

# **Unified Court Practice Summary**

Riga 2020

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## List of used terms

Below are listed the abbreviations and terms used in the Summary. If a term is not explained here, it is used within the meaning of the Framework Decisions or national laws:

Act	Judicial Cooperation in Criminal Matters with EU Member States Act of the Republic of Croatia
Summary	Unified court practice summary on two Council of Europe Framework Decisions – 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 and 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 - their use in the Partner Countries of the European Commission co-financing project “Development of Judicial Cooperation in Criminal Matters”, in Latvia, Lithuania, Croatia
working group	Working group set up by the Court Administration of the Republic of Latvia, in which meetings and work participate representatives from: - Ministry of Justice of the Republic of Latvia, Court Administration and courts; - Court Administration of the Republic of Lithuania; - Ministry of Justice of the Republic of Croatia
EU	European Union
Croatia	Republic of Croatia
Executing State	EU member state to which a judgment is forwarded for the purpose of its recognition and enforcement
CCP	Code of Criminal Procedure of the Republic of Lithuania
CPL	Criminal Procedure Law of the Republic of Latvia
Latvia	Republic of Latvia
Lithuania	Republic of Lithuania
Law	Law on Mutual Recognition of the Judgements of the Courts in the European Union in the Criminal Matters of the Republic of Lithuania
Framework Decisions	- 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; - 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
Framework Decision 2008/909	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
Framework Decision 2008/947	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
Partner Countries	Latvia, Lithuania, Croatia
Issuing State	EU member state in which a judgment is delivered
MoJ	Ministry of Justice of the Republic of Latvia, Department of International Cooperation

## 1. INTRODUCTION

This Summary is designed to summarize information on the implementation of the following mutual recognition instruments into national laws and their practical application in the Partner Countries:

- 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;
- 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.

The purpose of the Summary is to facilitate judicial cooperation in criminal matters and to promote the effective and coherent application of mentioned instruments of mutual recognition in criminal matters within the European Union. The sub-purpose of the Summary is to develop a unified court practice approach, when enforcing the sentence imposed by both the judicial authorities of Latvia, another EU member state, and to promote mutual cooperation in criminal matters.

The Summary has been developed within the working group, taking into account the views of the members of the working group, the requirements of international and national regulatory enactments defined within the working group, and the international experience gained through experience exchange visits to Partner Countries, as well as researching Latvian court practice. Representatives of the Partner Countries are involved as needed in the Summary development process, in the working group meetings and work, via using IT communication tools such as electronic mail, videoconferencing.

The Summary is designed to provide assistance to judges, assistant judges, employees of central authorities, officials, and other legal professionals in the Partner Countries institutions involved in the day-to-day application of the Framework Decisions, that are implemented in national laws. Accordingly, the Summary will serve as a practical material for its addressees, providing both informative and practical support in the day-to-day application of the Framework Decisions, and which will contribute to the development of best practice in criminal justice cooperation between EU member states.

The Summary is divided into eight chapters, which are subdivided into subsections. After the introduction to the Summary, chapter two of the Summary explains the Framework Decisions and their key elements. Chapters three and four of the Summary provide information on the implementation of the Framework Decisions in national laws and the comparison that highlights the differences between the implementation and application of the Framework Decisions in the Partner Countries. The fifth and sixth chapters of the Summary provide a description of the actions to be taken by the Issuing and Executing State in accordance with the national laws of the Partner Countries and Framework Decisions, with references to practical application issues, solutions and the best practice. The chapter seven refers to issues that arise in the process of applying the Framework Decisions and the national laws of the Partner Countries in general and do not relate to a specific action step. The eighth chapter of the Summary summarizes annexes.

The Summary was developed by SIA "ERNST & YOUNG BALTIC" with the participation of expert Mg. iur. Jūlija Muraru-Kļučica and in consultation with the representatives of the institutions involved in the working group.

## 2. FRAMEWORK DECISIONS AND THEIR KEY ELEMENTS

As the opportunities for free movement of persons across the borders of EU member states have increased in the European Union, both the number of crimes committed by Latvian citizens in other EU member states and the number of crimes committed by citizens of other EU member states in Latvia are increasing. To mitigate the effects mentioned above, for example, effects on the social rehabilitation of the sentenced person, Framework Decisions have been developed in the European Union with the purpose of promoting the social rehabilitation of the sentenced person and, more generally, cooperation of EU member states in criminal matters.

In accordance with Article 34 (2) (b) of the Treaty on European Union, Framework Decisions are, firstly, binding on EU member states as regards to the outcome to be achieved, leaving to the national authorities the choice of form and methods, and, secondly, Framework Decisions are not to entail direct effect.

Although framework decisions may not entail direct effect, as laid down in Article 34 (2) (b) of the Treaty on European Union, their binding character nevertheless places on national authorities, and in particular on national courts, an obligation to interpret national laws in conformity with EU law, which permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of EU law when they rule on the disputes before them. When national courts apply domestic law they are therefore bound to interpret it, so far as possible, in the light of the wording and the purpose of the framework decision concerned in order to achieve the result sought by the framework decision<sup>1</sup>.

There are some limits to the principle of interpreting national law. Thus, the obligation on the national court to refer to the content of a framework decision when interpreting and applying the relevant rules of its national law is limited by general principles of law, particularly those of legal certainty and non-retroactivity. In particular, those principles do not allow that the mentioned obligation, on the basis of the framework decision and independently of the law enacted to implement it, may oblige or increase the criminal liability of persons who act in breach of those provisions<sup>2</sup>.

EU law must be interpreted as meaning that a national court is bound to take into consideration the whole body of rules of national law and to interpret them, so far as possible, in accordance with framework decisions, in order to achieve the result sought by the framework decision, and if necessary to disapply, on its own authority, for example, the interpretation adopted by the national court of last resort, if that interpretation is not compatible with EU law<sup>3</sup>.

In the light of the above, the European Union has developed a specific legal framework - Framework Decisions establishing the results to be achieved by EU member states as regards the application of the principle of mutual recognition, cooperation and judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the

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<sup>1</sup> See Judgment of the Court (Grand Chamber) of 8 November 2016, *Ognyanov*, C-554/14, paragraph 56, 58, 59 and the case law cited.

<sup>2</sup> See Judgment of the Court (Fifth Chamber) of 29 June 2017, *Popławski*, C-579/15, paragraph 32 – 33 and the case law cited.

