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NOTE

From: Mr Julius Pagojus, Deputy Minister for Justice, Ministry of Justice of the Republic of Lithuania

On: 17 December 2014

To: Mr Rafael Fernández-Pita y González, Director-General, Council of the European Union

Subject: Notification of the transposition of Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA

Dear Sir,

Please find attached the texts of the provisions of the legislation of the Republic of Lithuania transposing the relevant provisions of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, and Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions of supervision measures as an alternative to provisional detention ("the Framework Decisions").

The provisions of the Framework Decisions are implemented by Law No XII-1322 of 13 November 2014 on the mutual recognition and enforcement of judgments in criminal matters by Member States of the European Union ("Law No XII-1322"), (Legislative Register No 2014-17299, 21.11.2014), establishing:

- 1) the procedures and conditions for the recognition and enforcement in the Republic of Lithuania of judgments imposing custodial sentences, issued by EU Member State courts;
- 2) the procedures and conditions for the transmission to other EU Member States of judgments imposing custodial sentences, issued by the courts of the Republic of Lithuania;
- 3) the procedures and conditions for the recognition and enforcement in the Republic of Lithuania of judgments involving deprivation of liberty and probation decisions, issued by EU Member State courts and other competent authorities;
- 4) the procedures and conditions for the transmission to other EU Member States of judgments involving deprivation of liberty and probation decisions, issued by the courts of the Republic of Lithuania;
- 5) the procedures and conditions for the recognition and enforcement in the Republic of Lithuania of decisions on supervision measures (other than arrest), issued by EU competent authorities;
- 6) the procedures and conditions for the transmission to other EU Member States of certain types of supervision measures or other procedural coercive measures imposed by Lithuanian courts, prosecutors or pre-trial investigation officers in criminal proceedings.

With a view to the smooth implementation of the provisions of the Framework Decisions, Articles 5 and 109 of the Penal Enforcement Code of the Republic of Lithuania and Articles 1, 121, 342 and 365⁵ of the Code of Criminal Procedure of the Republic of Lithuania have also been revised. We hereby inform you that Law No XII-1322 and the other legislation transposing the Framework Decision, will come into force on 1 April 2015.

For further information on the transposition of Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA, please contact Andrada Bavėjan, Head of the Legal Cooperation Division of the International Law Department at the Ministry of Justice of Republic of Lithuania (tel. (370 5) 266 2940, email andrada.bavejan@tm.lt), Indrė Balčiūnienė, Chief Specialist at the Legal Cooperation Division of the International Law Department at the Ministry of Justice of Republic of Lithuania (tel. (370 5) 266 2937, email indre.balciuniene@tm.lt), Darius Mickevičius, Advisor at the Administrative and Criminal Justice Department (tel. (370 5) 266 2966, email darius.mickevicius@tm.lt) or Tauras Rutkūnas, Chief Specialist at the Division of Criminal Justice of the Administrative and Criminal Justice Department (tel. (370 5) 219 1895, email tauras.rutkunas@tm.lt).

We also hereby submit our notifications and declarations on each of the Framework Decisions to the General Secretariat of the Council of the European Union.

(...)

(Complimentary close)

(s.) Julius Pagojus

Information provided by LT relating to

Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union

Declaration by the Republic of Lithuania on Article 7:

In accordance with Article 7(4) of Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, the Republic of Lithuania hereby declares that its competent authorities will not apply Article 7(1) of the Framework Decision.

Notifications by the Republic of Lithuania:

1) We hereby inform you that when the Republic of Lithuania is an *executing* State, the **district courts** are its competent authorities to recognise judgments imposing custodial sentences transmitted by the competent authorities of other EU Member States, under Article 2(1) of the Framework Decision.

The Ministry of Justice of the Republic of Lithuania is the competent authority to receive judgments imposing custodial sentences, transmitted by the competent authorities of other EU Member States. The Ministry of Justice forwards those decisions to the appropriate competent district courts.

Contact information for the Ministry of Justice can be found on the following website:

<http://www.tm.lt/tm/kontaktai/>. When the Republic of Lithuania is the *executing* State, any further correspondence between the court of the Republic of Lithuania and the competent authorities of another Member State of the European Union is direct.

It should be noted that a judgment imposing a custodial sentence, adopted in another Member State of the European Union and transmitted to the Republic of Lithuania for execution, is recognised in the Republic of Lithuania by the district court of the place of residence of the sentenced person. If a sentenced person is serving a sentence in a Lithuanian prison the decision is recognised by the district court of the place in which the sentence is being served. If the available data do not allow the specific competent court to be identified, the decision is recognised by Vilnius District Court. When the Republic of Lithuania is an *issuing* State, the **district courts** are its competent authorities to transmit judgments imposing custodial sentences to another EU Member State.

