirmation of Outline of the Institutional Reform of Court Bailiffs” // State Gazette. 1999. No. 114.

creditors out of the recovered debt. The system with the main function to make decisions performed this function episodically, operated at loss and basically deteriorated the work of other law enforcement authorities. Such in effectiveness of the system is related to insufficient qualifications of court Enforcement officers (around 70 percent did not have a legal education); court Enforcement officers were not concerned financially (they basically did not receive (they received 5 off the actually recovered amount but such system was effective only upon recovering higher amounts) a payment for a successful enforcement of court judgement).

After reforming the system of governmental offices of court Enforcement officers to a private system, from 1 January 2003, instead of 338 court Enforcement officers started working 126 private Enforcement officers who were granted a status of persons providing professional services, by leaving certain obligations of the Minister of Justice to control the Enforcement officers' activities. Legally a principal provision was established which declared that the costs of enforcing the decisions made with regard to the dispute of individual persons shall be covered not by the government, but by the parties of the dispute[24].

1.3. Please indicate whether there exists an underlying philosophical or dogmatic framework for your system of enforcement.

Systematic research of the enforcement process since 1988 basically concentrated at the Institute of Civil Procedure (now Institute of Private Law) of the Faculty of Law of Mykolas Romeris University. The interest in this topic was firstly taken by V. Višinskis, later he was joined by E. Tamošiūnienė. Both before the reform and after it, the issues of the enforcement process was rather widely discussed in dissertations and academic publications[25]. These authors contributed greatly to reforming the system of enforcing

[24] Information provided by the Lithuanian Chamber of Bailiffs, www.antstoliurumai.lt.

[25] Višinskis, V. *Teismo sprendimų vykdymo procesinės problemos.* Doctoral Dissertation, social science, law (01 S). Vilnius: Lithuanian Academy of Law, 2000; Stauskienė, E. *Teismo vaidmuo vykdymo procese*. Doctoral Dissertation, social science, law (01 S). Vilnius: Mykolas Romeris University, 2006; Stauskienė, E.; Višinskis, V. *Teismo sprendimų vykdymas*. Vilnius: Saulelė, 2008; Stauskienė, E. Skubiai vykdytinų teismo sprendimų instituto taikymo problemos. *Jurisprudencija.* 2005, 69(61): 90–98; Stauskienė, E. Teismas – teisinių santykių vykdymo procese subjektas. *Mokslinės praktinės konferencijos „Teisė į teisminę gynybą bei jos realizavimo praktiniai aspektai“, vykusios 2006 09 14–15, Vilniuje, mokslinių pranešimų rinkinys*. Vilnius: Mykolas Romeris University, 2006; Stauskienė, E. Teismo sprendimų įvykdymo atgręžimas. *Jurisprudencija*, 2006, 4 (82): 76–82; Vėlyvis, S.; Višinskis, V.; Žalėnienė, I. Antstolio veiksmų apskundimas. *Jurisprudencija*. 2007, 1(91): 21–27; Vėlyvis, S.; Stauskienė, E.; Višinskis, V. Pagrindinės teismo sprendimų vykdymo taisyklės romėnų teisėje. *Jurisprudencija*. 2007, 2(92): 10–20; Ambrasienė, D.; Višinskis, V. Vykdymo proceso šaltiniai. *Šiuolaikinės civilinio proceso teisės paskirtis*. Vilnius: Centre of Registers, 2008, p. 44–60; Višinskis, V.; Ambrasienė, D. Teismo vykdomųjų dokumentų išdavimo tvarka. *Jurisprudencija*. 2008, 2(104): 39–47; Višinskis, V. Teismo sprendimo vykdymo vieta. *Jurisprudencija*. 2006, 1(79): 128–137; Višinskis, V. Ne teismo išduodami vykdomieji dokumentai. *Jurisprudencija*. 2008, 7(109): 47–55; Višinskis, V. Raginimas įvykdyti sprendimą. *Jurisprudencija*. 2008, 1(103): 22–29; Višinskis, V. Skolininko turto paieška vykdymo procese. *Jurisprudencija*. 2006, 3(81): 99–105; Višinskis, V. Kai kurios turto realizavimo vykdymo procese problemos. *Jurisprudencija*. 2005, 77(69): 108–114; Stauskienė, Egidija; Žalėnienė, Inga. The distinctive features of representation in enforcement proceedings // Jurisprudencija : mokslo darbai = Jurisprudence : research papers / Mykolas Romeris University; Stauskienė, Egidija; Višinskis, Vigintas. Problems of forced execution of resolution to impose fine in the republic of Lithuania // Visuomenės saugumas ir viešoji tvarka (4) : mokslinių straipsnių rinkinys = Security of society and public order : proceedings of scientific articles (4) [electronic source] / Mykolas Romeris University. Višinskis, Vigintas; Stauskienė, Egidija. Resolution to impose an

court judgements in Lithuania: they took part in preparing amendments and supplements to CPC, Law on Enforcement officers, Judgement Enforcement Instruction, currently they are included in the CPC supervision committee compiled by the Minister of Justice of the Republic of Lithuania. V. Višinskis was the first founder of the project of part VI of CPC regulating the enforcement process.

1.4. Are there different types of enforcement procedures in your member state?

All enforcement procedures are carried out by the enforcement officer (bailiff). However, depending on the sum of enforcement, the procedures may differ. For instance, in case where the sum of exaction is less than 57 Eur, the procedures of enforcement are simpler than in the cases where it is higher (Article 5 of the Rules on the Enforcement of Judgments). Also, the enforcement procedures may defer according to the means of enforcement (listed in 1.8) or the subject of enforcement. For instance, CPC establishes certain particularities regarding the exaction from salary, securities and enforcement of non-pecuniary judgments.

Comment: *Does the legal framework in your member state provide for different and/or multiple types of enforcement procedures in civil or commercial matters, e.g. does it envisage special regime for enforcing money claims on the one hand and non-money claims on the other? does it envisage shortened/simplified/summary proceedings for certain claims etc? Also, explain interconnections between administrative and civil enforcement procedures, if existent and any other possible interrelation with other fields of law.*

1.5. Is your system of enforcement considered to be centralized or decentralized?

Comment: *Decentralization may manifest itself in various forms. For instance, in decentralized jurisdiction (both subject-matter and territorial come into play); decentralized rules of procedure (in federative states where different levels (both horizontally and vertically) of government and authorities have to be taken into account; the power and scope of the court and/or other authority/body in enforcement matters – does it hold competence in all mattes enforcement or are certain acts (‘steps’ of the enforcement procedure) ascribed/delegated to different authorities. Please provide a general overview on the above matter. In addition, please specify which authority/body is competent in matters of (refusal of) recognition and enforcement (is there a special authority/body at the ‘level of the state’ which decides on said matters, or does the individual for instance – akin to countries with common law – file an action on the foreign judgment.*

The system of enforcement in Lithuania is centralized. All enforcement procedures are carried out by the enforcement officer. The Court of Appeal of Lithuania is the only court in Lithuania who hears requests for the recognition of the decisions of foreign courts, international courts and arbitration awards and their enforcement in the Republic of Lithuania.

administrative fine as executive document // Visuomenės saugumas ir viešoji tvarka (4) : mokslinių straipsnių rinkinys = Security of society and public order : proceedings of scientific articles (4) [electronic source] / Mykolas Romeris University.

1.6. The authorities/bodies and agents involved. Which authorities/bodies have competence with respect to enforcement?

A lot of actions in the enforcement process in Lithuania are taken by the subject enforcing court judgements – the Enforcement officer. The main Enforcement officer's objective is to execute by force the order formulated in the execution document. The latter are not deemed jurisdiction because disputed material legal issues are not settled here, related evidence is not investigated and the material law is not resolved.

