National Report: Lithuania

Authors:
Darius Bolzanas
Vigintas Visinskis
Dalia Visinskyte

Vilnius, September 2020

Questionnaire for national reports

General guidelines

This questionnaire addresses practical and theoretical aspects regarding the structure, contents and effects of enforcement titles in EU Member States and one Candidate Country. Each partner should provide substantive answers for their respective State/Country (or additional State/Country, if specifically stipulated by the coordinator). Certain questions require knowledge on instruments of cross-border enforcement in the EU, particularly Regulation 1215/2012 ("Brussels Ia Regulation"; hereinafter also: B IA). The latter questions address the interplay of national law and the EU regime on cross-border enforcement in civil and commercial matters.
For useful information, especially relating to B IA and cross-border enforcement in the EU, please refer, among other sources, 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]
- 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,[2]
- 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,[3]
- 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),[4]
- Report on the Application of Regulation Brussels I in the Member States (Heidelberg Report),[5]
- The Commission's Civil Justice Policy site,[6]
- The European e-Justice portal,[7] embedded with the European Judicial network (and the old e-Justice portal).[8] The portal features several many useful sources, e.g. Study on European Payment Order, Study on making more efficient the enforcement of judicial decisions within the European Union etc.
- The Access to Civil Justice portal[9] hosted by the University of Maribor, Faculty of Law together with the results of our previous projects and the project blog.

[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(2010) 748. Available at:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0748:FIN:EN:PDF.
[3] COM(2009) 174 final. Available at:
http://ec.europa.eu/civiljustice/news/docs/report_judgements_en.pdf.
[4] http://ec.europa.eu/civiljustice/news/docs/study_residual_jurisdiction_en.pdf.
[5] 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.
[6] https://ec.europa.eu/info/policies/justice-and-fundamental-rights/civil-justice_en.
[7] https://e-justice.europa.eu/home.do?plang=en&action=home.
[8] http://ec.europa.eu/civiljustice/simplif_accelerat_procedures/simplif_accelerat_procedures_ec_en.htm.
[9] https://www.pf.um.si/en/acj/.

The structure of each individual report does not necessarily have to follow the list of questions enumerated below, however, following the structure is strongly advised. The questions raised should be dealt with within the reports, however, the authors are free to decide where this will be most suitable. Following the structure of the questionnaire will make it much easier to make comparisons between the various jurisdictions.
The list of questions is not regarded as a conclusive one. It may well be that we did not foresee certain issues that present important aspects in certain jurisdictions. Please address such issues on your own initiative where appropriate. On the other hand, questions that are of no relevance for your legal system can be left aside.
Please provide representative references 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: 28 September 2020.
Upload report to: "https://www.dropbox.com/request/Vw2BGUFUFRO8ukJylrfr".
In case of any questions, remarks or suggestions please contact project coordinators, prof. dr. Vesna Rijavec: vesna.rijavec@um.si and prof. dr. Tjaša Ivanc: tjasa.ivanc@um.si; or Denis Baghrizabehi: denis.baghrizabehi@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). Should be differentiated from 'claim'.

Appeal in Cassation: Second appeal in the Romanic family of civil procedure (in the Germanic family one uses "Revision" instead).

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

Civil Imprisonment: Imprisonment of a judgment debtor in order to force them 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 (England and Wales) designated as "Plaintiff". In your contributions, please only use "claimant" (the term which is also used in B IA).

Co-litigants: More than one person being considered a party or several parties on either the Claimant or the Defendant side.

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: Failure to perform the required procedural act (e.g. where the summoned defendant does not appear); failure to perform.

Defaulter: Party in a civil action who does not perform the required procedural act.

Defendant: Please use this term instead of "Respondent".

Enforcement: Use the term enforcement instead of execution.

Enforcement officer: Official involved in enforcing court rulings. Enforcement is among the duties 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 that he may exercise of his own motion.

Final judgment: Judgment that is binding on the 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 avoiding using the terminology "trial" (which in English civil procedure refers to a specific stage in litigation).

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

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

Joinder of Claims: The position whereby Claimant raises (either initially or after the initiation of proceedings) several claims.

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.

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.

Operative part: The "tenor" or "holding" part of the Judgement which contains a "finding" or "declaration" or "order" to the debtor to pay a sum of money or undertake an action. Usually denotes the obligation of the debtor, executable in enforcement proceedings. In German: *Urteilstenor*.

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 among 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 (England and Wales) reforms these documents were indicated as "pleadings". In French: "conclusions".

Statement of Claim: Document containing the claim.

Statement of Reasons: The part of the judgment that contains the grounds for the decision.

Statement of Defence: Document containing the defence.

Part 1: General inquiries regarding Enforcement titles

1.1 Briefly present how an "enforcement title" is defined in your national legal order.

Comment: *In addition to the definition, enumerate the domestic judicial (and other legal) instruments which conform to the above definition of an enforcement title. If there is a statutory definition, then please provide the citation to the exact article/paragraph of that law and an English translation. Provide a list of enforcement titles.*

The enforcement titles are governed by the article 587 of the Lithuanian civil code which enumerates the enforceable instruments.

Article 587. Enforceable instruments

Enforceable instruments shall be the following:
1) enforcement orders issued on the basis of court judgments, sentences, decisions, rulings;
2) court orders;
3) Court judgements and decisions when according to the law they are held to be enforceable instruments;
4) Court judgements, institutional and official decisions regarding preliminary measures;
5) Court judgements regarding the limitations of activities of a legal person and its liquidation;
6) Institutional and official decisions in administrative cases so far as they concern monetary obligations.

1.2 How are "civil and commercial" matters defined in your national legal order?

In Lithuania there is no official distinction between civil and commercial matters. All case encompassing commercial matters are regarded as civil.
Everything that does not explicitly fall within the definitions of criminal or administrative matters is considered to be a civil matter. There is no precise definition. The main themes of what falls within the definition of civil matters is found in the Civil code, which consists of six books, however the list is not exhaustive. The article 1.1. part 1 of the Civil code set the subject – civil laws regulate property and not property legal relations between the persons.
Athough Lithuania does not have special Commercial codex, commercial dispute is defined in the special law. The Law of commercial arbitration article 3 part 11 commercial dispute states as any disagreement between the parties on matters of fact and / or law arising from a contractual or non-contractual legal relationship, including the supply of goods or services, distribution, commercial representation, factoring, rental, ranking, consulting, engineering services, licensing, investment , financing, banking, insurance, concessions, development and operation of joint ventures, any other industrial or business cooperation, damages for breach of competition law, compensation, contracts awarded on the basis of public procurement, carriage of goods or passengers by air, sea and land , but not limited to.

1.3 Which bodies conform to the definition of "Courts and Tribunals" as provided for by the B IA under your domestic legal system?

The Law of the Courts article 12 part 2 implemented article 111 of the Constitution embedded general competence (civil) courts and specialized administrative court. The competence between the courts is defined in the Law of the Courts also in the procedural codex.
Till 1994 existed so called state arbitration (in Lithuanian language *Valstybinis arbitražas*). Instead of such institution under the special law on the period 1994-1999 existed and operated so called Economic court (in Lithuanian language *Ūkinis teismas*) which dealt on commercial matters. However, after the reform of the courts in 1999 were established specialized administrative courts and the special law created Economic court was annulled, all the civil and commercial matters resolve in general competence (civil) courts. State tribunals as such do not exist is the Lithuanian legal system, just private arbitration. Arbitral tribunals is defined in the Law of commercial arbitration as arbiters who resolve the commercial matters under that special law (article 3 part 7 of the Law of commercial arbitration).

1.4 Briefly present the types of domestic decisions (e.g. Judgments, Decrees, Decisions, Orders) which may be rendered/issued under your Member State's civil procedure.