<sup>3</sup> See Judgment of the Court (Grand Chamber) of 8 November 2016, *Ognyanov*, C-554/14, paragraph 71.



purpose of their enforcement in the European Union and such judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions. An overview of the content of these Framework Decisions and its key elements is given in the following subsections.

### **2.1. Framework Decision 2008/909 and its key elements**

More and more often, citizens of other EU member states are sentenced in EU member states, imposing custodial sentences or measures involving deprivation of liberty. In order to facilitate the social rehabilitation of the sentenced person, Framework Decision 2008/909 was adopted, the purpose of which is to establish the rules under which EU member state, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence (Framework Decision 2008/909 Article 3 (1)), providing an opportunity to a sentenced foreign person, serve a sentence in another EU member state. Framework Decision 2008/909 determines the results to be achieved by EU member states in order to establish a system for the transfer of a sentenced person to another EU member state to serve his or her sentence in the EU member state of nationality of the sentenced person or to another EU member state with which the sentenced person has links.

Framework Decision 2008/909 stipulates that EU member states should mutually cooperate with each other in the recognition of judgment, that facilitates the social rehabilitation of the sentenced person, executing a custodial sentence of another EU member state, transferring the sentenced person, etc. terms. Cooperation between EU member states must be based on mutual confidence in the legal systems of other EU member states (Framework Decision 2008/909 recital 5). In practice, this means that an EU member state trusts and recognizes a judgment in criminal matter of another EU member state. The cooperation shall be carried out by the competent authorities designated by the Issuing State and Executing State in accordance with their national laws (Framework Decision 2008/909 Article 2 (1)). Information on the competent authorities designated by the EU member states is available here: <https://www.ejn-crimjust.europa.eu/ejn/libcategories.aspx?id=36>.

The cooperation established by Framework Decision 2008/909 is based on regular mutual communication/consultation between the competent authorities designated by the Issuing State and Executing State at different stages of the process. Framework Decision 2008/909 sets out both the cases in which EU member states are required to consult each other and the general rule that there must be regular communication between EU member states by any means which leaves a written record, for example e-mail and fax (Framework Decision 2008/909 recital 18).

Framework Decision 2008/909 defines how the EU member states should organize the forwarding of the judgment and the certificate, as well as the arrangements for recognition and enforcement of the judgment. Framework Decision 2008/909 applies to any custodial sentence or any measure involving deprivation of liberty imposed for a limited or unlimited period of time on account of a criminal offence on the basis of criminal proceedings (Framework Decision 2008/909 Article 1 (b)). Framework Decision 2008/909 is applicable when the sentenced person is in the Issuing State or in the Executing State (Framework Decision 2008/909 Article 3 (2)).

Framework Decision 2008/909 concerns the mutual recognition and enforcement of custodial sentences or measures involving deprivation of liberty, however, further common rules are required, in particular where a non-custodial sentence involving the supervision of probation measures or alternative sanctions has been imposed in respect of a person who does not have his lawful and ordinary residence in the state of conviction (Framework Decision 2008/947 recital 3). Therefore, taking into account the previously mentioned information, Framework Decision 2008/947 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 has been developed.

## **2.2. Framework Decision 2008/947 and its key elements**

Framework Decision 2008/947 was designed to provide an opportunity for a person sentenced in another EU member state, to serve the sentence imposed in another EU member state in EU member state, which contributes to the reintegration of a person into the society.

Framework Decision 2008/947 aims at facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions, in case of offenders who do not live in the state of conviction (Framework Decision 2008/947 Article 1 (1)). The aim of mutual recognition and supervision of suspended sentences, conditional sentences, alternative sanctions and decisions on conditional release is to enhance the prospects of the sentenced person's being reintegrated into society, by enabling that person to preserve family, linguistic, cultural and other ties, as well as to improve monitoring of compliance with probation measures and alternative sanctions, with a view to preventing recidivism, thus paying due regard to the protection of victims and the general public (Framework Decision 2008/947 recital 8).

In order to achieve the above-mentioned objectives, Framework Decision 2008/947 sets out the basic rules. In case if basic rules are fulfilled, the EU member state where the person concerned is sentenced may forward a judgment and, where applicable, a probation decision to the EU member state where the sentenced person is lawfully and ordinarily resident with a view to the recognition thereof and to the supervision of probation measures or alternative sanctions contained therein (Framework Decision 2008/947 recital 12). Moreover, in Framework Decision 2008/947 it is stated that EU member state, other than the member state in which the person concerned has been sentenced, shall recognise judgments and, where applicable, probation decisions and shall supervise probation measures imposed on the basis of a judgment, or alternative sanctions contained in such a judgment, and shall take all other decisions relating to that judgment (Framework Decision 2008/947 Article 1 (1)).

In accordance with the Framework Decision 2008/947 Article 1 (2) this framework decision shall apply only to the recognition of judgments and, where applicable, probation decisions, the transfer of responsibility for the supervision of probation measures and alternative sanctions, and any other decisions related to the mentioned and provided for in this framework decision.

Accordingly, each EU member state has determined which authority or authorities, under its national laws, is competent to act under this framework decision in the situation where that member state is the Issuing State or the Executing State (Framework Decision 2008/947

Article 3 (1)). Moreover, in Framework Decision 2008/947 Article 3 (2) it is stipulated that EU member states may designate non-judicial authorities as the competent authorities for taking decisions under this framework decision, provided that such authorities have competence for taking decisions of a similar nature under their national laws and procedures. Information on the competent authorities designated by the EU member states is available here: <https://www.ejn-crimjust.europa.eu/ejn/libcategories.aspx?id=37>.

In view of the principle of mutual recognition, on which this Framework Decision 2008/947 is based, the Issuing State and Executing State should promote direct contact between their competent authorities in the application of this framework decision (Framework Decision 2008/947 recital 20). Where and whenever it is felt appropriate, competent authorities of the Issuing State and of the Executing State may consult each other with a view to facilitating the smooth and efficient application of this Framework Decision 2008/947 (Framework Decision 2008/947 Article 15).

### 3. IMPLEMENTATION OF FRAMEWORK DECISION 2008/909 INTO NATIONAL LAWS OF PARTNER COUNTRIES

Framework Decision 2008/909 of 27 November 2008 entered into force on 5 December 2008. Pursuant to Article 29 (1) of Framework Decision 2008/909, EU member states needed take the necessary measures to comply with Framework Decision 2008/909 by 5 December 2011. As mentioned previously, Framework Decision 2008/909 defines the results to be achieved by EU member states, but EU member states may choose the form and methods of implementation in order to achieve the outcomes set out in Framework Decision 2008/909.