The Enforcement officer gains a right to perform its rights and provide services in presence of all terms and conditions established in Article 8 of the Law on Enforcement officers of the Republic of Lithuania that grant the right to operate as Enforcement officer: the person seeking to become a Enforcement officer must have won a public procurement, insured his/her civil liability, must be assigned by the minster as Enforcement officer, and given an oath under the procedures of the Law on Enforcement officers of the Republic of Lithuania. The person recognised as Enforcement officer, after giving an oath under the established procedures, is included in the list of Lithuanian Enforcement officers, he/she is provided with a certificate confirming the right to operate as Enforcement officer and the Enforcement officer's certificate and badge. The main participant of the enforcement processes is the Enforcement officer. He/she is empowered by the State to carry out the enforcement of writs of execution, to make material ascertainments on the factual circumstances, to serve written proceedings, and any other functions provided by law. The main acts regulating the Enforcement officer's legal status are the Law on Enforcement officers of the Republic of Lithuania[26] and CPC of the Republic of Lithuania. Separate issues related to the Enforcement officers' activities are also regulated by other legislation. According to Article 585 (1) of the CPC of the Republic of Lithuania, the Enforcement officer's requirements are to implement the decisions, provide available information about the debtor's financial situation, access the documents necessary to enforce judgements or to refrain from action that would interfere with the enforcement of judgements, except for cases prescribed by law, binding on all parties and should be met through the time limit set by Enforcement officer. The Enforcement officer's authorisations are provided only to perform functions, the Enforcement officer's requirements are not related to the enforcement of judgements, e.g. while providing intermediary and other services, to other persons are mandatory as much as it is established by law. In all cases during the Enforcement officer's activities, the priority should be given to the performance of functions. He/she may provide services only if they do not contradict the performance of other functions. Overbearing powers to ensure jurisdiction are granted to the Enforcement officer only when performing functions that are performed in a process form. When providing services, the Enforcement officer has not got such overbearing powers and acts only as a person providing free professional services.

Upon performing enforcement actions, the Enforcement officer may not exceed his/her powers. The Enforcement officer must act in such a way that enforcement actions are legitimate and carried out not only complying with the law, but actually ensuring the

[26] Law on Bailiffs of the Republic of Lithuania // State gazette, 2002, No. 53-2042.

protection of the enforcement parties' rights and legitimate interests (Article 3 of the Law on Enforcement officers of the Republic of Lithuania). It is marked in the practice of the Supreme Court of the Republic of Lithuania that the rules of enforcing court judgements require from a Enforcement officer, as from a subject of public law, to act only in accordance with his/her powers (competence) (*intra vires*), and any action *ultra vires* is deemed a breach of the principle of legality (refer to the Ruling of the Extended Panel of Judges of the Civil Case Division of the Supreme Court of Lithuania of 11 June 2008 made in the civil case No. 3K-7-277/2008; ruling made on 08 February 2010 in the civil case of Enforcement officer No. 3K-3-40/2010; ruling made on 25 May 2012 made in the civil case No. 3K-3-157/2012; etc.). The provisions above and their explanation in the practice of the Court of Cassation pose a conclusion that the Enforcement officer's duty to seek a faster and real enforcement of judgement must be carried out with the consideration that the requirements of law and the enforcement parties' rights and legitimate interests must not be violated. A person who fails to comply with the demand of the Enforcement officer or otherwise hinders the Enforcement officer from executing enforceable instruments, may be imposed a fine in the amount of up to two hundred eighty nine EUR by the court for every day of failure to perform obligations or impediment. If a Enforcement officer is hindered from executing enforceable instruments, the Enforcement officer may call the police to eliminate the hindrance (Article 585 (2) of CPC of the Republic of Lithuania). The hindering of the Enforcement officer's activities to enforce the court judgement is sanctioned under criminal law. According to Article 231 of CC of the Republic of Lithuania, like the liability for other crimes and criminal offences, hindering the activities of a judge, prosecutor, pre-trial investigation officer, lawyer, or Enforcement officer is sanctioned under criminal law. For such acts the following punishments may be applied: public works, fine, arrest, restriction of freedom, and imprisonment.

Enforcement officers, upon performing their functions, must comply with the principles of legality of activities, cooperation and democracy and civil process. The Enforcement officer must perform professional functions in fairness, refrain from disclosing circumstances of a personal life that became available to him/her during professional activities, keep commercial secrets and other secrets protected by law. Upon executing enforcement documents, the Enforcement officer must take all legal measures to properly protect the judgement creditor's interests, without violating rights and interests of other parties of the enforcement process. In compliance with Article 3(2) of the Law on Enforcement officers of the Republic of Lithuania, Enforcement officers are independent and their activities are regulated by the Constitution of the Republic of Lithuania, international treaties of the Republic of Lithuania, Law on Enforcement officers of the Republic of Lithuania, other legislation Code of Ethics for Enforcement officers.

In the enforcement process of Enforcement officers there is a series of procedural rights and duties established. A Enforcement officer must on his own initiative undertake every legal measure to ensure that a judgement is satisfied as quickly and realistically as possible and actively help the parties to defend their rights and legally protected interests (Article 634(2) of CPC of the Republic of Lithuania). The Enforcement officer performs his/her functions for a reward. According to Article 610 of CPC of the Republic of Lithuania, all enforcement costs shall be covered by the judgement creditor. After the judgement has been enforced, such costs shall be recovered from the debtor.

Exceptions to the payment of enforcement costs may be specified in the Judgement Enforcement Instructions (Article 609(2) of CPC of the Republic of Lithuania).

Certain procedural enforcement actions may be carried out by the assistant Enforcement officer. According to Article 30 of the Law on Enforcement officers of the Republic of Lithuania, an assistant Enforcement officer shall have a right to serve written proceedings on behalf of the Enforcement officer and under his written authorisation, to conduct proceedings other than making material ascertainments, instituting or staying execution proceedings, returning of a writ of execution, sale of property, collocation and distribution of pecuniary assets to the plaintiffs, computation of enforcement expenses. Upon carrying out enforcement actions, the assistant Enforcement officer must indicate that he/she is acting on behalf of the Enforcement officer and indicate that he/she has got a written authorisation issued by the Enforcement officer to carry out such actions.

1.7. How ‘private’ is the system in actuality, if it is private at all?

All enforcement proceedings are carried out by the enforcement officer the under procedural supervision of the district court in which territory the enforcement officer’s office is established. Enforcement officer’s demands are obligatory and no one can hinder enforcement officer to enforce the judgment (article 585 of the CPC). However, the principle of dispositivity is applicable in the enforcement stage. For instance, the creditor and debtor have a right to conclude a peaceful agreement to settle the dispute (article 595 of the CPC), enforcement officer can delay the enforcement if the recover demands (article 627(1) of the CPC), the enforcement procedure is terminated if the recover declined the exaction (article 629 (1)(1) of the CPC), if the recover demands to exact from certain assets, such demand is obligatory to the enforcement officer (article 662(2) of the CPC). The creditor’s and debtor’s rights are listed in articles 639 and 643 of the CPC accordingly.

Comment: *The above term ‘private’ refers to the role of a ‘private individual’ in enforcement proceeding (both the creditor, debtor and other involved persons), i.e. how much significance do his actions and omissions hold; how much does he partake in advancing the procedure to later stages; is he involved in the designation of means of enforcement etc. In other words, describe the weight that the principle of ‘dispositivity’ holds in your system, in contrast to the ex officio powers of the court or other authority/body.*

1.8. Briefly enumerate the means of enforcement (methods which serve to procure involuntary collection of the claim).

Forced enforcement means are:

1) Exaction from debtor’s funds and wealth or property rights;
2) Exaction from debtor’s wealth and money amount which are in possession of third persons;
3) Prohibition for other persons to transfer money, wealth or execute other obligations to the debtor;
4) Seizure of documents, which confirm debtor’s rights;

5) Exaction from debtor’s salary, pension, scholarship or other profits;
6) The sezuire of certain things, mentioned in the judgment from the debtor and transfer to the recoverer;
7) Administration of debtor’s wealth and the use of profits from such wealth to cover the exaction;
8) Obligation to debtor to perform certain acts or refrain from doing them;
9) Set off of the opposite exacted mutual sums;
10) Other means, established by law.