The decision of the court of the Republic of Lithuania on the transmission of a custodial sentence to another EU Member State is taken: 1) by the district court of the place in which the sentence is being served or the district court of the place in which coercive medical measures or educational measures are being imposed, when the sentenced person is in the territory of the Republic of Lithuania and 2) by the criminal trial court, when the sentenced person is not in the territory of the Republic of Lithuania.

2) In accordance with Article 4(1)(c) and 4(3) and (4) of the Framework Decision, the Ministry of Justice appoints the competent authority to carry out consultations with the other EU Member State's competent authority.

3) In accordance with Article 7(4) of the Framework Decision, the Republic of Lithuania hereby declares that its competent authorities will not apply Article 7(1) of the Framework Decision (see Annex 1).

4) In accordance with Article 21 of the Framework Decision, the district courts and authorities enforcing the sentence inform the competent authorities of the other EU Member States directly about decisions taken. Where the Republic of Lithuania is the *issuing State*, any further correspondence between the court of the Republic of Lithuania and the competent authorities of a Member State of the European Union, is also direct, except for consultations on the decision on the transmission of a custodial sentence to another EU Member State, which go through the Ministry of Justice.

5) In accordance with Article 23(1) of the Framework Decision, we hereby inform you that the Republic of Lithuania will recognise decisions imposing a custodial sentence and issued by another EU Member State only where the certificate has been translated into Lithuanian.

6) In accordance with Article 23(3) of the Framework Decision, we hereby inform you that when the Republic of Lithuania is an *executing* State it will, after receiving a judgment and a certificate, request that the judgment or essential parts of it be accompanied by a translation into Lithuanian, where it finds the content of the certificate insufficient to decide on the enforcement of the sentence.

7) In accordance with Article 28(2) of the Framework Decision, the Republic of Lithuania will recognise and execute decisions imposing a custodial sentence issued from 5 December 2011. Where a decision imposing a custodial sentence has been issued before 5 December 2011, the Republic of Lithuania will continue to apply Article 365 of its Code of Criminal Procedure and the relevant provisions of international agreements (See Declaration by Lithuania in Council document 15413/1/08 REV 1 of 18 November 2008).

Contact information for Lithuanian courts and their areas of jurisdiction can be found on the website of the National Courts Administration: <http://www.teismai.lt/lt/teismai/teismai-teismu-kontaktai/> and <http://www.teismai.lt/lt/teismai/teismu-veiklos-teritorijos/>.

Information provided by LT relating to

Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

Declaration by the Republic of Lithuania on Article 10:

In accordance with Article 10(4) of Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, the Republic of Lithuania hereby declares that its competent authorities will not apply Article 10(1) of the Framework Decision in respect of all of the offences referred to in that paragraph.

Notifications provided by the Republic of Lithuania:

1) We hereby notify that when the Republic of Lithuania is an *executing* State, the **district courts** are its competent authorities to recognise decisions involving deprivation or liberty or probation decisions transmitted by the competent authorities of other EU Member States, under Article 3(1) of the Framework Decision. District courts are competent to directly receive judgments involving deprivation of liberty or probation decisions transmitted by other EU Member States. When the Republic of Lithuania is an *executing* State, the **Probation Services** are its competent authorities to recognise judgments involving deprivation or liberty or probation decisions transmitted by the competent authorities of other EU Member States.

A judgment involving deprivation of liberty or a probation decision issued in an EU Member State is recognised in the Republic of Lithuania by the district court of the place of residence of the sentenced person or, if the sentenced person has no residence in the Republic of Lithuania, the decision is recognised by Vilnius District Court.

When the Republic of Lithuania is an *issuing* State, the **district courts** are its competent authorities to transmit judgments involving deprivation of liberty or probation decisions to other EU Member States.

It should be noted that the question of transmission to another EU Member State of a decision involving deprivation of liberty or of a probation decision is dealt with and decided on by the district court of the place in which the probation service is located.