Accordingly, in Latvia, Framework Decision 2008/909 was implemented in the Criminal Procedure Law of the Republic of Latvia (hereinafter - CPL), via amendments of 24 May 2012, which came into force on 1 July 2012. Framework Decision 2008/909 was implemented into the CPL, following the structure set out in the CPL part C entitled “International Co-operation in the Criminal-legal Field”, namely, the Framework Decisions are introduced by supplementing the respective chapters (i.e. types of penalties) in the CPL<sup>4</sup>. Division 16 of the CPL part C “International Co-operation in the Criminal-legal Field”, lays down the procedure for recognition of foreign (including another EU member state) judgments and the execution of sentences, and Division 17 lays down the procedure for the execution of a sentence abroad (including in another EU Member State) imposed in Latvia. Each of these divisions begins with a chapter (i.e. Chapter 69 “General Provisions for the Execution in Latvia of a Punishment Imposed in a Foreign Country” and Chapter 77 “General Provisions in Relation to Execution in a Foreign Country of a Punishment Imposed in Latvia”) which set out the general provisions and basic principles for cooperation between EU member states. The provisions of Framework Decision 2008/909 on the enforcement in Latvia of a decision made in another EU member state have been introduced in Chapter 71 of the CPL “Execution in Latvia of a Ruling Made in a European Union Member State, by which a Punishment of Deprivation of Liberty has been Imposed”. The provisions of the Framework Decision 2008/909 on the execution of a sentence imposed in Latvia in another EU member state are introduced in Chapter 79 of the CPL “Execution in a European Union Member State of a Punishment of Deprivation of Liberty Imposed in Latvia”. Taking into account the aforesaid, in case it is necessary to execute in Latvia a judgement, that is taken in another EU member state, that is imposing a custodial sentence, the legal norms contained in Chapter 69 and Chapter 71 of the CPL shall apply. In its turn, in case in another EU member state the execution of a custodial sentence imposed in Latvia is necessary, the legal norms contained in Chapter 77 and Chapter 79 of the CPL shall be applied.

In contrast to the above implementation of Framework Decision 2008/909 in Latvia, both Croatia and Lithuania, have implemented Framework Decision 2008/909 in a specific law. In Croatia, Framework Decision 2008/909, as well as other EU instruments on judicial cooperation in criminal matters, were introduced in the “Judicial Cooperation in Criminal Matters with EU Member States Act” which entered into force on 1 July 2013, when Croatia became an EU member state. In Lithuania, Framework Decision 2008/909 was implemented in “The Law on Mutual Recognition of Judgments of the Courts of the European Union in Criminal Matters”, which entered into force on 1 April 2015, as well as other amendments

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<sup>4</sup> 24 May 2012 Annotation of the Amendments of Criminal Procedure Law. Available: <http://titania.saeima.lv/LIVS11/SaeimaLIVS11.nsf/0/B93B84F9E908A647C225793D004D1F90?OpenDocument>. Reviewed: 01/07/2020.

were made in the Lithuanian Code of Criminal Procedure, the Criminal Code and the Code of Executing Punishments.

### **Declarations of Partner Countries**

Framework Decision 2008/909 not only sets out the results to be achieved by EU member states, but also specifies the cases in which an EU member state may choose, for example, to apply or not apply one of the provisions of Framework Decision 2008/909 by submitting a declaration to the General Secretariat of the Council.

### **Competent Authorities**

In accordance with the Framework Decision 2008/909 Article 2 (1) each EU member state shall inform the General Secretariat of the Council which authority or authorities, under its national law, are competent in accordance with this Framework Decision, when that EU member state is the Issuing State or the Executing State.

In Latvia, a municipal (district) court has been designated as a competent authority within the meaning of Framework Decision 2008/909, while the central authority is the Ministry of Justice of the Republic of Latvia<sup>5</sup>, which acts as an intermediary between the Issuing State and the Executing State, providing support to the competent authorities in matters related to cooperation.

In Lithuania as an Executing State, the district courts are its competent authorities that recognise judgments imposing custodial sentences transmitted by the competent authorities of other EU member states. 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 judgments to the appropriate competent district courts. In cases where Lithuania is the Issuing State, the district courts are the competent authorities that send to another EU member state judgments imposing custodial sentences<sup>6</sup> without the intermediation of the Ministry of Justice of the Republic of Lithuania.

Croatia in its declaration about competent authorities has indicated that the authority competent to receive, recognise and execute judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty is the county court (the county court according to the place where the convict has a permanent or temporary residence, and in the alternative, according to the permanent or temporary residence of the convict's family (Article 5, Paragraph 1, Item 5 of the Act). In the case of Croatia being the

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<sup>5</sup> Competent authorities and languages on Transfer of prisoners, Probation Decisions and Supervision Measures by Latvia. Available: <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?id=1173>. Reviewed: 01/07/2020.

<sup>6</sup> Notification of the transposition of Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA by Lithuania. Available: <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?id=1532>. Reviewed: 01/07/2020.

Issuing State, judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty are issued by the courts competent under domestic law<sup>7</sup>.

### **Double Criminality**

Article 7 (4) of Framework Decision 2008/909 states that each EU member state may, on adoption of this Framework Decision 2008/909 or later, by a declaration notified to the General Secretariat of the Council declare that it will not apply Framework Decision 2008/909 Article 7 (1). Article 7 (1) of Framework Decision 2008/909 lists the offences which, without verification of the double criminality, are grounds for recognition and enforcement of the sentence, if they are punishable by a custodial sentence or a measure involving deprivation of liberty under the law of the Issuing State for a maximum period of at least three years and as they are defined by the law of the Issuing State.

According to the declarations made by the Partner Countries, Latvia has not made a declaration that Latvia will not apply Article 7 (1) of Framework Decision 2008/909, but both Lithuania and Croatia have submitted declarations stating that the Lithuanian and Croatian competent authorities will not apply Framework Decision 2008/909 Article 7 (1)<sup>8</sup>. Croatia further states in the declaration that the competent court will recognise judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty in respect of acts that comprise the essential characteristics of a criminal offence under domestic law, regardless of the legal description or classification of the criminal act set out in the judgment received<sup>9</sup>.

### **Language**

In the Article 23 (1) of the Framework Decision 2008/909 it is stated that any EU member state may, on adoption of this Framework Decision or later, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Union.