1.9. In short, present the underlying principles which govern the enforcement procedure in short.

There are a few main principles in the enforcement procedure: principle of territoriality of enforcement officer, principle of good faith, principle of co-operation, principle of economy and concentration, principle of enforcement officer’s legal expectations for renumeration.

Also, the debtor must pay the procedural interests (5 percents for natural persons and 6 percents for legal entities) if the debtor fails to perform a pecuniary obligation from the commencement of judicial proceedings in the court until the full enforcement of the judgment.

Comment: *Focus on both the principles which adhere to enforcement procedure in international capacity, e.g. territorial, sovereignty principle regarding coercive measures and the principles relating to procedural aspects in narrower terms e.g. principle of efficiency, protection of the debtor, priority principle, publicity, (non)mandatory hearing etc.*

1.10. Does the stage of ‘permitting the enforcement’ exist in your legal system? Please comment, e.g. German ‘*Titel mit Klausel*’.

Comment**:** *The stage of 'permitting the enforcement' is a mandatory phase of the enforcement proceedings found in certain member states, in which the court examines the enforcement title and specifically checks if all the (procedural and substantive) prerequisites for enforcement all met. If all prerequisites are found to be present, then the court allows for the enforcement to be undertaken and the enforcement proceedings enter the following phase of the procedure. The court thus issues a ‘decision’ or ‘order’, permitting the enforcement. The described phase is a pre-course to further enforcement action. It can also act in the capacity of ‘title import’ for foreign judgements, which means that member states withholding this stage will not be as greatly affected by the abolition of exequatur as those lacking it.*

1.11. Subject-matter jurisdiction in enforcement proceedings. Please provide a short presentation of the judicial system - courts system.

All enforcement proceedings are carried out by the enforcement officer under the procedural supervision of the district court in which territory the enforcement officer’s office is established (article 594 of the CPC). An action for the enforcement officer’s procedural actions may be submitted to the district court within 20 days from the day when the claimant knew or ought to have known about these actions (Article 512 of the CPC). The claim of appeal against the judgment of the court may be submitted to the second instance of appeal (article 513 (2) of the CPC).

1.12. Territorial jurisdiction in enforcement proceedings. Please provide a short description in this regard.

According to article 590 of the CPC, the enforcement officer operates (performs enforcement proceedings) in the certain territory. Thus, the principle of territoriality is applicable. However, the enforcement officer may continue the enforcement proceedings in the territory of another enforcement officer, if it I necessary for the successful enforcement of the judgment (article 591(1) of the CPC).

1.13. How are conditional claims enforced in your member state?

According to article 587(8) of the CPC, notary’s writ of enforcement can be issued for protested and non-negotiable promissory notes, cheques, and notary’s instructions for the conclusion of hereditary assets list.

1.14. Legal succession after the enforcement title was obtained: What has to be done to proceed with the enforcement against the successors? How about the creditor’s successors, are any changes required in the enforcement title?

Pursuant to article 48 of the CPC, the succession of procedural rights is possible in any stage of proceedings. Article 596(1) establishes that the court of the first instance in which the case was decided may change the creditor or debtor in the enforcement proceedings if the enforcement officer or interested persons submits a claim. If the enforcement proceedings were commenced not on the basis of court’s judgment, the district court in which the enforcement officer’s office is established may change the creditor or debtor. According to article 596(2), all actions, which were performed until the succession of the procedural rights are mandatory to the successor as much as they were mandatory to the previous person in the proceedings.

1.15. Enforcement titles: Decisions (judgments and other court decisions), settlements, public documents. Please elaborate – how does your system define enforcement titles, e.g. via enumeration, general clause etc? Also, provide a short commentary.

Enforceable instruments shall be the following: enforcement orders issued on the basis of court judgements, sentences, decisions, rulings, court orders, resolutions of institutions and officials in the proceedings regarding administrative law violations to the extent they relate to the exaction of possessions, other decisions of institutions and officials the execution of which is regulated by law under the procedures of the civil procedures.

Court judgements do not become enforcement documents by themselves that are enforced by Enforcement officers. Exceptions – court order regarding the application of

provisional safeguards and court orders that may be provided by the judgement creditor to the Enforcement officer for execution. In all other cases, on the basis of judgements made, court issues a separate enforcement note to the judgement creditor.

The judgement creditor is entitled to to provide such enforcement document to the Enforcement officer of his/her choice, acting in the territory of the judgement creditor's property, residential or work area. Enforcement actions are carried out on the basis of the enforcement documents. According to Article 586(2) of CPC of the Republic of Lithuania, it is prohibited to carry out execution actions without an enforceable instrument.

The procedures of the enforcement are applied not only to court judgements or other procedural documents, but also to enforcement documents issued by other institutions (e.g. arbitrage judgements, prosecutor sanctions regarding eviction of physical persons of residential buildings and other prosecutor's rulings as far as they are related to the recoveries of property type; notary's enforcement notes according to protested or non-protested bills or cheques and notary's executive orders regarding compiling a description of inherited property (supplement of the description of inherited property); decisions of the labour disputes committee). It is one of the exclusive features of the enforcement process as the final stage of civil procedures. Enforcement procedures may begin not only after the court makes a judgements, i.e. after the process finishes the preceding stages: after bringing the civil proceedings, preparation and legal investigations and maybe case investigation under the appeal and cassation, but also after no investigation of the case in court, e.g. enforcement of rulings of institutions and officers in the cases of administrative law violations as far as they are related to o the recoveries of property type (Article 587(3) of CPC of the Republic of Lithuania). These documents are executed under the civil proceedings because there are no special proceedings created to execute the documents issued both in the administrative process, the arbitrage, and other institutions that would help to enforce the decisions made by these institutions. The list of documents subject to enforcement is provided in Article 584 of CPC of the Republic of Lithuania that establishes that the documents subject to enforcement are the following:

1) rulings, decisions, resolutions and orders of courts and arbitration in civil case, also cases from administrative legal relations;
2) court’s rulings, decisions and resolutions in the criminal proceedings – as much as they are linked with the execution from the assets, execution of penalties of legal entities’ activities restriction and liquidation;
3) court’s resolution in the cases of administrative violations as much as they are linked with the execution from assets;
4) peaceful agreements, confirmed by the court;
5) foreign courts’ and arbitrations’ rulings as established in international treaties and laws;

According to the rules, established in part VI of the CPC, executed are also:

1) resolutions of institutions and officers in administrative violation cases as much as they are linked with execution of wealth;
2) other decisions of institutions and officers, then international treaties and law establish their execution process.

Execution actions are performed on the basis of the writ of execution. The non-exhaustive list of writs of execution is established in article 587 of the LR CCP, according to which, writs of execution are:

1) Writs of execution, given on the basis of courts‘ rulings, decisions or resolutions, also the basis of arbitration‘s rulings and resolutions;
2) Court‘s orders;
3) Court‘s ruling and resolutions – when they are writs of execution according to the laws;
4) Court‘s decisions and resolutions of institutions and officers for the application of provisional measures;
5) Court‘s ruling for the restriction of legal entity and liquidation of legal entity;
6) Resolutions of institutions and officers in the cases of administrative violations as much as they are linked with exaction from assets;
7) Prosecutor’s sanctions for eviction of natural persons from the living quarters or other prosecutor‘s resolutions as much as they are linked with exaction from assets;
8) Notary‘s writs of execution according to protested or non-negotiable promissory notes or cheques and notary‘s execution orders for conclusion of hereditary assets list (addition of the hereditary assets list);
9) Decisions of labour disputes commissions;
10) Decisions of other institutions and officers, which procedure of execution is established by law.

Enforcement notes issued on the basis of court judgements may be submitted for execution within 5 years after the court decision became effective. However, in some cases shorter terms are established. For instance, if the enforcement documents are issued because of the administrative fines that are not paid, if they are issued not by courts but by other institutions on the basis of decisions made not under the dispute procedures. The terms for submitting the rulings of officers or institutions for execution are established by respective laws.