Comment: *Briefly elaborate on the meaning and effects of these of types of decisions. "Civil procedure" is to be understood as any procedure so designated by domestic law. In addition, decisions not rendered in civil procedure, but having a civil character (e.g. decision on damages in criminal procedure), should also be included. Indicate which of these decisions may be considered enforcement titles. Additionally, please state what these decisions are called in the official language of your Member State. If enforcement titles are exhaustively enumerated by statute, please provide the citation to the exact article/paragraph of that statute and an English translation.*

Judgement and decision are both applicable, however they do not correspond well to the English translation.
Judgement (in Lithuanian language *Teismo sprendimas*) is a final first instance decision on the merits of the dispute, while a decision is to be understood as a decision on procedural matters (article 260 Civil procedure code).
Partial judgement (in Lithuanian language *Dalinis sprendimas*) is a final first instance decision on the part of the merits of the dispute (article 261 part 1 Civil procedure code).
Default judgement (in Lithuanian language *Teismo sprendimas už akių*) could also could become the final act if the defendant not raised objections within 20 days after delivery procedural documents (article 287 part. 1 Civil procedure code).
Court order (in Lithuanian language *Teismo įsakymas*) could also could become the final act if the debtor not raised objections within 20 days after delivery procedural documents (article 436 part. 7 Civil procedure code). Court order is issued in summary procedure where a first instance Court decides on monetary questions.
Court order, differ from the judgement, could become enforcement order by itself after come into force.
Judgement in criminal matters on civil claim could become final on civil dispute matters and is called verdict (in Lithuanian language *Teismo nuosprendis*).
As mentioned, certain types of judgements are called „sprendimas" which directly translates into „decision" even though the "decision" is a intermediate judgement for

procedural questions and in Lithuanian language called "Teismo nutartys". Such intermediate decisions are taken by the court for all the procedural questions on which the case is not resolved essentially (article 290 part. 1 Civil procedure code). Therefore the situation causes confusion.

1.5 Taking account of the euro-autonomous definitions of "Judgment" and "Authentic instrument" elaborated by the CJEU for the purposes of B IA, which domestic decisions and instruments conform to these definitions?

Comment: *Please explain which domestic decisions and instruments are problematic in the light of the euro-autonomous definitions and why. Explain which decisions and instruments do not fall within the definitions.*

Final judgements on civil matters, decisions on provisional measures, certain notary acts (in Lithuania it would be an „authentic document" that at the request of a creditor, are issued by a notary. These documents shall be issued no later than within 5 days after having received such a request).
The final decisions in criminal matters that touch upon civil matters.
Also the decisions of Labor dispute committee could become the final decision on labor matters if dispute parties do not apply to the court.

1.6 Have the national courts of your Member State addressed any questions for a preliminary ruling (Art. 263 TFEU) to the CJEU regarding the notion of "Judgment"?

No

1.7 Please explain the level of judicial control (the "power of assessment") exerted by the courts when rendering default judgments in your Member State.

Comment: *The power of assessment may significantly vary. For instance, the courts may be barred from examination of the substance of the case or limited to checking compliance with mandatory rules of law.*

There are 3 court instances in civil cases. The first and the second instance (appeal) courts shall assess the factual circumstances and the merits, however the Supreme Court (like third instance) in cassation procedure has a power to deal only with the questions of law which could be actual for the society and is not allowed to take into account any new facts. All the Courts can decide ex officio to go beyond what is requested by the parties regarding the legal questions. They can by themselves determine that certain legal matters must be adjudicated upon (therefore, there are no limits on what legal issues can be taken into account). Regarding the facts, the Courts dealing with the facts (first and second instances) can and ought to request for additional evidence where It is deemed necessary. The situation does not change in cases of default judgements. The default judgement

Default judgement may be rendered in case one of the parties, which has been duly notified of the time and venue of the hearing, fails to appear at the hearing and to file a petition to hear the case in its absence, and the attending party requests to adopt such a judgement, as well as in other cases provided in Civil procedure Code. Default judgement may also be rendered in case one or several plaintiffs or defendants fail, in the aforementioned circumstances, to appear at the hearing in the proceedings with several plaintiffs or defendants. Default judgement due to failure by the defendant to appear may

be passed only regarding such items of the claim, whereof the defendant has been notified under the procedural norms. By passing the default judgement, the court shall make a formal examination of the evidence submitted in the case, i. e., ascertain whether there is a ground to adopt such a judgement in case the contents of the evidence is proved to be true. The absent party, which was the reason of adopting default judgement, shall not be entitled to appeal against such judgement under the appeal or the cassation procedure. However, the party, who failed to appear at the court hearing, shall, within twenty days after adoption of such judgement, has the right to file the court that rendered the default judgement a petition for reviewing the judgement (article 285-287 Civil procedure code).

After considered the petition, the court shall have the right: 1) to dismiss the petition; 2) to reverse the default judgement and resume the case hearing on the merits (article 288 part. 3 Civil procedure code).

Part 2: General aspects regarding the structure of Judgements

2.1 Which elements are comprised in the structure of a domestic (civil) Judgment in your legal order?

Comment: *A judgment normally contains an array of (necessary) information in separate constituent parts (elements), e.g. the title; the proclamation that the Court issues the Judgment in the name of the people; the Court and the judge rendering the judgment; Parties to the dispute; the Operative part; the Reasoning; the Legal instructions etc.*

The elements of the judgement are listed in Article 270 of the Code of civil procedure of Lithuania.
Article 270. Contents of the judgement
1. The judgement of the court shall consist of the introduction, the recital, the motivation and the substantive provisions.
2. The following shall be indicated in the introduction of the judgement:
1) time and place of the adoption of the judgement;
2) the name of the court which adopted the judgement;
3) the bench of the court (name(s) of the judge(s)), the recording clerk of the court hearing, the parties, other persons participating in the proceedings;
4) the matter of the dispute.

2.2 Is the structure of a Judgement prescribed by law or court rules or developed in court practice (tradition or custom convention)?

Comment: *If applicable, please provide the citation to the exact article/paragraph of the rule and an English translation.*

It is provided for in the Code of civil procedure:

Article 270. Contents of the judgement

The following shall be indicated in the introduction of the judgement:
1) time and place of the adoption of the judgement;
2) the name of the court which adopted the judgement;
3) the bench of the court (name(s) of the judge(s)), the recording clerk of the court hearing, the parties, other persons participating in the proceedings; 4) the matter of the dispute.

3. The following shall be indicated in the recital of the judgement:
1) a summary of the claims and explanations of the plaintiff;
2) a summary of the rebuttals and explanations by the defendant;
3) a summary of explanations by other persons participating in the proceedings.

4. The following shall be briefly indicated in the motivation of the judgement:

1) the circumstances of the case established by the court;

2) the assessment of the evidence on which the conclusions of the court are based;
3) the arguments based whereon the court rejects certain evidence;
4) the laws and other legal acts invoked by the court, as well as other legal arguments.

5. The following shall be indicated in the substantive provisions of the judgement:

1) the conclusion of the court to grant the claim and/or counter-claim in full or in part, at the same time setting forth the contents of the allowed claim, or to dismiss the claim and/or counter- claim;

2) in the cases provided for by laws, the amount of the adjudged interest and the time period by which they shall be exacted;

3) direction as to the distribution of litigations costs;
4) the court's conclusions regarding other issues settled by the judgement; 5) the time limits and procedure of appeal against the judgement.

2.3 How standardised (regarding form and structure) do you consider judgments from your Member State to be (e.g. inadequately; adequately; standardised, although exceptions can be found)?

Comment: *If the law regulates this issue, then it is expected that judgments are standardised. However, if certain courts tend to disregard standards or if standards are too loosely defined, then please elaborate. If your Member State has multilevel governance structures (e.g. federalisation; autonomous regions) please elaborate if the different governance structures also apply different standards.*

Very standardized. The Supreme Court and other institutions from time to time also issue very detailed recommendations that are very helpful.

2.4 How are the different elements of the Judgment separated from one another (e.g. headline, outline point etc.)?

Usually by headlines.

2.5 If courts, other than courts of first instance, may issue enforceable judgments, how does the structure of such judgments differ from judgments issued by the courts of first instance?

Comment: *The question comes into play in cases where, after recourse, appellate and other courts may modify first instance judgments or decide on the claim independently.*

The instance of the court has no impact upon the structure, other than the higher instances mention the factual and procedural matrix presented in previous instances.

2.6 How does the assertion of a counterclaim affect the structure of the Judgment?

Comment: *In addition, explain when a counterclaim can be entertained in the same proceedings and be decided in a single Judgment (if possible).*

Both claims and counterclaims are adjudicated upon in one judgement. The assertion of a counterclaim has no influence upon the structure.

2.7. Does the Judgment include a specification of the time-period within which the obligation in the operative part is to be (voluntarily) fulfilled by the defendant? Conversely, does the judgment contain a specification of the time-period within which the judgment is not to be enforced? Does the judgment contain a specification of the time-period after which the judgment is no longer enforceable?

Comment (2.7): *If applicable, please also explain what happens if the court does not include the above time period(s). If applicable, how would the court, acting as a court of the Member State addressed, deal with a situation where a judgment is no longer enforceable after the limitation period for enforcement has expired, and this time period was not specified by the court in the Member State of origin, either because there is no obligation for the court to specify the period or because the court unintentionally omitted the specification.?*

Usually, no time period is specified in the judgment, however, such possibility is mentioned in the code of civil procedure (Artice 271 : „1. When passing a judgement, the court shall, if necessary, set a specific procedure and time limit for enforcing the judgement, defer or schedule the enforcement.")