With regard to the languages used in the documents, the Partner Countries stated in their declarations that:

- Latvia accepts documents that have been translated into Latvian<sup>10</sup>;

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<sup>7</sup> Notification by Croatia on the implementation of the Framework Decision on Transfer of prisoners. Available: <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=1386>. Reviewed: 01/07/2020.

<sup>8</sup> Implementation of the 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 - Information about the state of implementation. Available: [https://www.ejn-crimjust.europa.eu/ejnupload/Practical\\_info/CS/ImplementationCSNov16.PDF](https://www.ejn-crimjust.europa.eu/ejnupload/Practical_info/CS/ImplementationCSNov16.PDF). Reviewed: 01/07/2020.

<sup>9</sup> Notification by Croatia on the implementation of the Framework Decision on Transfer of prisoners. Available: <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=1386>. Reviewed: 01/07/2020.

<sup>10</sup> Competent authorities and languages on Transfer of prisoners, Probation Decisions and Supervision Measures by Latvia. Available: <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=1173>. Reviewed: 01/07/2020.

- Lithuania will recognise judgments imposing a custodial sentence and issued by another EU member state only where the certificate has been translated into Lithuanian<sup>11</sup>;
- The competent judicial authority in Croatia will execute a decision by a foreign judicial authority if that decision and any supporting documents are translated into Croatian. In urgent cases, a translation into English will be accepted on condition of reciprocity<sup>12</sup>. According to the Article 23 (3) of the Framework Decision 2008/909, Croatian competent courts do not request Croatian translation of the decision, except if the content of the certificate is insufficient to decide on the enforcement of the sentence. Also, if the sentenced person was not present at the hearing when custodial sentence had been imposed and decision has not been delivered to the sentenced person, then Croatian competent court requests Croatian translation of the decision from the Issuing State.

An up-to-date summary of the implementation status of Framework Decision 2008/909 and the declarations made is available at: [https://www.ejn-crimjust.europa.eu/ejn/EJN\\_Library\\_StatusOfImpByCat/EN/36](https://www.ejn-crimjust.europa.eu/ejn/EJN_Library_StatusOfImpByCat/EN/36).

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<sup>11</sup> Notification of the transposition of Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA by Lithuania. Available: <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=1532>. Reviewed: 01/07/2020.

<sup>12</sup> Notification by Croatia on the implementation of the Framework Decision on Transfer of prisoners. Available: <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=1386>. Reviewed: 01/07/2020.

#### 4. IMPLEMENTATION OF FRAMEWORK DECISION 2008/947 INTO NATIONAL LAWS OF PARTNER COUNTRIES

Framework Decision 2008/947 of 27 November 2008 entered into force on 16 December 2008. In accordance with Article 25 (1) of Framework Decision 2008/947, EU member states took the necessary measures to comply with Framework Decision 2008/947 by 6 December 2011.

Framework Decision 2008/947 was implemented in Latvia in the CPL as amended on 24 May 2012; the amendments entered into force on 1 July 2012. The amendments determine the procedure both in case Latvia executes, i.e. supervise, the alternative sentence or probation measure imposed in another EU member state, as well as in the event from Latvia is sent for execution to another EU member state an alternative sentence or obligation imposed in Latvia. As mentioned above, Division 16 “Recognition of Judgments of a Foreign Country and Execution of Punishments” of the CPL establishes the procedure for recognition and enforcement of foreign (including another EU member state) judgments and in Division 17 “Execution in a Foreign Country of a Punishment Imposed in Latvia” is set the procedure for execution of a sentence imposed in Latvia abroad (including in another EU member state). Each of these divisions begins with a chapter (i.e. Chapter 69 “General Provisions for the Execution in Latvia of a Punishment Imposed in a Foreign Country” and Chapter 77 “General Provisions in Relation to Execution in a Foreign Country of a Punishment Imposed in Latvia”) which set out the general principles and basic principles for cooperation between EU member states. The provisions of Framework Decision 2008/947 on non-custodial sentences and probation measures have been introduced in Chapter 76 of the CPL “Execution in Latvia of a Punishment of Restriction on Rights Determined in a Foreign Country and the Ruling Made in a European Union Member State on an Alternative Sanction”. The provisions of the Framework Decision 2008/947 on the procedure for enforcement of a judgement made in Latvia on the transmission of alternative sanctions for execution in the EU member state have been introduced in Chapter 81 of the CPL “Execution of the Ruling Made in Latvia on the Recovery of a Financial Nature, on the Confiscation of Property and on an Alternative Sanction in a European Union Member State”. When applying the provisions of the CPL, the sections which determine the general rules (i.e. Chapter 69 “General Provisions for the Execution in Latvia of a Punishment Imposed in a Foreign Country” or Chapter 77 “General Provisions in Relation to Execution in a Foreign Country of a Punishment Imposed in Latvia”) must be applied first, followed by chapters (Chapter 76 “Execution in Latvia of a Punishment of Restriction on Rights Determined in a Foreign Country and the Ruling Made in a European Union Member State on an Alternative Sanction” or Chapter 81 “Execution of the Ruling Made in Latvia on the Recovery of a Financial Nature, on the Confiscation of Property and on an Alternative Sanction in a European Union Member State”), which lay down special rules.

As mentioned above in relation to the implementation of Framework Decision 2008/909, Framework Decision 2008/947 has also been implemented in a specific law in both Lithuania and Croatia. In Croatia, Framework Decision 2008/947 was implemented in the “Judicial Cooperation in Criminal Matters with EU Member States Act” which entered into force on 1 July 2013. In Lithuania, Framework Decision 2008/947 was implemented in the “Law on Mutual Recognition of Judgments of Courts of the European Union in Criminal”, which entered into force on 1 April 2015, as well as other amendments were made in the Lithuanian Code of Criminal Procedure, the Criminal Code and the Code of Executing Punishments.



## **Declarations of Partner Countries**

As stated above in relation to the implementation of Framework Decision 2008/909, in the context of the implementation of Framework Decision 2008/947, the Partner Countries have made declarations to specify and clarify the application of a specific provision of Framework Decision 2008/947 in the Partner Country.

### **Competent Authorities**

Pursuant to Article 3 (1) of Framework Decision 2008/947, each EU member state shall inform the General Secretariat of the Council which authority or authorities, under its national law, are competent to act under Framework Decision 2008/947 where that EU Member State is the Issuing or Executing State.

In its declaration on Article 3 (1) of Framework Decision 2008/947, Latvia has declared that the competent authority is the municipal (district) court, but the Ministry of Justice of the Republic of Latvia performs the functions of a central authority<sup>13</sup>.