1.16. Requirements for issuing the certificate, certifying that the judgment is enforceable (confirmation of enforceability) - procedural steps. Which procedural steps must be undertaken, to obtain the certificate?

When the enforced decisions (which shall be enforced) comes into force, the court of the first instance issues a writ of enforcement on the basis of recoverer‘s written claim. The court may issue a writ of enforcement to the recoverer without his claim in the cases when the assets is confiscated or the monetary sums are exacted to the state‘s budget, when the damage made by the criminal act is exacted, when manintenance is exacted, damage which results in mutilation or health, also when the life of preserver is taken away (article 646 parag. 1 of the LR CCP). In the enforcement proces, the principle of disposition is valid, which, when the public interest exsists, seeking to preserve the most harmful social groups, is restricted, thus is the cases mentioned in the law, the writ of enforcement is not given and without recoverer‘s claim. In the case of the urgent enforcement, on the basis of recoverer‘s claim, the writ of enforcement is issued not latter than the next working day by the court of the first instance, or the court of appeal or he court of cassation which renders the decision of urgen enforcement. The

writ of enforcement is issued to the recoverer by recorded deilivery or send by the registered mail. Copies of the documents of the seizure of assets and other documents, necessary for the enforcement of decision are added to the writ of enforcement. The issue of the writ of enforcement is marked in the case.

1.17. Service/notifications of documents and decisions (provide a wholesome picture of service and notification in the enforcement proceedings). Please present an overview of said activity, e.g. which documents are served and the method of service, how notifications are made.

Various means of delivery of procedural documents are applicable in the Lithuanian civil process.

1.18. **Division between enforcement and protective measures.**

1.18.1. What and/or which provisional measures are possible (are provided for) in your member state? Enumerate and briefly describe.

Provisional measures may be:

1) Seizure of respondents’ immovable property;
2) Record in the public registry of prohibition to transfer the ownership rights;
3) Seizure of movable property, money or property rights, belonging to the respondent or to the respondent and third persons;
4) Detention of a thing which belongs to;
5) Appointment of the administrator of respondent’s assets;
6) Prohibition to the respondent to participate in certain contracts or make certain actions;
7) Prohibition to other persons to transfer assets or implement other obligations to the respondent;
8) Prohibit to respondent to leave his permanent domicile and (or) prohibition to take out a child from the permanent domicile without the consent of the court in the exceptional cases;
9) Delay of the realization of the assets, when the claim is submitted for the annulment of seizure to such assets;
10) Delay of execution in the process of execution;
11) Adjudgement of temporal material maintenance or establishment of provisional measures;
12) Obligation to perform actions, preventing the harm to appear or increase;
13) Other means established in laws or applied by the court, which, if not applicable, may cause a complication or impossibility to execute decision.

Concern: what can be recognised and enforced in other EU MS?

A great importance with regard to ensuring the execution of a future court judgement is given to the institute of provisional safeguards. As court applies provisional safeguards, the relationship between the contradictory procedure and the enforcement process and the mutual dependency of the two institutes is revealed. Even though the terms for case investigation in

Lithuania are recognised as some of the shortest terms in Europe[27], quite a long time may pass from going to court to court judgement becoming effective. Hence, because of various reasons, may arise for the execution of the court judgement. In order to ensure that the enforcement of the court judgement favourable to the plaintiff did not become worse or impossible, the provisions of CPC of the Republic of Lithuania establish the institute of provisional safeguards. The provisional safeguards may be applicable in any stage of the process, except for the final stage of the civil process. According to Article 144(3) of CPC of the Republic of Lithuania, provisional safeguards may be applied even before filing of a claim. It confirms that the application of provisional safeguards regardless of whether they are applied before filing of a claim or after that in other stages of the process, is an effective guarantee for enforcing a real court judgement. This institute ensures the effectiveness of enforcement procedures. Intention of provisional safeguards is to prevent impediment of enforcement of a court judgement or making it impossible (Article 144(1) of CPC of the Republic of Lithuania). The final judgement is a procedural court document that solves the dispute finally and grants the claim and/or counter-claim of claimed material legal demands in full or in part, or to dismiss the claim and/or counter-claim (Article 260(1) and 270(5.1) of CPC). Hence, the possible content of the future court judgement should be evaluated according to the legal requirements stated in the case. Since the future court judgement grants the claimed requirements in the claim (counter-claim), in establishing, whether there is a reason to apply provisional safeguards, it should be assessed if, after the court judgement favourable to the plaintiff is made, i.e. after his/her claims are satisfied, execution of such judgement may become worse or impossible. Due to this reason, it is rightfully acknowledged in court practice that court may apply only those provisional safeguards that are related to the claims made and can ensure the enforcement of the future court judgement if these requirements are satisfied[28].

The goals of both enforcement of court judgements and provisional safeguards actually coincide, though the difference between these two institutes is preserved. Provisional safeguards have to do with the procedural legal and not material legal nature. Even though these safeguards are intended to ensure the requirements of material legal manner, they are not material legal civil remedies, i.e. persons' right restrictions of the material legal nature are applied for the procedural purposes[29]. Procedural legal nature of provisional safeguards determine the following: 1) provisional safeguards are always interim restrictions[30], their application is limited with respect to time and they are valid only until the final dispute resolution; 2) such measures are applied for prevention[31], in attempt to avoid the impossibility or worsening of the enforcement of the future court judgement; 3) provisional safeguards have no preliminary or *res judicata* power[32]. Upon making a judgement, court may also apply the measures of ensuring enforcement of the judgement that differ from provisional safeguards, even though they both may be (with certain exceptions, e.g. entry in one register regarding prohibition to transfer property rights, as per Article 145(1.2) of CPC of the Republic of Lithuania) executed under the procedures of enforcement. The defendant may request the court to substitute a provisional safeguard or eliminate it. Debtor has no such right, but he/she has a right to appeal the Enforcement officer's actions if he/she it considers the provisional

[27] http://www.teismai.lt/data/public/uploads/2016/04/2016-eu-justice-scoreboard.pdf
[28] Supreme Court of the Republic of Lithuania, Review of General Questions Regarding the Application of Provisional Safeguards, Court Practice No. 34
[29] Ruling of the Court of Appeal of Lithuania of 12 May 2016 made in the civil case No. 2-1021-241/2016.
[30] Ruling of the Court of Appeal of Lithuania of 14 January 2016 made in the civil case No. 2-25-407/2016.
[31] Ruling of the Court of Appeal of Lithuania of 20 November 2014 made in the civil case No. 2-1857/2014.
[32] Ruling of the Court of Appeal of Lithuania of 28 January 2015 made in the civil case No. 2-90-241/2015.

safeguards to be applied illegally. The defendant also is entitled to appeal the Enforcement officer's actions to arrest property that cannot have recovery directed at it. In case of the application of provisional safeguards, the defendant's interests are also protected, by establishing the security of possible defendant's loss regarding the security of provisional safeguards. In the enforcement process, this institute is not applied because the validity of the judgement creditor's requirements is already established by the court judgement in effect. In our opinion, with the application of provisional safeguards and measures to ensure the enforcement of judgement, security for the enforcement of a possible court judgement is created. These measures are used to seek the enforcement itself. They are different stages of execution of one goal: remedy of the rights that are possibly violated by ensuring the security for the enforcement of future judgement if the rights are acknowledged and the rights defended under judicial proceedings. The last stage of executing this goal is the actual enforcement of court judgement.

1.18.2. Difficult requirements for protective measures. Which provisional measures are possible (are provided for) in your member state and what are the requirements for issuing them? Please accompany the answer with a comment on the ‘difficulty’ of actually meeting those requirements.

All provisional measures established in article 145(1) of the CPC may be applicable. There are additional, specific provisional measures in the cases of public procurements (article 423^7 of the CPC).