2.8. What personal information must be specified in the Judgment for the purposes of identifying the Parties to the dispute?

Comment: *For example, in Slovenia, the Judgment will list the Parties' name and surname, residence and Unique Personal Identification Number (so-called EMŠO). This number is provided to each citizen of Slovenia and is also a feature in other countries of the former Yugoslavia. The information is stated in the Introduction to the judgment and is usually not repeated in other parts of the judgment.*

In procedural documents (e.g. claim) - name, last name (surname) and unique (personal) identification number. Personal number consists of specific five numbers plus the birth date of a person (in the middle of the code) is provided to each citizen of Lithuania. All the legal persons are registered in Register of legal entities and the main data of the legal person could be reached to everyone https://www.registrucentras.lt/jar/index_en.php
The same data is in the resolution part of the judgement if the court adjudge amount.

2.9. How do courts indicate the amount in dispute?

Comment: *Please elaborate how this amount is specified (if this information is specified), especially in cases where amendments to claims occur during proceedings.*

The claimant specifies the concrete amount of the claim in introduction and resolution parts of the final action (article 135 part 1 item 1 of Civil procedure code).
The Court states it in the introductory part when summarizes the final claim.
All the procedural questions regarding amendments to claim occur during proceeding usually resolved by the court at the preparation stage, because at the stage of the trial such amendments could not be arisen (except exceptional cases and situations when amount claim is reduced, the court adjudges a partial dispute taking partial judgement or decision).

2.10. Can the Claimant seek interim declaratory relief and what effects (if any) are attributed to the decision on this claim? How is the decision specified in the Judgment?

In Lithuania interim declaratory reliefs are not possible. Such content of contractual parties rights and obligations are only possible to be rendered after full consideration of the merits in the final judgement.
However, the courts at any stage under articles 144-152 Civil procedure code in any civil case may issue interim procedural decision - interim measures which are dedicated to preserve the rights that are claimed after the court finds that the claim is plausible temporarily. However, it is not declaratory relief judgement.

2.11. What kinds of decisions can a court issue in regular litigation proceedings?

Comment: *For example, in certain Member States, the court may decide on procedural issues (e.g. admission of evidence; modification of claim) with a "decision" and a "Judgment" on the merits of the case. Provisional and protective measures may or may not be tied to the proceedings.*

For distinct procedural matters courts issue decisions (for example decisions on interim relief, admission of witnesses etc.). Regarding the merits, the court issues a judgement that can be partial, interim or final. Procedural questions (matters) can also be decided upon in the judgement without issuing a separate decision.

2.12. How are Judgments drafted when (if) they contain a "decision" on issues other than the merits of the case?

Comment: *Such decisions can, for example, pertain to the modification of a claim, withdrawal of a claim, joinder of parties, joinder of proceedings etc.*

Usually it is put in a separate paragraph, but nothing too significant as to the form of the final judgment.
Questions of withdrawal of a claim, joinder of parties, pertain to the modification of a claim the court adjudge by separate decision usually at the pretrial stage.
However, the decision on such procedural question as joinder of proceedings could be settled by the decision of special subject - competence judge (usually by the President of court) before the final judgement (article 136 part 4 of Civil procedure code).

2.12.1. How does this effect the operative part and/or the reasoning?

Usually does not affect, except, for instance if the plaintiff withdrawal a claim, the court adjudge a decision to close the proceeding without ruling on the merits of the dispute.

2.12.2. Which decisions (2.12) can be incorporated into the judgment?

All of them are mentioned, however they are not „incorporated", they are provided in a separate document that is attached to the case file.

2.12.3. Can provisional and protective measures form part of a Judgment or can they only be issued separately?

Both options are possible, it depends on the results occur. For instance, if protective measures were issued by the court during the proceeding and finally the court decided to dismiss a claim, court annul such measures in the judgement.

3. Part 3: Special aspects regarding the operative part

3.1.What does the operative part communicate?

The precise elements of the operative part are stated in article 270.5 of the code of civil procedure:
1) the conclusion of the court to grant the claim and/or counter-claim in full or in part, at the same time setting forth the contents of the allowed claim, or to dismiss the claim and/or counter- claim;
2) in the cases provided for by laws, the amount of the adjudged interest and the time period by which they shall be exacted;
3) direction as to the distribution of litigations costs;
4) the court's conclusions regarding other issues settled by the judgement;
5) the time limits and procedure of appeal against the judgement.

3.1.1. Must the operative part contain a threat of enforcement?

Comment: *A threat of enforcement is to be understood as a legal instruction referring to the possibility of enforcement proceedings if the debtor does not voluntarily perform the obligations imposed by the judgment.*

No, it would be very unusual.
However, the bailiff under the article 659 Civil procedure code calls the debtor to execute the decision in 10 days period voluntarily.

3.1.2. Must the operative part include declaratory relief if the Claimant sought payment (e.g. if the debtor's obligation to perform is found to be due and the Claimant requested performance)?

No. As stated according to article 270(5) of the Civil procedure code, the operative part of the judgment shall contain the conclusion of the court to satisfy the claim and/or counterclaim in full or in part, together with the content of the satisfied claim, or to reject the claim and/or counterclaim; in cases provided by law, the amount of interest awarded and the period until which it is recovered; an instruction on the distribution of costs; court conclusions regarding other issues resolved by the judgment.
Thus, the court has to only to determine whether the claim or counterclaim shall be satisfied or not.

3.1.3. Is the specification of the debtor's obligation finalized by the court or is it left to later procedures/authorities?

The debtor's obligations are set exclusively by the Court and the bailiff sets the execution fees of the judgement. According to Article 270(5) of the CCP the court determines whether the claim or counterclaim shall be satisfied or not. Also, the court has to decide on all litigation costs and distribution of the payment of litigation costs between the parties. Pursuant to the case law, a judgment is a motivated individual binding act of law adopted by a court on behalf of the Republic of Lithuania, which, when interpreting and applying legal norms to specific relations of the parties, substantially and definitively

resolves a legal dispute: substantive legal relations of the parties are established, changed or terminated.[10]

3.1.4. How is the operative part drafted in a the case of a prohibitory injunction (German: "Unterlassungsklage")?

No specific requirements, it is simply mentioned in the final judgment, including operative part, for example in family case could be decided that Mr. X.Y. shall not come closer to Ms. M.N. than 100 meters.

3.1.5. How is the operative part drafted in a interlocutory judgment?

No specific requirements.
The main requirements for interlocutory judgments (decisions) stated in article 291 Civil procedure code, one of these – has to be court rulling.
It simply states at the top which part of the dispute it addresses.
An example would be "The court finds that the claimant has a right to the incurred damaged. The exact amount of the damages shall be determined in the final judgement".

3.1.6. How is the operative part drafted in the case of alternative obligations, i.e. where the debtor may decide among several modes of fulfilling a claim?

It would not be possible.
Lithuanian procedural laws do not allow issue such type of claims for the plaintiff and the court does not issue such decisions.

3.1.7. How is the operative part drafted when a claim is wholly or partially rejected?

It simply states that the claim is rejected and brief reasoning is provided. Court in the operative part would only state that "the claim is rejected" or "the claim is rejected in so far as it concerns x, y and z" or "to find the defendant liable for x and reject all the other claims brought by the claimant".
The court would then add a sentence on the court's fees.

3.1.8. How is the operative part drafted if the debtor invokes set-off? Provide an example.

Comment: *In certain jurisdiction, set-off (compensation invoked in proceedings) requires the operative part to specify how the claim and counter-claim are extinguished and to what extent. This may, for instance, be done by specifying the amount of both claims and declaring the amount to be compensated.*

It is not reflected in the operative part. It is explained in the general reasoning.
As a general point, the operative part in Lithuanian judgements is extremely brief. It does not even say something like "for the reasons stated above". It mostly only states "the claim is rejected" or "the claim is upheld. The damages to be awarded to the claimant are x eur".

[10] Judgment of the Supreme Court of Lithuania of 7 November 2012 in case No. 3K-3-464/2012.

3.2. Are there specifications pertaining to the structure and substance of the operative part of the Judgment in your national legal system – set out by law or court rules or developed in court practice? If so, please provide an English translation of the relevant provisions.

It is Article 270 of the Code of Civil Procedure (already provided in 2.1) that regulates the elements that must be present. No other specific provisions regarding the substance and structure of the operative part exist.

3.3. Does the operative part contain elements from or references to the reasoning of the judgment (grounds for the decision/legal assessment)?