However, Lithuania in its declaration on Article 3 (1) of Framework Decision 2008/947 informs, that when the Republic of Lithuania is an Executing State, the district courts are its competent authorities to recognise judgments imposing a penalty not involving deprivation of liberty, and probation decisions transmitted by the competent authorities of other EU member states. When the Lithuania is an Executing State, the Probation Services are its competent authorities to enforce judgments imposing a penalty not involving deprivation of liberty, or probation decisions transmitted by the competent authorities of other EU member states. When Lithuania is an Issuing State, the district courts are its competent authorities to transmit judgments imposing a penalty not involving deprivation of liberty, or probation decisions to other EU member states<sup>14</sup>.

According to the Croatian declaration concerning Article 3 (1) the judicial authority competent to receive, recognise and execute judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions is the county court of the respective county. Judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions are issued by the courts competent under domestic law and in accordance with that law<sup>15</sup>.

### **Types of Probation Measures and Alternative Sanctions**

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<sup>13</sup> Implementation of 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 - Information provided to the General Secretariat. Available: [https://www.ejn-crimjust.europa.eu/ejnupload/Practical\\_info/Probation/ImplementationProbationNov16.PDF](https://www.ejn-crimjust.europa.eu/ejnupload/Practical_info/Probation/ImplementationProbationNov16.PDF). Reviewed: 01/07/2020.

<sup>14</sup> Notification of the implementation of the Council Framework Decision on Probation Decisions by Lithuania. Available: <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=1682>. Reviewed: 01/07/2020.

<sup>15</sup> Notification by Croatia of the implementation of the Framework Decision on Probation Decisions. Available: <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=1390>. Reviewed: 01/07/2020.

In the Framework Decision 2008/947 Article 4 (2) it is stated that each EU member state shall notify the General Secretariat of the Council, when implementing this Framework Decision, which probation measures and alternative sanctions, apart from those referred to in Article 4 (1), it is prepared to supervise.

Latvia will recognize only those probation measures that are specified in the legal acts in the field of criminal law in Latvia. In turn Lithuania has made a declaration on Article 4 (2) of Framework Decision 2008/947 declaring that Lithuania will recognize and enforce the probation measures and alternative sanctions referred to in Article 4 (1) of Framework Decision 2008/947<sup>16</sup>. Croatia has made a declaration on Article 4 (2) of Framework Decision 2008/947 stating that the domestic competent authorities, on the basis of a recognised foreign probation measure or alternative sanction, will enforce in respect of a convicted person only such types of probation measures and alternative sanctions as are provided for in the criminal legislation of the Republic of Croatia. In Croatia, a freely accessible list of measures has been drawn up with regard to the obligations of the sentenced person, which includes, but is not limited to, the measures referred to in Article 4 (1) of Framework Decision 2008/947<sup>17</sup>.

### **Double Criminality**

Article 10 (4) of Framework Decision 2008/947 states that each EU member state may, on the adoption of this Framework Decision or later, by a declaration notified to the General Secretariat of the Council, declare that it will not apply Framework Decision Article 10 (1), which lists offences, as they are defined by the law of the Issuing State, which, without verification of the double criminality of the act, give rise to recognition of the judgment and, where applicable, the probation decision and to supervision of probation measures and alternative sanctions, if they are punishable in the Issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years.

Only Lithuania has made a declaration on Article 10 (4) of Framework Decision 2008/947 stating that its competent authorities will not apply Article 10 (1) of Framework Decision 2008/947 in respect to all offenses referred to in this paragraph<sup>18</sup>.

### **Language**

Article 21 of Framework Decision 2008/947 states that any EU member state may, on adoption of this Framework Decision or later, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the institutions of the European Union.

In view of the above, Latvia has made a declaration on Article 21 of Framework Decision 2008/947 declaring that it will accept the documents in Latvian. On the other hand, Lithuania

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<sup>16</sup> Notification of the implementation of the Council Framework Decision on Probation Decisions by Lithuania. Available: <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?id=1682>. Reviewed: 01/07/2020.

<sup>17</sup> Notification by Croatia of the implementation of the Framework Decision on Probation Decisions. Available: <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?id=1390>. Reviewed: 01/07/2020.

<sup>18</sup> Notification of the implementation of the Council Framework Decision on Probation Decisions by Lithuania. Available: <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?id=1682>. Reviewed: 01/07/2020.

states in its declaration on Article 21 of Framework Decision 2008/947 that it will recognise a judgment imposing a punishment not involving deprivation of liberty, or a probation decision issued by the competent authority of another EU member state only where the certificate has been translated into Lithuanian<sup>19</sup>. In its declaration on Article 21 of Framework Decision 2008/947, Croatia states that the competent judicial authority will execute a decision by a foreign judicial authority if that decision and any supporting documents are translated into Croatian. In urgent cases, a translation into English will be accepted on condition of reciprocity<sup>20</sup>. According to the Article 21 of the Framework Decision 2008/947, the competent courts do not request Croatian translation of the decision, only Croatian translation of the certificate. If Croatian court needs additional information in order to render a decision, then that court contacts the issuing competent authority in order to get clarifications. If Croatian court needs a translation of a decision, it only applies to a ruling on the imprisoning and not the statement of reasons.

An up-to-date summary of the implementation status of Framework Decision 2008/947 and the declarations made is available at: [https://www.ejn-crimjust.europa.eu/ejn/EJN\\_Library\\_StatusOfImpByCat.aspx?l=EN&CategoryId=37](https://www.ejn-crimjust.europa.eu/ejn/EJN_Library_StatusOfImpByCat.aspx?l=EN&CategoryId=37).

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<sup>19</sup> Implementation of 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 - Information provided to the General Secretariat. Available: [https://www.ejn-crimjust.europa.eu/ejnupload/Practical\\_info/Probation/ImplementationProbationNov16.PDF](https://www.ejn-crimjust.europa.eu/ejnupload/Practical_info/Probation/ImplementationProbationNov16.PDF). Reviewed: 01/07/2020.

<sup>20</sup> Notification by Croatia of the implementation of the Framework Decision on Probation Decisions. Available: <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=1390>. Reviewed: 01/07/2020.

## 5. ACTIONS TO BE TAKEN BY THE ISSUING AND EXECUTING STATE IN ACCORDANCE WITH FRAMEWORK DECISION 2008/909 AND THE NATIONAL LAWS, REFERENCES TO PRACTICAL APPLICATION ISSUES, SOLUTIONS AND THE BEST PRACTICE

The actions to be taken by the Partner Countries, when acting as Issuing and Executing State in accordance with Framework Decision 2008/909 and the national laws, as well as references to practical application issues, solutions and best practices, are set out in the following subsections.