Article 144 of the CPC establishes two requirements for the application of provisional measures: the claimant justifies the claim (*prima facie*) and the enforcement of the judgment may become difficult or impossible. According to the judicial practice the first requirement means that the claimant shall prove that the claim is reasonable and grounded. The second requirement is coupled with the risk of the proper enforcement of the judgment. The claimant must prove both requirements, however, the respondent may submit the objection for their application.

Some peculiarities are in the application of provisional measures in the public procurements procedures. According to the judicial practice, it is necessary to assess which legal value could be less hampered by the application of measures: the public interest to get the object of the public procurement urgently or to ensure the legality of the public procurement procedures.

1.19. Comments and critical approach to your legislation. Please identify deficiencies of your national system, e.g. length of enforcement proceedings; success rate of enforcement; interconnectivity and over-lapping to other areas of law (insolvency proceedings).

Part 2: National procedure for recognition and enforcement of foreign judgments

2.1. Which of the three systems is enacted in your system, disregarding EU or other international acts: (1) *Révision au fond*; (2) *Contrôle limité*; (3) *Ex lege*.

The system of *Contrôle limité* is enacted in Lithuanian civil procedure law rules regulating recognition of foreign judgments. There is even directly stated in Part 4 Article 810 of the Code of Civil Procedure of the Republic of Lithuania that *"when resolving recognition of a judgment of a foreign court, lawfulness and reasonability of the judgment may not be checked"*. *Révision au fond* is directly prohibited in Lithuanian law, unless stated otherwise. This system first of all is applicable when recognising foreign judgments in Lithuania on the basis of national law in the absence of European and/or international basis for recognition), but this rule shall also be applied in case, when recognition of foreign judgments in Lithuania is south according to EU or other international acts.

2.2. What is the concept of ‘recognition’ and ‘enforcement’ of foreign judgments in your member state?

Comment: *Please firstly evaluate the terms on their own and later-on conduct a comparison. In doing so, refer to the established theories on the subject-matter which strive to provide an explanation on the effects of decision on recognition and/or enforcement (does the decision hold constitutive effects; does the decision provide for a extension of effects from the state of origin and state of enforcement; does it cumulate both effects).*

There is no clear and comprehensive definition of ‘recognition’ provided in Lithuanian law and in the doctrine. There is no legal act which defines precisely its meaning.

Only The Supreme Court of Lithuania (court of cassation instance which has competence to develop case law in Lithuania) has stated in its former jurisprudence that the recognition of a foreign judgment means that it:

1) first of all, acquires the effect of *res judicata* in the recognising state;

2) has prejudicial effect;

3) the state recognising a foreign judgment at the same time admits that the foreign state that rendered the judgment abided by the principles of fair proceedings;

4) becomes enforceable in the recognising state, i.e. must be enforced in the same way as a national judgment“.

Such definition of the recognition and declaration of enforceability of foreign judgments in the case-law of the Supreme Court of Lithuania means that Lithuania followed ***the theory of equivalence*** (*Gleichstellungstheorie*) that assigns the same legal effect to foreign judgments and the recognition of such judgments leads to the same legal

consequences as those of an equivalent national judgment. Foreign judgments are treated as equivalent to national judgments, unless stated otherwise.

However, with the later jurisprudence from 2014, The Supreme Court of Lithuania turned to the understanding of the recognition of foreign judgments in the case-law and had formulated the predominant of theory of ***extended effects*** (*Wirkungserstreckungstherie*) of foreign judgments in Lithuania, which means that the recognition of the legal effects and legal consequences of foreign judgments extending in the territory of Lithuania where such judgment is recognised. The theory of extension of the effects of foreign judgments is also familiar to the interests of the parties to the proceedings. It can be explained by the fact that the parties to the proceedings normally expect the judgment to have the same consequences as those arising under the law of the state where the proceedings take place.

2.3. Main features of ‘delibation’ (*procedura di delibazione*) or ‘*incidenter*’ procedure – type of procedure. Which type of procedure is provided for in your system? Accompany the answer with commentary.

Comment: *On the continent usually two distinct civil procedures exist. One is a separate non-contentious civil procedure especially tailored for recognition and enforcement of foreign judgments in Italy called ‘procedura di delibazione’. However, in certain countries a possibility also exist that the foreign judgment is recognised and enforced directly within the procedure of enforcement (in the meaning of the execution) (in France called ‘incidenter’ procedure).*

In the Code of Civil Procedure of the Republic of Lithuania special rules for the procedure of the recognition of foreign judgments are provided. Recognition and permission to enforce judgments of foreign courts (and arbitration tribunals) as well as peaceful settlements approved by courts in foreign states and court rulings regarding provisional protective measures are regulated by the Civil Procedure Code in Lithuania and by special Law implementing the acts of the European Union and international Law regulating the civil procedure of the Republic of Lithuania No X-1809 from 2008 when recognising judgments of other EU member states. In Lithuania applications for recognition of foreign court judgments can only be resolved by the Court of Appeal of Lithuania and its rulings can be appealed against in The Supreme Court of Lithuania.

Part 1 of Article 809 of the Code of Civil Procedure (Legal meaning of recognition of judgments of foreign courts (arbitration tribunals)) states that judgments of foreign courts (arbitration tribunals) may be enforced in the Republic of Lithuania only after being sustained by the Lithuanian Court of Appeal acting as a body authorized by the State to recognize such judgments.

Hence, it has to be admited that Lithuanian system folows Italian system "*procedura di delibazione"* .

It also has to be said that even two different procedures of the hearing of applications for recognition of foreign judgments exist in Lithuania. They are the following:

1. Procedure of recognition of judgments of courts of all foreign states.

2. Recognition of judgments of courts of other EU Member States under Brussels I, Brussels Ibis, Brussels II *bis* regulations and new Lugano Convention from 2007, when they are applicable.

How are these procedures similar and how they differ? In the first case the application is heard by one judge (or, when the application is of particular complicated and difficult) - the board of three judges of the Lithuanian Court of Appeal. Court examines all possible grounds for refusing recognition of the judgment according to the bilateral agreement, convention or the Code of Civil Procedure of the Republic of Lithuania. The ruling of the Lithuanian Court of Appeal can be appealed against in The Supreme Court of Lithuania by cassation order in one month.

In the second case the application for recognition of the judgment of court of another EU Member State first of all is heard by one judge of the Lithuanian Court of Appeal and the judgment of the court of another EU Member State is recognised automatically by one judge. In case if the defendant appeals against the ruling by which the judgment of another EU Member State is recognised and declared as enforceable, then the appeal is heard by the board of three judges of the same Lithuanian Court of Appeal and then the court already as appeal instance checks if there are no grounds for refusing recognition of the judgment according to particular regulation or new Lugano Convention from 2007. After that the ruling of the Lithuanian Court of Appeal can be appealed against in The Supreme Court of Lithuania by cassation order in one month.

2.4. Jurisdiction in matters of recognition and enforcement (substantive and territorial). Provide a short description.

Only one court in Lithuania has jurisdiction to deal with applications for the recognition and declaration of enforceability of foreign judgments, i.e. the Lithuanian Court of Appeal. In matters of recognition and enforcement all territory of the state falls under the jurisdiction - both substantive and territorial of this court. Hence, there is no need to examine jurisdiction according to the place of residence of the debtor and according to the amount awarded by the foreign judgment recognition of which is south in the territory of Lithuania.

2.5. Type of decision. Explain types of procedure and types of decision in your member state? Highlight any possible atypical procedures/decisions and their effects.