No.

3.4. Elaborate on the wording used in your national legal system, mandating the debtor to perform.

Comment: *For instance, in Slovenia, the debtor is not specifically "ordered" to perform by the wording of the operative part, since the operative part only finds the debtor "liable to pay" a certain amount. However, in practice, it is universally understood that this "liability" is to be understood as a duty to perform and not merely as declaratory relief. Would you find such wording problematic?*

Both are possible, but since in the enforcement document, the operative part of the judgement must be <u>quoted</u> directly, it is unequivocally understood as an order (item 4, p. 1, art. 648).

3.5. If applicable, explain how the operative part is drafted in cases of reciprocal relationships where the Claimant's (counter-) performance is prescribed as a condition for the debtor's performance? How specifically is this condition set out?

No specifications, cause it would not be possible.

3.6. How are the interest rates specified and phrased in a judgment ordering payment?

Comment: *Please provide a typical wording and the legal basis – not concerning the merits but concerning the requirement in procedural law as to how to draft the operative part*.

Interest rate is stated in private laws. The debtor shall also be bound to pay a certain interest established by laws on the sum adjudged to the creditor for the period from the moment of the commencement of the case in the court until the final execution of the judgement (article 6.37 part 2 of Civil code). Under article 6.210 of Civil code where a debtor fails to meet his monetary obligation when it falls due, he shall be bound to pay an interest at the rate of five percent per annum upon the sum of money subject to the non-performed obligation unless any other rate of interest has been established by the law or contract. Where both parties are businessmen or private legal persons, the interest at the rate of six percent per annum shall be payable for a delay in payment unless any other rate of interest has been established by the law or contract.

The court in a judgement usually phrase like following: the defendant shall pay 5 or 6 percent (it depends on the legal status – corporal or legal person) interest from the day the claim was submitted until the debt is fully recovered.

3.7. Please demonstrate how the operative part differs when claims to impose different obligations on the debtor are joined (e.g. performance, prohibitory injunction etc.) or when the action is of a different relief sought (e.g. action for performance, action for declaratory relief, action requesting modification or cancellation of a legal relationship).

Comment: *Please elaborate on the second part of the question only if such a joinder of claims is admissible. Please accompany your answer by providing typical (abstracted) examples of operative parts in situations where the debtor is ordered to pay an amount of money; when he is ordered to perform an action; when a prohibitory injunction is issued against him; when he is ordered to hand over moveable property. Additionally, formulate abstracted examples of declaratory relief (including negative declaratory relief) and actions for the creation, modification or cancellation of legal relationships).*

Ex. Orders to X to pay 1000 eur to Y; to render the contract signed on 10 July 2001 invalid; etc.
All the orders of the court are simply listed next to each other. There is no distinction in terms of form among them.

3.8. May the operative part refer to an attachment/index (for example, a list of "tested claims" in insolvency proceedings)?

Comment: *Please explain the "technique" of drafting such operative parts and how attachments are actually attached/connected to the judgment? Which attachments can be referred to in the operative part?*

No attachments or references to the operative part are possible. In very exceptional circumstances, for example, when a piece of land is divided by the judgement, a detailed map of that piece of land may be attached to the judgement.

3.9. What are the legal ramifications, if the operative part is incomprehensible or inconsistent?

Comment: *Explain whether this presents a ground for appeal or other legal remedy. Explain how this affects enforcement proceedings.*

The matter is regulated by Article 278 of the Code of civil procedure: Construction of the judgement

1. If the judgement is unclear, the court that adopted the judgement shall have the right to construction, at the request of the participants in the proceedings as well as on its own initiative, of the judgement rendered by it, however, without changing its contents.
2. It shall be allowed to construct the judgement, provided it is pending, the period during which the judgement may be enforced has not expired or this period has not been resumed.
3. The issue regarding the construction of the judgement shall be settled at the court hearing. The persons participating in the proceedings shall be notified of the time and venue of the hearing. However, failure by such persons to appear does not prevent from determining the issue of construction of the judgement.

4. The court ruling regarding the construction of the judgement may be appealed against by a separate appeal

If it is the Bailiff who finds the decision unclear, the matter is regulated by Article 589 of the same Code: Construction of the procedural decision of the court and of enforcement thereof:
1. Where the procedure for enforcing the procedural decision of the court is unclear, a bailiff shall address the court, which has adopted the procedural decision, for the construction of the enforcement procedure.
2. A request of the bailiff provided for in paragraph 1 of this Article shall be considered by the court in accordance with the procedure prescribed in Article 593 of this Code.

3.10. May the operative part deviate from the application as set out by the claimant? If so, to what extent? In other words, how much discretion does the court enjoy when formulating the operative part?

The Court is restricted by the claim, however in exceptional circumstances, the Court may act *ex officio*. In such situations it is mentioned in the operative part.

4. Part 4: Special aspects regarding the reasoning

4.1. If applicable, how does the law or court rules or legal practice govern the structure and content of the reasoning of the judgment?

Article 265 of the Code of Civil procedure indicates what issues must be settled:

Issues settled upon the adoption of the judgement:

1. When adopting a judgement, the court shall weigh the evidence and state, which circumstances relevant to the case have been established and which have not, which law must be applied in the case at hand, and whether the claim is awardable.
2. The court must adopt the judgement on all claims filed by the plaintiff, defendant and third person, except in cases when a partial judgement is rendered. The judgement shall not exceed the claims filed in the case, save in the cases provided for in this Code.

4.1.1. Is there a specific order to be followed when drafting the reasoning?

Comment: *The reasoning usually contains both factual and legal grounds for the decision. Should these aspects follow a predetermined order or may they intertwine?*

They may intertwine, though usually the factual matrix is set in the very beginning and then the legal grounds.

4.1.2. How lengthy/detailed is the reasoning?

Usually the reading part is very detailed and relatively long. Around 5-30 pages.

4.1.3. Do you find the reasoning to be too detailed?

Usually no, the opposite is more common when the parties appeal on the ground there is not enough legal arguments. In very exceptional cases courts put too much relevant court precedents which in areas like intellectual property may take dozens of pages. There is very little real reasoning of the Court, simply repetitive paragraphs that most lawyers skim through. There is really no need to put all that practice. It would be useful to limit it to the most relevant cases where ration decidendi coincide and to refer to the others only in the footnotes.

4.1.4. Are the parties' statements (adequately) summarized in the grounds for decision?

Yes, under the law (article 270 part 3 of Civil procedure code). Besides, the parties statements is a measure of evidence (article 186 Civil procedure code)..

4.1.5. Is it possible to distinguish between the parties' statements and the court's assessment (the problem of an unclear distinction between the parties' statements and the court's findings and interpretation)?

Yes, they are very clearly distinguished.
Under the recommendations of the Supreme Court the court structuring the judgement into separate parts and numbering the text chronologically by using headlines, for instance one paragraph called parties' statements or descriptive part; the latter one constitute the results of the motivation and specify concrete argumentation; the last one (operative) constitute the results.

4.2. In the reasoning, do the courts address procedural prerequisites and applications made after the filing of the claim?

Comment: *Prerequisites are to be understood as all criteria necessary to initiate the proceedings correctly under national law, e.g. jurisdiction, standing, party capacity etc.*

No, it would be rather unusual.

4.3. Are independent procedural rulings properly re-addressed in the judgment?

Yes.

4.4. What legal effects (if any) are attributable to the reasoning, e.g. is the reasoning encompassed within the effects of the finality of the Judgment?

Reasoning does not really have any legal effects as of itself.

5. Part 5: Effects of judgments – the objective dimension of res judicata

5.1. A final judgment will, in most Member States, obtain res judicata effect.[11] With regard to this point, please answer the following questions:

5.1.1. What are the effects associated with res judicata in your national legal order?

The law states after the judgement, the order or the ruling has become effective, the parties and other participants in the proceedings, also their legal successors may not file with the court a new the same claims on the same grounds as well as participate in another proceedings the facts and legal relations determined by the court. This shall not prevent the parties concerned from applying to court regarding an infringed or participated right, if such a dispute has not been examined and determined by an effective judgement of the court (article 279 part 4 of Civil procedure code). The final judgment (order) has no res judicata or preliminary ruling power for persons who did not participate in the case, and the principle of universal mandatory of the decision (order) does not restrict the right of

[11] If your national legal order does not operate with the principle of res judicata, then please thoroughly describe the alternative doctrine governing finality of judgements. Please answer the questions in this Part of the questionnaire by mutatis mutandis applying your respective doctrine. If this is not possible, please approximate the answers as far as possible or provide additional explanations.

non-parties to seek judicial protection in the same factual and legal situation, which has already taken effect in another case[12].