- 2) In accordance with Article 4(2) of the Framework Decision, we hereby notify that the Republic of Lithuania will recognise and execute the probation measures and alternative sanctions referred to in Article 4(1) only.
- 3) In accordance with Article 5(3) and (4) of the Framework Decision, we hereby notify that in the cases referred to in Article 5(2) of the Framework Decision, i.e. where an alternative sanction or probation measure has been imposed on a person not resident in the Republic of Lithuania, the court of the Republic of Lithuania will generally agree to take over the execution of the measure if the sentenced person is studying, working or has been granted an employment contract in the Republic of Lithuania or if a family member of the sentenced person is resident in the Republic of Lithuania or if there are other compelling reasons for taking over the execution of the alternative sanction or probation measure.
- 4) In accordance with Article 10(4) of the Framework Decision, we hereby notify that the Republic of Lithuania will not apply Article 10(1) of the Framework Decision in respect of all of the offences referred to in that paragraph (see Annex 2).
- 5) In accordance with Article 21 of the Framework Decision, we hereby notify that the Republic of Lithuania will recognise judgments involving deprivation of liberty or probation decisions issued by the competent authority of another EU Member State only where the certificate has been translated into Lithuanian.

Contact information for Lithuanian courts and their areas of jurisdiction can be found on the website of the National Courts Administration: <http://www.teismai.lt/lt/teismai/teismai-teismu-kontaktai/> and <http://www.teismai.lt/lt/teismai/teismu-veiklos-teritorijos/>. The jurisdiction of the regional probation services is established by Law No 1R-134 of the Minister for Justice of 9 May 2014 adopting the regulations of Kaunas, Klaipėda, Panevėžys, Šiauliai and Vilnius regional probation services (http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=424351&p_tr2=2).

Information provided by LT relating to

Council Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

Notifications by the Republic of Lithuania:

1) We hereby notify that when the Republic of Lithuania is an *executing* State, the **Prosecutor** is its competent authority under Article 6 of the Framework Decision.

It should be noted that a decision transmitted to the Republic of Lithuania on a supervision measure imposed on a person ordinarily resident in the Republic of Lithuania and who consents to return to the Republic of Lithuania is recognised by a prosecutor of the District Prosecutor's Office of the place of residence of the person in respect of whom the decision has been issued.

Moreover, a decision on a supervision measure imposed in respect of a person not ordinarily resident in the Republic of Lithuania, may also be recognised and executed in the Republic of Lithuania at the request of that person and if the prosecutor agrees to take over the execution of the decision on the supervision measure. In this case, the decision to recognise the supervision measure is issued by a prosecutor of the Prosecutor General's Office of the Republic of Lithuania.

When the Republic of Lithuania is an *issuing* State, **the Prosecutor** and the **court** are its competent authority under Article 6 of the Framework Decision.

It should be noted that at the pre-trial stage, the decision to transmit a supervision measure to another EU Member State is taken by a prosecutor, while at trial stage, that decision is taken by the trial court.

2) In accordance with Article 8(2) of the Framework Decision, we hereby notify that as well as the supervision measures set out in Article 8(1) of the Framework Decision, the Republic of Lithuania will also recognise and execute decisions on supervision measures issued in criminal proceedings in other Member States of the European Union, imposing, as an alternative to the detention of the suspect, defendant or sentenced person, one or more of the following obligations and prohibitions:

- a) a prohibition from engaging in certain activities related to the alleged offence;
- b) a driving ban;
- c) an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once.

3) In accordance with Article 9(3) and (4) of the Framework Decision, we hereby notify that in the cases referred to in Article 9(2) of the Framework Decision, i.e. where a supervision measure is imposed on a person not ordinarily resident in the Republic of Lithuania, the Prosecutor General's Office of the Republic of Lithuania will generally agree to take over the decision on the execution of the supervision measures if the suspect, defendant or sentenced person is studying, working or has been granted an employment contract in the Republic of Lithuania or has a family member resident in the Republic of Lithuania or if there are other compelling reasons for taking over the execution of the supervision measure.

4) In accordance with Article 21(3) of the Framework Decision, we hereby notify that the Republic of Lithuania will apply Article 2(1) of Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States in deciding on the surrender of the person concerned to the issuing State.

5) In accordance with Article 24 of the Framework Decision, we hereby notify that the Republic of Lithuania will recognise a decision of another EU Member State on a supervision measure only where the certificate has been translated into Lithuanian.

We recall that, in adopting the Framework Decision, the Republic of Lithuania has submitted a declaration to the General Secretariat of the Council, stating that for constitutional reasons it will not apply Article 14(1) of the Framework Decision in respect of all of the offences referred to in that paragraph.

Contact information for the Lithuanian Prosecution Service and prosecutors can be found on the Prosecution Service website <http://www.prokuraturos.lt/>. Contact information for Lithuanian courts and their areas of jurisdiction can be found on the website of the Lithuanian National Courts Administration <http://www.teismai.lt/lt/teismai/teismai-teismu-kontaktai/> and <http://www.teismai.lt/lt/teismai/teismu-veiklos-teritorijos/>.