According to article 809 of the CPC, foreign courts’ (arbitrations’) judgment shall be enforced in the Republic of Lithuania only when the Court of Appeal of Lithuania recognizes it. Foreign courts’ judgments are recognized on the basis of international treaties. The claim for the recognition of the judgment shall submit by the person who has an interest in the case. In the absence of international treaty, the judgment of the foreign court is not recognized when:

1) The judgment has not came into force according to the laws of the state in which it was rendered;

2) According to the provisions of the law of the Republic of Lithuania or international treaty, the case is designated for the exceptional jurisdiction to the court of the Republic of Lithuania or third states;
3) Party, which did not participate in the proceedings, was not properly notified about the commencement of the lawsuit and during the proceedings there were no possibilities of procedural defense, and in the cases where the party was incapable in the certain areas or it’s capability was restricted in the certain areas, - a possibility for a proper representation;
4) The judgment of the foreign court is incompatible with the judgment of the court of the Republic of Lithuania, rendered between the same parties;
5) The judgment contradicts with the public order, established in the Constitution of the Republic of Lithuania;
6) The foreign court decided on the legal capacity of the citizen of the Republic of Lithuania, representation on the basis of law, family or succession legal relations and it contradicts with the private international law of the Republic of Lithuania, expect the cases, when the court of the Republic of Lithuania would have rendered the same judgments

Part 3: Recognition and Enforcement in B IA

3.1. Certification or declaration of enforceability in Member States of origin (Art. 53. B IA).

"Article 53

The court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I."

3.1.1. Requirements. Provide a critical assessment on the requirements regarding the certification.

In Lithuanian national civil procedure law, there are no additional requirements for issuance of a certificate under B IA additional to those indicated in Regulation itself and except person who can apply (ask) for issuance. Certificate can be issued only to the person who was involved in the case and after adjudication has the interest to enforce it.

3.1.2. Does a specific legal remedy exist to challenge the certificate of enforceability in the Member State of origin? If yes, how does it influence the course of civil enforcement?

NO.

3.1.3. What happens if the court of the Member State of origin certifies the enforceability for a judgment which has not yet acquired this effect (e.g. in Slovenia the time limit for voluntary fulfillment of the claim in the legally binding judgment (a prerequisite for enforceability) has not yet expired)? Can the court thereafter repeal the certificate? In connection: What happens if the judgment was served to the wrong address or to the wrong person? Does this constitute a ground for withdrawal of certificate of enforceability in the Member State of origin?

As it was indicated in answer 3.1.2, there is no specific legal remedy to challenge and/or withdrawal the certificate of enforceability.

3.1.4. B IA does not provide, neither for withdrawal of certificate nor for a certificate of non-enforceability. How would the domestic court thereafter deal with unlawfully issued certificates due to deficiencies of requisites (e.g. certificates issued where the claim has not yet actually acquired the attribute of enforceability; where the judgment was served to the wrong person etc.)?

Comment: *In addition to certificate of enforceability, the Regulation does not include any provisions related to rectification or withdrawal of certificate (cf. Art. 10 of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims). This issue is therefore governed by domestic law in the*

Member state of origin. Moreover, certificate of non-enforceability unfortunately does not exist (Art. 6(2) Reg. 805/2004), which could ease termination or suspension of enforcement procedure in Member State of enforcement in cases where a judgment has ceased to be enforceable or its enforceability has been suspended or limited. Is it a technical matter that can be handled by the clerk?

It is not regulated by national law either in can be answered only in the future if such problems raise and how they will be solved by courts.

3.1.5. What are the effects of the certificate in your legal order in the Member State of origin (e.g. Germany – ‘*Klausel*’)? Comment on the type of procedure/decision and the effects it produces.

The effects of the certificate are similar like in German system - it is an enforceable document (like national enforcement order) by bailiffs in Lithuania.

3.1.6. Control and Correction. What options are available for challenging errors?

Although it is not special regulated in respect of errors in the certificate, most probably court would *mutatis mutandis* apply the rules of the Code of Civil procedure of Lithuania for correction of errors in the judgment.

3.1.7. Plurality of certificated documents (number of copies of certificate). Provide a comment on said subject and possible problems which may stem from it.

In Lithuanian national civil procedure law, there are no clear references on the certificate number. Most likely, the courts are inclined to issue one copy of the certificate or mutatis mutandis apply the rules of the Code of Civil Procedure which regulates the issuance of several enforcement orders (Art. 647). Several enforcements orders, respectively - certificate under B IA the court may issue when judgment must be enforced in several locations or when ordered from several defendants or several claimants. In this case, in each issuing enforceable instrument has to be a clear indication of its place of enforcement, in a case of certificate - specific Member State.

3.1.8. Legal nature of the certificate of enforcement. The relation between B IA and national rules. Please comment on possible discrepancies and similarities.

National law does not specify any specific legal characterizations or legal nature of the Certificate under B IA. It corresponds to the national enforceable instrument, however, it is appointed to be enforced in another Member State. Accordingly, for the enforcement of national court's judgment the Certificate and its issuance does not correlate with the National enforcement order, so it is difficult to provide comments on possible discrepancy and similarity.

3.1.9. *Post festum* cancelation or withdrawal of certificate of enforceability in Member State of origin. How should such an event be treated and what effects, if any, are to be ascribed to it?

3.1.10. While there are no specific rules in the national law, in such case other Member State's court judgment cannot be enforced if the concerned person has submitted relevant evidence. As mentioned above, national law does not provide any special rules. Does the certificate need to be served to the defendant at all? Does it have to be served within a specific timeframe? Note that these questions refer to the Member State of origin.

Neither Regulation B IA, nor national law requires handing the Certificate to the defendant in the Member State of origin. Such action would not be carried out.

3.1.11. Service of declaration of enforceability, if it is foreseen in the national law. How is the service conducted? Describe the conditions for and methods of service.

NO.

3.1.12. Although Art. 40 of the B IA enables the creditor to apply for any protective measures which exist under the law of the Member State addressed prior to the first enforcement measure, this interim step requires additional costs and can cause delays. Please provide a critical assessment.

“Article 40

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.”

Comment: *One of the major concerns which relates to certificate of enforceability (Art. 53). According to Article 43 (1) where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Article 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure. Mentioned provision does not sufficiently take into account the surprise effect of enforcement. Seizure or attachment of debtor's property is usually the first enforcement measure, which freezes debtor's property and precludes debtor's to dispose with its assets. If the certificate of enforceability is served on the debtor prior to the first enforcement measure, there is no surprise effect of enforcement. What is more, in that way the court even warns the debtor that creditor attempts to attach his assets and debtor can dispose of his assets and prevent the recovery of debts.*

3.1.13. The largest defect of regulation in B IA is the surprise effect elimination of the debtor. Being informed about the enforcement of provisional measure the subject can hide the assets and/or cash, and an order enforcement for provisional measures will lose its meaning and purpose and the applicant's efforts will be worthless. It certainly reduces the attractiveness of B IA and does not ensure the development of united European area of justice. On the other hand, the institutes of provisional measures have a specific regulation (EU) No 655/2014. Regulation can operate effectively according to the

objectives by which is adopted, but the requirement to hand the Certificate before applying provisional measures should be eliminated.Certificating the amount of interests. Provide a comment on possible problems and solutions.

Comment: *Regarding the enforcement of interests, the certificate of enforceability does not contain easily discernable data where a judgment refers to statutory interests which are calculated in accordance with (most commonly) domestic law of the Member state of origin (e.g. Point 5.2.1.5.2.1 of certificate). In some member states, the interest rate of (default) interests is determined by statute and changes from time to time (e.g. Slovenia every 6 months). If an enforcement agent in Slovenia (Member State of enforcement) has to enforce a foreign judgment, in terms of speedy (efficient) procedure, he is not interested in the foreign (for example Italian) statute governing the interests rate. Contrary, the enforcement agent is interest in the exact amount of interests or - at the very least - a precise calculation formula to calculate them. In that regard, Points 5.2.1.2. and 5.2.1.3.contained in certificate under Regulation (EC) No 805/2004 are much more suitable for these purposes, because they enable the enforcement authority in the Member State of enforcement to calculate the amount of interests very easily. Replacing Annex of Brussels I Recast with a new, more detailed Annex would be very appropriate.*

Problems with the size of interests could arise if they are not specified in the Certificate at all. If the rate is specified, the authors of this questionnaire do not see the problem.

3.1.14. How does party succession affect the content of the certificate and the overall procedure?

If a party's rights and obligations successor took over during the proceedings so it will be pointed out in the judgment and in the corresponding certificate. If the inheritance occurred after court judgment and/or the issuance of the Certificate, the successor in order to continue to enforce the court's judgment will need to prove party's rights and obligations takeover in additional documentation.