The material consequences of a res judicata judgment are twofold. First, the parties can no longer initiate an identical claim, that is to say, the negative effect of res judicata; secondly, the decision may be the basis for a claim in another civil case - it acquires a prejudicial legal force, which is the so-called positive effect of the application of the principle of res judicata[13].

5.1.2. What decisions in your Member State have the capacity to become res judicata?

Any Court or Arbitral *final* judgement or decision that have not been appealed or annulled (came into legal force).

5.1.3. At what moment does a Judgment become res judicata?

Comment: *Pinpoint the time and/or requirements when the judgment meets the criteria for becoming a res judicata*.

First instance court judgement has got res judicata characteristic after 30 days period from the first instance court judgement declared if appeal was not submitted or after the appellate procedure is finished (and the case has not been remanded) (article 307 part 1 of Civil procedure code). If the party miss the deadline for important reasons, the court has a right to nenew the term to appeal but no later within 3 months period after the judgement was declared (article 307 part 3 of Civil procedure code). After the expiration of this term the judgement may be revoked only through reopen procedure with limited grounds.
Moreover in the cases finished by the court decision adjuged on the basis of parties peace treaty negative res judicata aspect is declared.

5.1.3.1. How (if at all) does the exercise of the right to appeal/the exercise of legal remedies affect this moment?

As stated above.

5.1.3.2. How does the answer to this question differ depending on whether the remedies being invoked are considered "ordinary" or "extraordinary" under your domestic law – is the classification of remedies into one of these two categories dependent on these effects?

The classification of remedies has no effect whatsoever.

[12] Paragraphs 17–19 of the ruling of the Supreme Court of Lithuania of 18 April 2019 in civil case No. e3K-3-140-469/2019
[13] Paragraph 21 of the ruling of the Supreme Court of Lithuania of 8 October 2019 in civil case No. 3K-3-293-823/2019

5.1.4. Is res judicata restricted to the operative part of the judgment in your legal system or does it extend to the key elements of the reasoning or other parts of the judgment?

Comment: *For example, a court in Member State A has to rule whether a seller must deliver goods. In its decision, the court argues that the contract between the seller and the buyer is null and void because of some errors of will. If the seller in Member State B later submits an action for the payment of the purchase price, a court in Member State B will have to reject that claim, as it is bound by the reasoning in the judgment of the court in Member State A, which argued that there had been an error of will. Will this be the case in your Member State*? *In other words, does finality pertain to preliminary questions on points of law? If it does, how are preliminary questions decided upon? Does the decision on preliminary issues form part of the operative part? how are they elaborated in the Judgment?*

Res judicata positive effect legally means the judgement may be the basis for a claim in another civil case between the same parties, but just on the facts constituted in the judgement, not points of law.
For example, if the causality was discussed and determined the Court would not say anything about the causality in the operative part. It would only say that the claim is upheld and the damaged awarded are X Eur sum.
Under the 28 March 2006 and 24 October 2007 rules of Constitutional Court the courts form judicial precedents (horizontal and vertical precedent effect), which become not only compulsory and enforceable but mandatory for the courts in the future dealing with analogical or very similar (on facts) cases.

5.2.If part of a civil claim is being claimed in civil proceedings, how does this affect the remainder of the claim, taking into account res judicata effects?

Res judicata applies only to the part of the claim sought in civil proceedings and subject to a final judgment. Res judicata does not include the remaining part of the claim that was not included in the judgment, except judgements decreed on the ground of actions for recognition legal facts (e. g. parenthood, legal entity's bankruptcy fact).

5.3. In the case of a negative declaratory action, what is the effect of a finding that the matter is res judicata?

Comment: *For example, A initiates an action against B for a declaration that he does not have to pay B 1000 EUR (negative declaration). If the court dismisses the claim, does the judgment at the same moment declare that A does have to pay B 1000 EUR? If the dismissal of a negative declaratory action is the equivalent of a declaration of the converse (in inter partes proceedings), is such a judgment enforceable for the creditor (in this case: B)?*

Negative declaratory action is not possible in Lithuania.

5.4. If a court issues a judgment concerning the well-foundedness of a claim, does this judgment have any effects outside of the pending dispute?

Comment: *Can a party rely on the res judicata effects of such a judgment in separate proceedings (is the court in another set of proceedings bound by the judgment) or are these effects confined to the dispute in which the judgment was rendered? Note: a judgment on the well-foundedness of a claim refers to a judgment finding the liability of the defendant to pay, but leaves the amount of payment to be determined in a subsequent judgement.*

It could have a legal effect if the same parties participate in another legal dispute between them, e. g. only if the same parties are involved, the relief sought is the same and the legal instrument relied upon is the same. If such is the case the Court would simply reject such claim. Otherwise, it would not produce any effects outside the proceedings concerned.

5.5. Suppose the following hypothetical. If, in Member State Y, a seller (S) as claimant is suing the buyer (B) as defendant for payment of the purchase price, B will not be able to sue S in Member State Z for liability on a warranty at the same time due to lis pendens rules under B IA.

5.5.1. Is it possible for B to sue S in Member State Z after the case in Member State Y has been decided with res judicata effect? What is the position regarding this question in your Member State?

If the dispute was adjudicated upon without any procedural irregularities, the Court would decline to take the case.

5.5.2. If it is possible for B to sue S in Member State Z (in the above situation), will the court in State Z be bound by the reasoning in the judgment from the court in Member State Y? What is the position on that question in your national legal order:

It is not possible.

5.5.2.1. If in domestic cases you do not extend res judicata effect to the elements of a court's reasoning (Question 5.1.4)?

We do extend.

5.5.2.2. If res judicata effect is extended to elements of the reasoning in the Member State of origin but not in the Member State addressed?

Res judicata would encompass the decisions of both States.

5.5.2.3. If res judicata effect is not extended to elements of the reasoning in the Member State of origin but is in Member State addressed?

Same as above.

5.5.3. How do you handle the limitation period problem in the scenario described above? The lis pendens case law of the CJEU prevents the filing of a warranty liability claim in State Z as long as a payment claim is pending in State Y. How can the buyer prevent the limitation period from running in State Z (your home State) without making the warranty case pending?

The claimant can file a request to renew the time period based on the fact that he could not file his claim as long as the claim was pending in State Y. Also he could ask the Court to suspend the process regarding his claim (it would remain in the Court's docket) for as long as the claim in State Y is being dealt with.

6. Part 6: Effects of judgements - res judicata and enforceability

6.1. What is the relation of res judicata to enforceability, i.e. can a judgment be enforced before it is res judicata?

Comment: *Does your legal order operate with the institution of "provisional enforceability", i.e. the enforceability of judgments that are not (yet) res judicata, but have nonetheless been endowed, either by the decision of a court or by operation of law, with the attribute of enforceability? Do you think such (foreign) judgments might be controversial from the perspective of the (procedural) legal order of your Member State, if the creditor attempted to enforce them? For an example of provisional enforceability, see §§704, 708, 709 of the German ZPO).*

In Lithuania the institution of provisional applicability is not applicable, however, in certain very exceptional cases (art. 282 Civil procedure code), the Court may allow for the „urgent enforcement" of the judgement for example when a child needs to be taken into custody or paying alimony to the child.
The court may render the judgment provisionally enforceable if a delay would prevent or significantly hamper the enforcement of the judgment or put the claimant at the risk of incurring damage (art. 283 part 1 item 4 Civil procedure code).
The urgency of execution of the judgement must be clearly indicated in the judgement.

6.1.1. Is provisional enforceability suspended (by operation of law or at the discretion of the court) if an appeal is lodged?

If as described above „urgent enforcement" is allowed by the court, the launch of an appeal does not have any effects.

6.1.2. Who bears the risk in case of provisional enforceability - does the judgment creditor have to provide security before the judgment can be enforced?

In the urgent enforcement cases, the claimant is responsible for the enforcement action. If the decision is later overturned by the court of the higher instance, the amount recovered will have to be returned under procedural rules (art. 760-762 Civil procedure code).

6.1.2.1. Must the judgment creditor provide security before the judgment can be enforced?

No

6.1.2.2. Must the creditor compensate the debtor for damages he has suffered by the judgement being enforced, or by the payments he had to make, or any other actions he had to take in order to avert enforcement?

Yes, the damages debtor has suffered by the judgement being enforced must be compensated under the common rules on the ground of the claim.