### 5.1. Latvia

The actions to be taken, when Latvia is Issuing and Executing State in accordance with Framework Decision 2008/909 and the CPL, as well as references to practical application issues, solutions and best practices, are set out in the table below.

It is important to point out that both when sending and receiving requests for taking over judgments that are imposing custodial sentences, one of the fundamental criteria that is assessed by both the MoJ and the court is the observance of the convicted person's human rights through the prism of social resocialization. In practice, this is reflected in the assessment of the sentenced person's relationship with the Executing State, taking into account the following criteria: language, family, nationality, employment, etc.

Nr.	Activity description	Reference to the article of CPL
In case Latvia is an Issuing State and it is necessary to execute a custodial sentence imposed in Latvia in another EU member state		
1.	<p>Proposal by the Latvian court to MoJ, request for the execution of a judgment of deprivation of liberty in another EU member state.</p> <p>MoJ also initiates the verification at the request of the sentenced person or his representative, as well as at the initiative of itself, an EU member state and a custodial institution.</p>	<p>Article 808., Article 809. (1) and (2), Article 823 of the CPL</p> <p>Article 825. (1) of the CPL</p>
<p>If the request is submitted by the Latvian court, then in this step of action it is observed that:</p> <ul style="list-style-type: none"> <li>- <b>Latvian court does not always send a proposal to the MoJ regarding the execution of a custodial sentence imposed in Latvia in another EU member state.</b></li> </ul>		

Nr.	Activity description	Reference to the article of CPL
<p><b>Issues, solutions and the best practice</b></p>	<p><i>Accordingly, it would be advisable for the Latvian court to monitor and control the execution of the judgment, especially in cases where the materials of the criminal case contain information that the sentenced person is outside the territory of Latvia.</i></p> <ul style="list-style-type: none"> <li>- <b>The information provided in the proposals of the Latvian court is incomplete.</b> Provision of incomplete information significantly hinders the commencement of proceedings - execution of a custodial sentence imposed in Latvia in another EU member state.</li> </ul> <p><i>In order to avoid delaying the start of the process, it is recommended to include in the proposal the information/documentation specified in the Article 678. and the Article 809. (2) of the CPL.</i></p> <p>If the request is made by the sentenced person or his representative, it is observed in this step of action that:</p> <ul style="list-style-type: none"> <li>- In order to verify the information provided in the request of the sentenced person or his/her representative, the MoJ shall initiate the verification by requesting information from the court and the custodial institution. <b>The CPL does not specify the period within which the verification should be performed</b>, but stipulates that if requests have been received and the MoJ considers that the conditions referred to in Article 823 of the CPL exist, a special form certificate must be prepared within 10 days (Article 809. (3) of the CPL). <b>It should be noted that 10 days are set for the verification of the proposal and not for the preparation of a special form certificate. Upon receipt of the request, the verification may take more than 10 days.</b></li> <li>- <b>The time for starting the verification process may be delayed by inaccurately drawn up documents by the sentenced person's representative</b>, for example, the power of attorney of the sentenced person's representative has not been submitted.</li> </ul> <p><i>Accordingly, it would be advisable to provide as complete information as possible so that the MoJ can initiate and carry out the verification process without delay.</i></p> <p>As regards the initiative of the custodial institution, it should be noted that:</p> <ul style="list-style-type: none"> <li>- The Prison Administration compiles a summary of the imprisonment of EU citizens in prisons in Latvia. In accordance with Article 819. (1) of the CPL, administration of a deprivation of liberty institution shall, within 10 days after it has received an order of a judge regarding execution of the judgment, inform a foreigner convicted in Latvia or a person whose permanent place of residence is not in Latvia, regarding the right of the person to express his or her wish to serve a punishment in the state of his or her citizenship or permanent place of residence. The convicted person shall be informed about the legal consequences of the transfer of a person for serving of a punishment.</li> </ul>	

Nr.	Activity description	Reference to the article of CPL
<b>Issues, solutions and the best practice</b>	<i>It would be advisable for convicted EU citizens to provide information on the possibility of serving their sentence in an EU member state of their nationality, for example, by providing the booklets available here: <a href="https://www.europris.org/wp-content/uploads/2019/12/FD909-Leaflet.pdf">https://www.europris.org/wp-content/uploads/2019/12/FD909-Leaflet.pdf</a>, <a href="https://steps2.europris.org/wp-content/uploads/2016/07/Annex-4.10.-Workstream-2.2-Offender-Handbook.pdf">https://steps2.europris.org/wp-content/uploads/2016/07/Annex-4.10.-Workstream-2.2-Offender-Handbook.pdf</a>.</i>	
2.	The MoJ examines and verifies the proposal within 10 days and informs the court that addressed the proposal of the results. If the conditions are met to request that the judgment imposed in Latvia is enforced in another EU member state, the MoJ shall fill in a special form certificate.	Article 809., 823. and 825. of the CPL
3.	A special form certificate is sent to the EU member state together with the judgment and the sentenced person's opinion. About the sending of the judgment and the certificate to the EU member state, MoJ shall inform the proposal or request submitter.	Article 825. (6) of the CPL
<b>Issues, solutions and the best practice</b>	In case: <ul style="list-style-type: none"> <li>- <b>The sentenced person is serving a custodial sentence in Latvia, a special form document, that informs the sentenced person about sending of the judgment and the certificate to the relevant member state of the European Union shall be issued to the sentenced person.</b></li> <li>- <b>The sentenced person is in another member state of the European Union, the certificate shall be accompanied by a special form document, that informs the sentenced person about the sending of the judgment and the certificate to the relevant member state of the European Union.</b></li> </ul>	
4.	After being informed by an EU member state of its decision regarding the judgment and the special form certificate sent to that state, the MoJ shall notify the submitter of the request, the court supervising the full execution of the judgment, the sentenced	Article 825. (7) of the CPL