3.2. Recognition and Enforcement in Member State of enforcement.

3.2.1. The concept of ‘recognition’ (Art. 36/1). Provide your understanding.

“Article 36

1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.”

The concept of ‘recognition’ as it is indicated in Part 1 Art. 36 of B IA, interpreting it in common sense with other provisions of the Regulation shall be understood that legal consequences of a judgment of any Member State shall invoke the same effect in all other EU Member States, i.e. legal consequences of a judgment, if it falls under the scope of application of B IA Regulation, can

and shall be automatically expanded to the territory of all other EU Member States without any formal procedure of recognition by national court or any other authority in recognising/enforcing state. The theory of extended effects of the recognition of foreign judgments shall be automatically applied to all court judgments in different EU Member States without additional formal procedures, unless stated otherwise

3.2.2. The scope of a judgment's authority and effectiveness. Do you see any national (problematic) issues considering the doctrine of spreading the effects of a judgment from the Member State of origin to the Member State of enforcement?

There is no problems with the doctrine of spreading the effects of a judgment from other Member State to Lithuania , However, there is doubt about the court judgment, by which recognition of B IA is no longer necessary, qualities such as, in particular, but not limited to, the prejudice, the extension in enforcing country. Regulation B IA regulates and provides the possibility of the enforcement of a judgment between the EU Member States without exequatur procedure, but there is a reasonable question: whether this in itself means that such judgment, without recognition procedures, acquires other characteristics inherent for the national judgment The Supreme Court has stated in its case-law the recognition of a foreign judgment means that it:

1) first of all, acquires the effect of *res judicata* in the recognising state;

2) has prejudicial effect;

3) the state recognising a foreign judgment at the same time admits that the foreign state that rendered the judgment abided by the principles of fair proceedings;

4) becomes enforceable in the recognising state, i.e. must be enforced in the same way as a national judgment .

There is no question of enforceability of foreign judgment, but no other legal consequences should be addressed to B IA. Therefore it is not entirely clear whether the provision of B IA Part 1 Art. 36 is a sufficient basis for Lithuanian courts to rely on the other Member State's court judgment .Having in mind Art 43/1, is it possible to begin with the first enforcement measure and limit the enforcement proceedings to protective measures, when the certificate issued pursuant to Article 53 has not been served on the defendant (debtor) yet? Should this matter be clarified by the CJEU?

3.2.3. Having in mind Art 43/1, is it possible to begin with the first enforcement measure and limit the enforcement proceedings to protective measures, when the certificate issued pursuant to Article 53 has not been served on the defendant (debtor) yet? Should this matter be clarified by the CJEU?

"Article 43

1. *Where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Article 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure. The certificate shall be accompanied by the judgment, if not already served on that person."*

"Article 53

The court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I."

Comment: *In some jurisdictions (e.g. Slovenia and Austria) the first enforcement measure and protective measure overlap. For instance, when enforcing debtor's movable property, the first enforcement measure is seizure of certain movables (e.g. vehicle). Seizure of a certain movable is a protective measure. The following problem may therefore come to fruition: taking into account Art 43/1; may a protective measure which, in certain member states overlaps and is considered as the initial step in enforcement procedures, be regarded as a 'first enforcement measure', thus requiring the service of the certification and thereby stripping the protective measure of self-standing effect?*

Declaration of enforceability is now issued in the Member State of origin and is compared to declaration of enforceability according to Art. 38 of B I (44/2001), which was issued in Member State of enforcement.

Where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Article 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure (Art. 43/1). That is why for the debtor it is crucial that declaration of enforceability is served to him prior to the beginning of enforcement. This is the German solution. The Slovenian and Austrian solution differs – declaration of enforceability is not ex officio served to debtor. That is why a creditor with an Austrian or Slovenian enforceable title can only apply for protective measures according to Art. 40 (in Slovenia predhodne odredbe, in Austria Exekution zur Sicherstellung according to par. 373 EO).

Could this be ground for preliminary ruling for the Court of Justice of the EU? (e.g. 'Is a national law, such as the one in the case at hand, where a self-standing protective measure overlaps with a first measure of enforcement, compatible with the Regulation').

According to the Lithuanian civil procedure law in any case, prior to enforcement of the judgment, the debtor receives a warning to satisfy a judgment voluntarily. Enforcing the judgment of another Member State, together with a warning to the debtor could be handed sir certificate of

enforcement, even though such an obligation to the bailiff in Lithuanian legislation is not provided. Therefore, enforcement problems in case of overlapping protective measures, with the first measure of Enforcement does not arise.

In any case, this B IA Part 1, Art. 43 requirement is incompatible with the orders for provisional measures enforcement, which also falls in B IA scope of application.

3.2.4. A key question is whether the certificate on standard form B IA was served before commencing enforcement. Comment.

Comment: *Standard form does not allow and does not have a rubric that certificate was served. It is very convenient for the creditor that the service is done in the Member State of origin, not in Member State of enforcement.*

Based on a systematic interpretation of Regulation B IA and specific provision of Part 1 Art. 43, Certificate shall be served by authorities of enforcing state. The authors of the questionnaire cannot endorse an opinion that it is very convenient for the creditor that the service is done in the Member State of origin, not in Member State of enforcement, in such a case, the creditor's intention to take enforcement action in another Member State, the debtor would find out significantly earlier than those actions are started and should be enough time to conceal assets. Therefore, we think that is enough, that the certificate will be received by the debtor in the enforcing state, although the authors of the questionnaire questions the requirements of Part 1 of Art. 43 expediency.

If the Regulation B IA provided the enforcement of judgments between the Member States without the possibility of exequatur, the implementation process could be left to national law, without any additional measures - even in service of certificate prior enforcement.

3.2.5. Although the *ex-ante* exequatur has been abolished, the challenge stage is retained as a result of negotiations. How is the residual stage regulated in your member state? How does your system enable the debtor to invoke a challenge? What kind of procedural instruments are at his disposal?

Comment: *By initiating a procedure in accordance with the national law of the Member State (of enforcement) the grounds for refusal of enforcement listed in Art 45 can be invoked by any interested party. However, the particularities are scarce and much is left desired – seeking introspective into national law.*

To the best knowledge of the authors of this questionnaire, there are no specific rules or regulations in Lithuanian national law on the above-mentioned issue.

Part 4: Remedies

4.1. General observations on the systemization and availability of national remedies. Provide a short explanation of legal remedies in the national civil procedure of your member state. How is your domestic system of legal remedies structured (e.g. a division between ordinary and extraordinary remedies)?

4.2. Remedies in enforcement procedure.

4.2.1. Provide a concise description of all the remedies (and other recourse, i.e. separate enforcement claims) available throughout the enforcement procedure (and separate/adjacent procedures), for all involved persons. Therein, specify the requirements for each remedy.

4.2.2. Characteristics of legal remedies in enforcement procedure. Remedies differ in effect and the way in which they exert that effect. Herein focus on the nature and attributes of different remedies in your system, e.g. does invoking a certain remedy suspend the proceedings for the time being; which body/authority is equipped with the competence on rendering a decision in remedial procedures (hierarchy of competence); is a given remedy unilateral or bilateral (does the opposing party have the option of supplying an answer); what powers does the appellate body/authority have, e.g. cassation.

4.2.3. Should objections be brought up in enforcement or in separate procedure?

4.3. Opposition in enforcement.

4.3.1. If a separate judicial procedure to enforce claims from judgments is not foreseen in your member state, what options does the debtor have in order to challenge inadmissibility of particular enforcement on the grounds that appeared (came into being) after the enforcement title was acquired (*nova producta*) or due to the inadmissible way of performing enforcement?

4.3.2. On which grounds does opposition against an enforcement decision have to be substantiated? In case no substantiation is queried, does an ‘assertion’ of opposition suffice?