6.1.2.3. Does the answer to the previous question (6.1.2.2) vary, if the debtor voluntarily payed (performed) the claim?

It reduces litigations costs

6.1.2.4. Does the answer to the previous question (6.1.2.2) vary, if the judgement was a default judgement, by a first instance court or a court of appeals?

No

6.1.2.5. What is the scope of the compensation? Is it limited to direct loss or is indirect loss also covered?

The main rules apply

6.2. Does your legal order prescribe a suspensive period within which the judgement creditor cannot initiate the enforcement proceedings? For example, must the judgement creditor first demand payment from the debtor before he can move to enforcement (execution of the judgement)?

Comment: *The question is framed in general terms regarding enforcement of judgements, not in relation to provisional enforceability. If answered in the positive, please indicate what are the legal consequences of the suspension, i.e. is the judgement by operation of law not considered enforceable within this period or does the judgement creditor merely take on the risk of bearing costs for enforcement.*

6.3. Does the judgment incorporate elements akin to the French "command and order to the enforcement officer" (*Mandons et ordonnons a tous huissiers de justice à ce requis de mettre le present jugement à execution*)?

No.

6.4. How would your legal order deal with foreign enforcement titles which involve property rights or concepts of property law unknown in your system?

We have not encountered such situation in practice and the matter is not regulated by national laws.

7. Part 7: Effects of Judgments - Subjective dimensions of res judicata

7.1. How are co-litigants and third persons (individuals who are not direct parties of the proceedings) affected by the judgment (e.g. alienation of a property or a right which is the subject of an ongoing litigation; necessary parties?

The Court can order actions only directed to the parties to the dispute, the *final* judgement cannot affect the rights of the third parties, except *erga omnes* situations.

7.2. Do certain judgments produce in rem (*erga omnes*) binding effects?

Just in the very limited cases (for instance, on the insolvency matters or class action, determination of incapacity).

7.3. How are (singular and universal) successors of parties affected by the judgment?

Comment: *Explain how succession of parties occurs after the rendering of the judgment as well as in potential enforcement proceedings, and what acts, if any, must be undertaken for interested persons to demonstrate succession. In addition, explain whether there are circumstances in which succession is not possible, e.g. succession to non-pecuniary damages claims.*

The successors of any of the parties under the legal grounds may ask the Court to replace the party at any stage of the proceeding (if subrogation is possible under substantive or material laws – in all pecuniary damage claims and also non pecuniary damage claims if the claim is not inextricably linked to the person), including execution procedure (article 45, 596 of Civil procedure code).
Succession of parties not possible if the claim inextricably linked to the person.
For natural persons, when the claim concerns alimony to the children, payments for injuries to health and similar in the case of child or injured person death, reinstatement proceeding.
For legal persons - once the legal limited liability person goes bankruptcy, no succession is possible (the exception is voluntary reorganization procedure).

8. Part 8: Effects of Judgments - Temporal dimensions

8.1. Can changes to statute or case-law affect the validity of a judgment or present grounds for challenge?

No, if it has res judicata legal effect.
Changes to statute or case law could be the ground to initiate new proceedings with dissimilar claims.

8.2. If the judgment requires the debtor to pay future (periodic) instalments (e.g. maintenance or an annuity by way of damages), how can the judgment be challenged in order to amend the amount payable in each instalment?

The debtor can file a claim regarding the review of the amount of instalments if the circumstances have significantly changed (for example, his/her income has reduced, the needs of the child have significantly changed or similar) (article 279 part 5 Civil procedure code).

8.3. Can facts that occur after the last session of the main hearing and are beneficial to the defendant (debtor), be invoked in enforcement proceedings with a legal remedy?

No.
However, based on these facts the defendant :

- **may ask the first instance court to resume the case if the decision still not rendered.**
- **may lodge the appeal if the first instance court render the decision but the appeal could be lodged.**
- **may ask the first instance court to reopen proceeding (if the judgement came into force) on the new circumstances ground (article 366 part 1 item 2),**

8.4. Can set-off of a judicial claim be invoked by the debtor in enforcement proceedings, even if the debtor's counterclaim already existed during the original proceedings?

Yes, if the debtor managed to obtain an enforcement title for his own claim.

9. Part 9: Lis pendens and related actions in another Member State and irreconcilability as a ground for refusal of recognition and enforcement

9.1. The B IA Regulation uses the concept of a "cause of action" for the purposes of determining lis pendens.

9.1.1. How does your national legal order determine lis pendens?

Lis pendens rule is applicable in civil proceedings in Lithuania. According to Article 137(2)(5) of the Code of Civil Procedure of the Republic of Lithuania, the court shall refuse to accept the action if there is a case filed with the court concerning a dispute between the same parties concerning the same subject, and on the same grounds. Also, Article 296(1)(4) of the CCP, the court shall leave the action unconsidered if the dispute between the same parties regarding the same dispute and on the same ground is pending before the court. Thus, there are three criteria for the application of lis pendens rule: the same parties, subject and grounds.
According to the case law, once the court has accepted the action and instituted proceedings, the plaintiff loses the right to re-apply to the court with an identical action.[14] This means that the parties cannot claim the same or another court, whether general or specialized, to commence two or more cases regarding the same dispute. The application of this provision does not depend on whether the case is dealt with in accordance with the general rules of law of the action, the procedure of documentary proceedings or the application of the court order procedure, it is important that the actions (claims) are

[14] Judgment of the Court of Appeal of 3 September of 2020 in case No. e2-1009-407/2020.

identical. If two identical actions are submitted, the court hears only the action which had been submitted first.[15]

9.1.2. How does the B IA concept of a "cause of action" correspond to any similar domestic concept in your national legal order? Describe how your national legal order establishes the identity of claims.

Two claims are considered to be identical when the circumstances on which the claimant based his/her claim (the factual background), the parties and the subject of the claim (the legal basis invoked) are identical.

9.1.3. Does your national legal order allow a negative declaratory action? If so, how is this action treated in relation to contradictory actions (e.g. for (payment of) damages)?

No.

9.1.4. How do you determine the identity of parties in national proceedings and how (if at all) does the methodology differ from that of the BIA?

For natural persons - they provide their identity documents (identity card or passport), legal persons - a document from the registry of legal entity is provided.

9.1.5. How should we understand the requirement that judgments need to have "the same end in view" as expressed by the CJEU?

There is no practice in this regard in Lithuania as such an issue has not yet arisen before the courts.

9.2.Does your national legal order operate with the notion of "related actions"? If so, what are the effects it ascribes to them? Please accompany the answer with relevant case law.

Related actions are stated in the laws.

According to Article 136(1) of the Code of Civil Procedure of the Republic of Lithunia, the claimant shall be entitled to join several mutually related claims into a single statement of claim.

According to Article 136(2) of the Code of Civil Procedure of the Republic of Lithunia, the court, in accepting a statement of claim, in which several claims are joined, shall be entitled to sever one or several of them into a separate case if it is recognised that it is more expedient to hear them separately.

The Supreme Court of the Republic of Lithuania found that the notion of claim in Article 136(1) of the Code of Civil Procedure of the Republic of Lithunia has a broader meaning that factual basis of the claim and is in essence, a separate action (lt. Šioje įstatymo normoje terminas *reikalavimas* turi platesnę reikšmę negu faktinis ieškinio pagrindas ir

[15] Judgment of the Supremet Court of Lithuania of 5 May of 2011 in case No. 3K-3-240/2011; Judgment of the Court of Appeal of Lithuania of 9 January of 2020 in case No. 2-12-790/2020.

savo turiniu iš esmės prilygsta atskiram ieškiniui).[16] The existence of relationships which, pursuant to Article 136 (1) of the the Code of Civil Procedure of the Republic of Lithunia, allows several actions to be joined in a single action without the need to initiate separate proceedings may also be established where independent claims derrive from the basis of the origin of the claim (whether pecuniary or non-pecuniary or of tort, delict, etc.) and whether or not separate claims should be brought before different courts[17].

9.3. Has your Member State experienced cross-border cases involving related actions within the meaning of the B IA?

No.

9.3.1. How have your courts defined irreconcilability for the purpose of related actions?

There is no such practice.

9.3.2. How have your courts exercised the discretion to stay proceedings?

The Courts of lower instances could in principle stay proceedings if a case on the same matter is already pending at the Supreme Court in order to ensure the unity of the case law.

10. Part 10: Court settlements

10.1. What are the prerequisites for the conclusion of a court settlement?

There are no official prerequisites. One of the main principles that the Court must abide by is to ensure that such settlement does not affect the rights of the third parties and public interest.

10.1.1. Describe the necessary elements a court settlement must contain.

There are no necessary elements, the only requirement is not to affect the rights of the third parties.