Nr.	Activity description	Reference to the article of CPL
	person and his representative in cases where the request is submitted by this representative.	
<p><b>Issues, solutions and the best practice</b></p>	<p>At this stage of the action, <b>it should be noted that in most cases EU member states do not take decisions on the sent judgment and the special form certificate within the time limits set out in Framework Decision 2008/909. As far as possible, the MoJ sends reminders to the EU member states if no information on the decision taken by another EU member state has been received within the set deadline.</b></p> <p><i>Accordingly, it is recommended that other parties involved, such as the court supervising the enforcement of the judgment, monitor the enforcement of the sentence imposed.</i></p>	
5.	If another EU member state has agreed to the execution of a punishment, the MoJ shall assign the State Police, upon an agreement with the relevant EU member state, to transfer the sentenced person thereto within not more than 30 days from the day when the member state took the final decision to recognise the judgment and to execute the punishment.	Article 829. (1) of the CPL
6.	Upon receipt of information about the end of the execution of a punishment, the MoJ informs the court and the custodial institution thereof.	Article 812. (2) of the CPL
<p><b>Issues, solutions and the best practice</b></p>	<p>In practice, <b>it is very rare for another EU member state to inform the MoJ about the end of the execution of a punishment.</b></p> <p><i>It would be advisable that upon receipt of a request from the court supervising the enforcement of the judgment, the MoJ requests information on the sentence from another EU member state.</i></p>	
<p>In case Latvia is the Executing State to which the judgment of another EU member state has been forwarded for recognition and enforcement in Latvia</p>		
1.	Having received a request (judgment and special form certificate) of another EU member state regarding the execution of a punishment imposed therein, the MoJ shall, within 10 days, but if	Article 754. and 778. of the CPL

Nr.	Activity description	Reference to the article of CPL
	the amount of materials is particularly large within 30 days, verify in accordance with the procedure set in CPL Article 754.	
<p><b>Issues, solutions and the best practice</b></p>	<p>In this step of action, <b>Latvia, on the basis of the provisions of Framework Decision 2008/909, receives a special form certificate, its translation into Latvian, and a judgment in the language of another EU member state (without translation into Latvian). Framework Decision 2008/909 stipulates that only a special form certificate is required to be translated into Latvian, but in practice it has been established that for Latvian courts also a judgment of another EU member state is translated into Latvian</b>, although the special form certificate already contains precise and complete information about another EU member state judgment. MoJ sends the judgment to the Court Administration of the Republic of Latvia in order to request the translation of judgment of another EU member state in Latvian. After receiving the translation of the judgment, all the documentation is sent to the competent Latvian court for assessment.</p> <p><i>As the translation of the judgment prolongs the proceedings, it would be advisable for the Latvian courts to rely on the information provided in the special form certificate, based on the principle of mutual recognition. In case there are differences between countries in determining the sentence or the case is complicated, the Executing State may ask the EU member state to provide a full translation of the judgment into Latvian.</i></p>	
2.	After verification of the request, the MoJ sends the materials to the district (city) court for a decision on the recognition of a foreign judgment and enforcement of the sentence in Latvia, and informs the member state of the EU thereof.	Article 754. (4) and Article 778. of the CPL
3.	<p>A judge of a district (city) court shall, within 30 days, examine a request of a foreign country regarding execution of a punishment imposed in the foreign country in a written procedure.</p> <p>If information provided by another EU member state is insufficient, the MoJ or a court with the intermediation of the MoJ may request additional information or documents, specifying a deadline for the submission thereof.</p>	<p>Article 759. (1) of the CPL</p> <p>Article 754. (5) of the CPL</p>
<p><b>Issues, solutions and</b></p>	<p>In this step of action, it can be observed that:</p> <ul style="list-style-type: none"> <li>- <b>There are cases when Latvian courts, without requesting additional information, make a decision on refusal to recognise and execute the judgment of another EU member state on the execution of custodial sentence.</b></li> </ul>	



Nr.	Activity description	Reference to the article of CPL
the best practice	<p><i>It is recommended that the Latvian court examine this category of cases more carefully, and in case of doubt, always use the opportunity to request additional information. Failure to request additional information may violate the sentenced person's human rights.</i></p> <ul style="list-style-type: none"> <li>- <b>Latvian courts quite often</b>, upon receipt of a request from another EU member state - a judgment imposing a custodial sentence - <b>do not recognize and enforce the judgment within the term specified in Article 759. of the CPL - within 30 days.</b></li> </ul> <p><i>It is recommended that Latvian courts make a decision within the time period specified within the CPL.</i></p> <p><b>In addition, Article 12 of Framework Decision 2008/909 provides that a decision must be taken within 90 days on whether to consent to the transfer of a person to serve a further custodial sentence. Article 15 of Framework Decision 2008/909, on the other hand, provides for that the transfer of a natural person must take place within 30 days.</b></p>	
4.	The judge of the district (city) court, having assessed the conditions of execution and the reasons for refusal, shall make one of the following decisions within 30 days:	Article 775. and 776. of the CPL
4.1.	Decision on consent to recognise the judgment and execute the punishment imposed in the foreign country	Article 759., 774., 775., 776. and Article 779. (1) and (2) of the CPL
Issues, solutions and the best practice	<p>In this step of action, it can be seen that:</p> <ul style="list-style-type: none"> <li>- <b>In practice, Latvian courts incorrectly formulate a court decision.</b> In practice, Latvian courts make a decision, for example: <ul style="list-style-type: none"> <li>▪ a decision to satisfy the request of an institution of another EU member state and to take over/transfer the sentenced person for serving a sentence in Latvia;</li> <li>▪ a decision to recognize the request and take over/transfer the citizen to serve the sentence in Latvia;</li> <li>▪ a decision to recognize a judgment of another EU member state and to take over the custodial sentence imposed on the person sentenced in that judgment.</li> </ul> </li> </ul> <p><i>According to Article 759. of the CPL, a Latvian court must make a decision on consent to recognise the judgment and execute the punishment imposed in another EU member state.</i></p> <ul style="list-style-type: none"> <li>- <b>Latvian courts very often do not provide the information specified in point j) of the special form certificate requested by another EU member state</b>, as a result of which the human rights of the sentenced person may be affected.</li> </ul>	