4.3.3. Are the grounds for enforcement exhaustively listed or encompassed by a general clause or described in exemplary fashion? If a general clause is present, how is it formulated and what is its relation to exemplary listed grounds. Are the grounds subdivided into ‘categories’, e.g. Slovenian and to a certain extend Austrian theory incorporate an understanding of ‘impugnation’ and ‘opposition’ grounds; while the first refer to situations where a creditor possesses a valid enforcement title and an existent claim but cannot enforce it (due to a timely preclusion for instance), the latter refer to situations where the creditor holds a valid enforcement title, however a fact, which has arisen after the title attained the attribute of enforceability (see above *nova product*), prevents the enforcement (for instance due to the extinguishing of the claim because of compensation, voluntary fulfillment by the debtor etc,).

4.4. Remedies in international private procedure, i.e. remedies foreseen in national law, relating to recognition and enforcement of foreign judgments under private international law (cross-border situations), excluding B IA .

4.4.1. Types and main features of legal remedies.
4.4.2. Grounds for challenging foreign judgment.
4.4.3. Please indicate what are the differences compared to the grounds in B IA.

4.5. Remedies concerning Enforcement of Foreign Judgments according to B IA following the abolishment of exequatur.

4.5.1. Remedies in the Member State of origin regarding the enforcement title itself. Do these remedies influence the enforcement procedure in the Member State of enforcement?
4.5.2. Refusal of enforcement. What and/or which are the proceedings in your Member State (of enforcement)? Present the procedural aspects of the application for refusal and the role of national procedural law (Art. 47).

“Article 47

1. 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.

2. The procedure for refusal of enforcement shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State addressed.

3. The applicant shall provide the court with a copy of the judgment and, where necessary, a translation or transliteration of it.

The court may dispense with the production of the documents referred to in the first subparagraph if it already possesses them or if it considers it unreasonable to require the applicant to provide them. In the latter case, the court may require the other party to provide those documents.

4. The party seeking the refusal of enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party 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.”

4.5.3. What are your own specifics regarding required documents?
4.5.4. Service of documents and representation in your member state. How will service of documents pursuant to B IA be conducted in your member state? Please elaborate.
4.5.5. Opposition by the defendant (objection against recognition and enforcement of foreign judgment) – prerequisites and procedure. Does the law envisage ‘*incidenter*’ or separate procedure. Separate procedure at the first instance/at

the second instance. Elaborate on the particularities of the herein provided issues.

4.5.6. Second appeal, (third instance appeal) as a remedy – is it to be utilized only in cases of violation (of procedural or substantive law) or can it be used for control of facts as well?

Comment: In Slovenia the law provides for appeal (pritožba) or revision (revizija). Whilst the former generally encompasses the control of facts, the latter does not permit for such control.

4.5.7. Who is eligible to apply for a refusal of recognition or enforcement? How do you understand the euro-autonomous interpretation?

4.5.8. Suspension and limitation of enforcement proceedings (Art. 44). How is it regulated in your legislation?

“Article 44

1. In the event of an application for refusal of enforcement of a judgment pursuant to Subsection 2 of Section 3, the court in the Member State addressed may, on the application of the person against whom enforcement is sought:

(a) limit the enforcement proceedings to protective measures;

(b) make enforcement conditional on the provision of such security as it shall determine; or

(c) suspend, either wholly or in part, the enforcement proceedings.”

4.6. 2. 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.

4.7. Protective measures.

4.6.1. Which protective measures are available, in National perspective, according to Art. 40?

4.6.2. What are the prerequisites for these protective measures?

4.6.3. How long do protective measures last (duration period)?

4.6.4. Effects of protective measures - *Auszahlungsverbot (Verfügungsverbot)* or pledge (mortgage).

4.6.5. Can an enforcement motion be refused entirely due to the objection regarding foreign enforcement title or is this just limited to the security measures?

4.8. Grounds for refusal.

4.7.1. What are the past characteristics in your member state regarding grounds for refusal of recognition? Do you see any new problems regarding grounds for refusal?

4.7.2. What is your opinion on the fact that the grounds for refusal in the B I (44/2001) apply in B IA as well?

4.7.3. Please comment on the most problematic grounds in your member state in more detailed manner.

4.7.4. Grounds regarding related actions and irreconcilable judgments. Do you find any open issues in your member state in this regard?

Part 5: Final critical evaluation of B IA – what necessary adaptations to national legislations need to be done?

5.1. Does B IA in your opinion actually simplify, speed up and reduce the costs of litigation in cross-border cases concerning monetary claims and eases cross-border enforcement of judgments?

Authors of this questionnaire truly believe that in some sense B IA eases cross-border enforcement of judgments. The mechanism provided in B IA eases at least creditor's position and transfers the duty to take active actions to the debtor, in case he/she wants to prevent enforcement for the court judgments of another Member State.

On the other hand, the purpose of the European Union to create genuine European area of justice will not be reached until there are no common principles and rules of the enforcement procedures in all Member States (not only preconditions for enforcement), still leaving legal regulation of enforcement procedures purely for the national legal systems, although it is not the issue of B IA.

5.2. Which is, from the creditor’s point of view, the most convenient alternative in your member state in case of cross-border collection of debts in the EU?

There are no specific national procedures for cross-border collection of debts in Lithuanian national law, although all existing national procedures can be used for this as well. Speaking of the enforcement of foreign judgments within the EU, European Enforcement Order procedure still seems more attractive and efficient than procedure provided in B IA, if judgment satisfies requirements under the Regulation (EC) No 805/2004.

5.3. Language issues: Is it possible or advisable to choose the form in the language of the debtor?

Lithuanian courts can issue forms only in Lithuanian language according to the principle of national language in the proceedings. Lithuania did not indicate any other acceptable languages of standard forms according to the Art. 75(d) except for Lithuanian. However, it would be undoubtfully useful and efficient if standard forms under B IA, or under other regulations could always be issued in both - language of the state of origin and language of the enforcing state (or debtor's).

5.4. Do you anticipate that the principle of national procedural autonomy shall be adversely affected by the provisions of B IA?

Comment: *The principle (in essence) provides that member states are free to choose the remedies and procedures which govern the enforcement of EU law. The principle is not confined to the enforcement of substantive rights, even more so, its importance is revealed in cases such as the one at hand. B IA (in part) relies on remedies provided by national procedural law. The latter must therefore conform the euro-autonomous nature of B IA and provide for adequate remedies in terms of interpretation, effectiveness, effective judicial protection of non-discrimination. If these prerequisites are not duly respected, certain corrections to national procedural law are in order, perhaps even ad hoc introduction of new remedies.*

Costs. Since the recognition and enforcement of foreign judgments no longer requires *exequatur*, what is your take on the costs which will incur with respect to enforcing judgments under B IA in comparison to enforcing them under BI? Will it be more cost – effective?

Comment: *Try to indicate the specific costs which may arise in relation to the procedure envisaged under the BI A. Tariffs, lawyer's fees, etc.*

To the best knowledge of the authors of this questionnaire, there is no ground to believe that the principle of national procedural autonomy shall be adversely affected by the provisions of B IA. Regulation B IA provides only preconditions for the enforcement of court judgments from the other Member States, but does not regulate the procedure of the enforcement itself.

The procedure under B IA should decrease expenses for the creditor seeking to enforce the judgment in another EU Member State. At least creditor will be able to save costs by applying to the court with the application to recognise and to declare enforceable a foreign judgment. Although there is no court fee for such application in Lithuania, it is obvious that it is practically impossible to apply to the court of another Member State with any procedural application without additional costs (at least for national lawyers). Other expenses related to the enforcement of foreign judgments in other Member States, most likely, will not be changed (decreased) significantly, as still there will be need for translations of documents (first of all but not limited to every court judgment, content of the standard form, etc.), enforcement fees, etc.

Under the national law of Lithuania, creditor shall pay administrational fee in advance when submitting enforceable document for the enforcement to the bailiff, in this case - foreign court judgment enforceable under B IA. Other enforcement expenses are recovered from the debtor if enforcement is successful.