10.1.2. What formal requirements must be satisfied (e.g. signature of the parties; service)?

The parties sign the document that the court approves by rendering a judgement. When such judgement is rendered, it becomes a „normal" judgement that can for example be appealed.

10.1.3. How are the parties identified?

They are identified from the personal details (personal codes for natural persons and register codes for legal persons)

10.1.4. What (substantive) legal relationships can be settled in a court settlement?

Any civil legal relationship.

[16] Judgment of the Supremet Court of Lithuania of 30 March of 2016 in case No. e3K-3-179-469/2016
[17] Judgment of the Court of Appeal of Lithuania of 9 October of 2018 in case No. e2-1367-943/2018

10.2. When does a court settlement become enforceable?

Once a judgement confirming the settlement is rendered.

10.3. How are (singular and universal) successors of parties affected by the judgment?

Comment: *Explain how succession of parties occurs after the rendering of the judgment as well as in potential enforcement proceedings, and what acts, if any, must be undertaken for interested persons to demonstrate succession. In addition, explain whether there are circumstances in which succession is not possible.*

The successors of the party obtains a document from the notary confirming the succession. This document is presented then to the Court that issued the judgement. The Court then issues decision to change the party in the dispute into its successor.

10.4. If applicable, describe how the legal relationship, once settled, can be amended?

Yes, by the higher court in traditional procedural control procedure.

10.5. If applicable, describe how (under what circumstances) a court settlement can no longer be considered enforceable?

If a different judgement is passed that modifies that judgement. Otherwise, it will remain enforceable.

10.6. If applicable, describe how errors in a court settlement can be remedied and the recourses that are available against a notarial act, whether independently or during enforcement proceedings.

Errors are remedies by the court or notary, it depends on the error. If an error occurs during the enforcement proceedings, the notary issues additional document rectifying the error.

11. Part 11: Enforceable notarial deeds

11.1. Briefly describe the competence the notary holds in civil and commercial matters in your Member State.

The competence of the notary is defined in Article 26 of the Law on the notary office:
26. Notarial Acts Performed by Notaries
Notaries shall perform the following notarial acts:

1) **Certification of transactions;**
2) **Issuance of inheritance title certificates;**
3) **Issuance of certificates of title to a part of marital common property;**
4) **Authentication of copies and extracts of documents;**
5) **Authentications of signatures on documents;**
6) **Certification of authenticity of document translations from one language to another;**
7) **Certification of fact that a natural person is alive and in a specific location;**
8) **Acceptance for safe custody of wills equivalent to official wills and personal wills;**
9) **Attestation of document delivery time;**
10) **Delivery of applications by natural and legal persons to other natural and legal persons;**
11) **Acceptance of money for deposit;**
12) **Acceptance of maritime liens;**
13) **Protests of promissory notes and cheques;**
14) **Entry of enforcement clauses of the protested and non-protestable promissory notes and cheques;**
15) **Drawing up and attestation of documents on the authenticity of documents submitted by legal persons to the Register of Legal Persons and certification that legal persons can be registered as a result of satisfaction of obligations or presence of circumstances prescribed in laws or incorporation documents;**

16) **Attestation of conformity of incorporation documents of legal persons to legislative provisions;**
17) **Other notarial deeds provided for by laws.**

11.2. Is (can) a notarial deed be considered an enforcement title in your respective Member State/Candidate Country? If so, briefly present, how the concept of a notarial deed as an enforcement title is defined in your national legal order.

Comment: *If the definition is provided by a provision of law, then please provide the citation to the exact article/paragraph of that rule and an English translation.*

In some cases notarial deed would have exactly the same legal power as a Court judgement under article 43 of the Law on the notary office.

11.3. Is, according to your domestic legal order, a notarial deed an enforcement title *per se* or must it contain additional conditions/clauses to be considered as such?

Comment: *For instance, in Slovenia, notarial deeds are considered enforcement titles only if they contain a so called 'direct enforceability clause'.*

It is an enforcement title „per se" in such cases:
Entry of enforcement clauses of the protested and non-protestable promissory notes and cheques;
enforcement clauses from notarial approves contracts from which arise pecuniary obligations;
notarial enforcement clauses on the compulsory recovery of debts under a mortgage (pledge) creditor's statement, executed and certified by civil claims.

11.3.1. If there is a certain clause (that constitutes the notarial deed an enforcement title) please set out an example of such a clause (cite an example clause). Furthermore, explain if there a difference in said clause if the deed refers to monetary or non-monetary claims?

The notary can only issue deeds regarding monetary claims (see more detailed 11.3 answer)

11.3.2. Is the debtor's consent to direct enforceability considered to be a part of notarial deed?

No.

11.3.3. If the previous question is answered in the positive, can such consent be of a general nature or specific and concrete to the debtor's obligations arising from the notarial deed?

11.4.How is a notarial deed structured in your domestic legal order? What elements must it contain?

There is no structure enshrined in the laws, except notarial enforcement clauses on the compulsory recovery of debts under a mortgage (pledge) creditor's statement, executed and certified by civil claims, which is defined by the Minister of Justice.

The procedure for making notarial enforcement clauses are regulated by the Act December 30 2015 The Minister of Justice of the Republic of Lithuania by Order No. 1R-381 approved Form of "Executive Records" Description of the procedure for performing notarized transactions that gave rise to pecuniary obligations

11.5. What personal information must be specified in the notarial deed for the purposes of identifying the Parties?

Name, surname and personal identification number for natural persons. For legal persons a company document from the national registry of legal persons.

11.6. Must a notarial deed, considered to be an enforcement title, contain a threat of enforcement?

After verifying the information, the notary shall send a notice to the debtor before making the enforcement order, which must contain the information provided by the creditor and an offer to pay the debt to the creditor within twenty days from the date of sending the notice to the debtor and to notify the notary in writing of the fulfillment of the obligation or to provide the notary with data on the unfoundedness of the creditor's claim.
Depending on the data provided by the creditor and the debtor, the notary makes the enforcement record or refuses to do so with reasons. The notary has the right to cancel the enforcement record in cases prescribed by law (article 49^1 part 2 the Law on the notary office).

11.7. If applicable, how lengthy and important is the part of the notarial deed, which contains warnings and explanations by the notary?

See the answer 11.6

11.7.1. Is the notary obliged to explicitly warn the parties about the direct enforceability of the deed?

11.7.2. Is there a need for parties and/or the notary to sign each page of a notarial deed, to be considered valid?

It is not required by the law, but it usually happens in practice.

11.8. What are the consequences if the parties fail to meet the formal requirements for a valid notarial deed?

Any legally interested party can file a claim to recognize the invalidity of the deed.

11.9. What kind of (substantive) obligations, arising out of legal relationships and contained in a notarial deed can become directly enforceable, according to your domestic legal order (e.g. mortgage)? Conversely, are there legally valid obligations which cannot become directly enforceable due to restrictions in legislation or due to judicial decisions?

Comment: *For instance, in Slovenia, taxes, which arise from the claim-enforcement procedure, cannot be directly enforced by the creditor. The same applies to some bank products.*

See the answer 11.4, 11.6

11.10. Is it possible that conditional claims, contained in a notary deed are directly enforceable? If so, are there any special conditions which have to be met in notarial deeds or in enforcement procedure?

There are no special conditions which have to be met in notarial deeds or in enforcement procedure, except mentioned.

11.11. Can obligations, contained in a directly enforceable notary deed, be written in attachments to the notarial deed or must they be set out specifically within the text of the notarial deed?

They be set out specifically within the text of the notarial deed.

11.12. Is it possible for parties to conclude a contract wherein they set up a legal (contractual) relationship and only later bring said contract to the notary in order to confirm the direct enforceability of obligations, arising out of the contract?

It is legally possible under the principle of contractual freedom (article 6.156 Civil code) if not object to the imperative norms, good faith and public interest.

11.13. Must the notarial deed include the specification of the time period in which the obligation of the debtor is to be performed? In conjunction, is there the possibility that a notarial deed is directly enforceable even if the time period has not yet expired? If so, under what conditions?

No, the time period by default is 5 years.

11.14. Disregarding EU legislation, are there any special restrictions regarding recognition and enforcement under the private international law of you Member State, pertaining specifically to foreign notarial deeds?

No

11.15. Is it possible to bring grounds of objection in enforcement proceedings, concerning not only enforcement proper (execution), but opposition to the claim itself? In other words, can the debtor raise grounds against the claim contained in the notarial act in enforcement proceedings?

Yes, the debtor has a right bring grounds of objection in enforcement proceedings, concerning not only enforcement proper. The other question – how effective legally is it?

11.16. If your domestic legal order does not operate with enforceable notarial acts, how would you enforce a foreign enforceable notarial act?

Lithuanian domestic legal order does operate with enforceable notarial acts

11.17. Are there other authentic instruments under your domestic legal order, which are considered enforcement titles?

Yes, for instance, the decision of Labour Dispute Committee.

Instructions for contributors

1. References

As a rule, specific references should be avoided in the main text and, preferably, should be placed in the footnotes. Footnote numbers are placed after the final punctuation mark when referring to the sentence and directly after a word when referring to that word only. We humbly invite our authors to examine carefully our sample references which are preceded by [•]. These sample references put the theory of our authors' guidelines into practice and we believe that they may serve to further clarify the preferred style of reference.

1.1. Reference to judicial decisions

When citing national judicial authorities, the national style of reference should be respected. References to decisions of European courts should present the following form:

[Court] [Date], [Case number], [Party 1] [v] [Party 2], [ECLI] (NB: the "v" is not italicised)

- ECJ 9 April 1989, Case C-34/89, Smith v EC Commission, ECLI:EU:C:1990:353.
- ECtHR 4 May 2000, Case No. 51 891/9, Naletilic v Croatia.

1.2. Reference to legislation and treaties

When first referring to legislation or treaties, please include the article to which reference is made as well as the (unabbreviated) official name of the document containing that article. The name of a piece of legislation in a language other than English, French or German should be followed by an italicised English translation between brackets. In combination with an article number, the abbreviations TEU, TFEU, ECHR and UN Charter may always be used instead of the full title of the document to which the abbreviation refers. If the title of a piece of legislation constitutes a noun phrase, it may, after proper introduction, be abbreviated by omission of its complement. Thus:

- Art. 2 Protocol on Environmental Protection to the Antarctic Treaty (henceforth: the Protocol).
- Art. 267 TFEU.
- Art. 5 Uitleveringswet [Extradition Act].

1.3. Reference to books

1.3.1 First reference

Any first reference to a book should present the following form: [Initial(s) and surname(s) of the author(s)], [Title] [(Publisher Year)] [Page(s) referred to]

- J.E.S. Fawcett, The Law of Nations (Penguin Press 1968) p. 11.

If a book is written by two co-authors, the surname and initials of both authors are given. If a book has been written by three or more co-authors, 'et al.' will follow the name of the first author and the other authors will be omitted. Book titles in a language other than English, French or German are to be followed by an italicised English translation between brackets. Thus:

- L. Erades and W.L. Gould, The Relation Between International Law and Municipal Law in the Netherlands and the United States (Sijthoff 1961) p. 10 – 13.
- D. Chalmers et al., European Union Law: cases and materials (Cambridge University Press 2010) p. 171.

- F.B. Verwayen, Recht en rechtvaardigheid in Japan [Law and Justice in Japan] (Amsterdam University Press 2004) p. 11.

1.3.2 Subsequent references

Any subsequent reference to a book should present the following form (NB: if more than one work by the same author is cited in the same footnote, the name of the author should be followed by the year in which each book was published):

[Surname of the author], [supra] [n.] [Footnote in which first reference is made], [Page(s) referred to] Fawcett, supra n. 16, p. 88.

- Fawcett 1968, supra n. 16, p. 127; Fawcett 1981, supra n. 24, p. 17 – 19.

1.4. Reference to contributions in edited collections

For references to contributions in edited collections please abide by the following form (NB: analogous to the style of reference for books, if a collection is edited by three or more co- editors only the name and initials of the first editor are given, followed by 'et al.'):

[Author's initial(s) and surname(s)], ['Title of contribution'], [in] [Editor's initial(s) and surname(s)] [(ed.) or (eds.)], [Title of the collection] [(Publisher Year)] [Starting page of the article] [at] [Page(s) referred to]

- M. Pollack, 'The Growth and Retreat of Federal Competence in the EU', in R. Howse and K. Nicolaidis (eds.), The Federal Vision (Oxford University Press 2001) p. 40 at p. 46.

Subsequent references follow the rules of 1.3.2 supra.

1.5. Reference to an article in a periodical

References to an article in a periodical should present the following form (NB: titles of well-known journals must be abbreviated according to each journal's preferred style of citation):

[Author's initial(s) and surname(s)], ['Title of article'], [Volume] [Title of periodical] [(Year)] [Starting page of the article] [at] [Page(s) referred to]

- R. Joseph, 'Re-Creating Legal Space for the First Law of Aotearoa-New Zealand', 17 Waikato Law Review (2009) p. 74 at p. 80 – 82.
- S. Hagemann and B. Høyland, 'Bicameral Politics in the European Union', 48 JCMS (2010) p. 811 at p. 822.

Subsequent references follow the rules of 1.3.2 supra.

1.6. Reference to an article in a newspaper

When referring to an article in a newspaper, please abide by the following form (NB: if the title of an article is not written in English, French or German, an italicised English translation should be provided between brackets):

- [Author's initial(s) and surname(s)], ['Title of article'], [Title of newspaper], [Date], [Page(s)]: T. Padoa-Schioppa, 'Il carattere dell' Europa' [The Character of Europe], Corriere della Serra, 22 June 2004, p. 1.

1.7. Reference to the internet

Reference to documents published on the internet should present the following form: [Author's initial(s) and surname(s)], ['Title of document'], [<www.example.com/[...]>], [Date of visit]

- M. Benlolo Carabot, 'Les Roms sont aussi des citoyens européens', <www.lemonde.fr/idees/article/2010/09/09/les-roms-sont-aussi-des-citoyens-europeens_1409065_3232.html>, visited 24 October 2010. (NB: 'http://' is always omitted when citing websites)

1.8. Cross-references

In referring to other chapters and sections of the text, as well as to other footnotes, supra is used to refer to previous sections of the contribution, whereas infra is used to refer to subsequent sections. Cross-references should never refer to specific page numbers. Thus:

- See text to n. 10 supra.
- See text between n. 10 and n. 12 infra.
- Compare n. 10 supra.

2. Spelling, style and quotation

In this section of the authors' guidelines sheet, we would like to set out some general principles of spelling, style and quotation. We would like to emphasise that all principles in this section are governed by another principle – the principle of consistency. Authors might, for instance, disagree as to whether a particular Latin abbreviation is to be considered as 'common' and, as a consequence, as to whether or not that abbreviation should be italicised. However, we do humbly ask our authors to apply the principle of consistency, so that the same expression is either always italicised or never italicised throughout the article.

2.1 General principles of spelling

- Aim for consistency in spelling and use of English throughout the article.
- Only the use of British English is allowed.
- If words such as member states, directives, regulations, etc., are used to refer to a concept in general, such words are to be spelled in lower case. If, however, the word is intended to designate a specific entity which is the manifestation of a general concept, the first letter of the word should be capitalised (NB: this rule does not apply to quotations). Thus:
- [...] the Court's case-law concerning direct effect of directives [...]
- The Court ruled on the applicability of Directive 2004/38. The Directive was to be implemented in the national law of the member states by 29 April 2006.
- There is no requirement that the spouse, in the words of the Court, 'has previously been lawfully resident in another Member State before arriving in the host Member State'.
- Avoid the use of contractions.
- Non-English words should be italicised, except for common Latin abbreviations.

2.2. General principles of style

- Subdivisions with headings are required, but these should not be numbered.

- Use abbreviations in footnotes, but avoid abbreviations in the main text as much as possible.
- If abbreviations in the main text improve its legibility, they may, nevertheless, be used. Acronyms are to be avoided as much as possible. Instead, noun phrases are to be reduced to the noun only (e.g., 'the Court' for 'the European Court of Human Rights'). If this should prove to be problematic, for instance because several courts are mentioned in the text (e.g., the Court of Justice and the European Court of Human Rights), we ask our authors to use adjectives to complement the noun in order to render clear the distinction between the designated objects (e.g., the Luxembourg Court/the European Court and the Strasbourg Court/the Human Rights Court). As much will depend on context, we offer considerable liberty to our authors in their use of abbreviations, insofar as these are not confusing and ameliorate the legibility of the article.
- In English titles, use Title Case; in non-English titles, use the national style.

2.3. General principles of quotation

- Quotations are to be placed between single quotation marks, both in the main text and in the footnotes (thus: 'aaaaa').
- When a quotation forms part of another quotation, it is to be placed between double quotation marks (thus: 'aaaaa "bbbbb" aaaaa').
- Should a contributor wish to insert his own words into a quotation, such words are to be placed between square brackets.
- When a quotation includes italics supplied by the contributor, state: [emphasis added].