Nr.	Activity description	Reference to the article of CPL
<b>Issues, solutions and the best practice</b>	<p>When completing point j) of the special form certificate of Framework Decision 2008/909, other EU member states often indicate that they wish to receive information from the Executing State about the provisions of the law of the Executing State applicable to early or conditional release, the beginning and end of the period of early or conditional release.</p> <p><i>It would be advisable for Latvian courts to provide the information specified/requested in a special form certificate before deciding to consent to the recognition and enforcement of a judgment of another EU member state, as there are often cases where the conditions for early release in another EU member state are more favourable than in Latvia. In such cases, other EU member states upon receiving information about the conditional release of the person and seeing that conditions are more unfavourable in Latvia may withdraw the execution of the request.</i> Otherwise, in case the request is not withdraw, the sentenced person's right to liberty may be violated (Article 5 of the European Convention on Human Rights).</p>	
4.2.	Decision on refusal to recognise the judgment and execute the punishment imposed in the foreign country	Article 759., 774., 775., 776. and 779. (1) and (2) of the CPL
<b>Issues, solutions and the best practice</b>      <b>Issues, solutions and</b>	<p>In this step of action, it can be seen that:</p> <ul style="list-style-type: none"><li>- <b>In practice, Latvian courts incorrectly formulate a court decision.</b> In practice, Latvian courts make, for example, a decision to reject a request of another EU member state and not to take over/transfer a sentenced person for execution of punishment in Latvia.</li></ul> <p><i>According to Article 759. of the CPL, a Latvian court must make a decision on refusal to recognise the judgment and execute the punishment imposed in another EU member state.</i></p> <ul style="list-style-type: none"><li>- <b>The Latvian court points out that from the special form certificate and the materials attached to it, the content of the decision on the custodial sentence is not clear, the date of its adoption and entry into force is not clear, it is not clear whether the decision is attached at all.</b> The court decides to refuse to recognize the judgment of another EU member state and to enforce the sentence in Latvia.</li></ul> <p><i>It would be advisable that in such a case the Latvian court would act in accordance with Article 779. (2) of the CPL, which stipulates that the court may suspend taking of a decision on the recognition and execution of a ruling on the punishment of deprivation of liberty if the special form certificate is incomplete or does not conform to the judgment, and to specify a time period, by which the certificate should be updated by the European Union member state. It would be advisable for the Latvian court to specify a reasonable time limit for the provision of additional information, taking into account the time required for the transfer and translation of documents (minimum time limit - 3 months).</i></p>	

Nr.	Activity description	Reference to the article of CPL
<p><b>the best practice</b></p>	<p>- <b>Latvian courts, when receiving requests from another EU member state, assess them in accordance with Chapter 70 of the CPL and in the decisions on refusal to recognize and enforce judgments of another EU member state are using the reasons for refusal specified in Article 751. of the CPL.</b></p> <p><i>Upon receipt of a request from another EU member state, it should be assessed in accordance with Chapter 71 of the CPL, and decisions on refusal to recognize and enforce judgments of another EU member state should use the grounds for refusal specified in Article 776. of CPL.</i></p>	
<p>5.</p>	<p>The decision referred to in point 4 of this table is not subject to appeal, and the judge notifies the sentenced person in another EU member state of the decision and, through the MoJ, the judge notifies another EU member state and the sentenced person if he or she is in that member state.</p> <p>Concurrently with a notification regarding the decision on consent to recognise the judgment and execute the punishment imposed in another EU member state (CPL Article 760. (1)) referred to in point 4 of this table, a judge shall inform a person convicted in another EU member state and a prosecutor regarding the right, within 10 days from the day of receipt of the notification, to submit objections against the determination of the punishment to be executed in Latvia in a written procedure, to submit recusation for a judge, to submit an opinion on the punishment to be executed in Latvia, as well as on the day of availability of the decision.</p> <p>Takeover of a person convicted in the European Union member state shall take place in accordance with the procedures laid down in Article 768. of CPL.</p>	<p>Article 759. (3) of the CPL</p> <p>Article 760. (4) of the CPL</p> <p>Article 779. (3) of the CPL</p>
	<p>In this step of action, it can be seen that:</p>	

Nr.	Activity description	Reference to the article of CPL
<p data-bbox="219 427 385 564"><b>Issues, solutions and the best practice</b></p> <p data-bbox="219 858 385 995"><b>Issues, solutions and the best practice</b></p>	<ul data-bbox="474 284 2038 778" style="list-style-type: none"> <li>- <b>Latvian courts, when making a decision on consent to recognize and enforce a judgment of another EU member state, do not simultaneously send a request to the State Police to take over/transfer a person</b>, as a result of which the process of taking over/transfer of a person is prolonged.</li> </ul> <p data-bbox="519 405 2038 510"><i>Simultaneously with the decision of the Latvian court on the consent to recognize and enforce the judgment of another EU member state, the task must be sent to the State Police to take over/transfer the sentenced person from another EU member state. When a person is taken over/transferred, the Latvian court sends a notification of the right to object within 10 days.</i></p> <ul data-bbox="474 533 2038 778" style="list-style-type: none"> <li>- The Article 779. (3) of the CPL stipulates that takeover of a person convicted in the European Union member state shall take place in accordance with the procedures laid down in Article 768. of CPL. The Article 768. (1) of the CPL stipulates that having taken the decision referred to Article 759. (1) 1) of CPL and received a consent of the foreign country to transfer the person convicted in the foreign country for serving of the punishment of deprivation of liberty in Latvia, a court shall assign the State Police to take over the person, after co-ordinating it with the relevant foreign country. After delivery of the person convicted in the foreign country to Latvia a court shall be notified thereof without delay, and the person shall be placed in investigation prison until a decision to determine the punishment to be executed in Latvia is taken.</li> </ul> <p data-bbox="519 798 2038 973">Article 768. of the CPL concerns the transfer of a convicted person in foreign country (not an EU member state). Framework Decision 2008/909 does not provide for the final consent of an EU member state prior the start of the physical transfer/takeover process. <b>In practice, Latvian courts often await final consent, but EU member states are not obliged to give such final consent.</b> As a result, the process is delayed due to incomplete legal framework. <b>In case of transfer of a sentenced person from an EU member state, it is not necessary to obtain the final consent prior starting the physical transfer/transfer process of the person.</b></p>	
6.	After making the decision referred to in point 4 of this table, the judge shall determine the sentence to be executed in Latvia in a written procedure, unless a person convicted in another EU member state and a prosecutor object to it.	Article 760. (1) and Article 779. (1) of the CPL
7.	Decision on the continuation of the sentence imposed in another EU member state and determination of the part of the sentence to be served in Latvia.	Article 779. (1) of the CPL

Nr.	Activity description	Reference to the article of CPL
<b>Issues, solutions and the best practice</b>	In this step of action, it can be observed that <b>the decision on the continuation of the sentence imposed in another EU member state and determination of the part of the sentence to be served in Latvia, does not indicate from which moment the sentence to be served in Latvia should be started/counted.</b> <i>It would be advisable to determine in the decision from which moment the sentence to be served in Latvia should be started/counted.</i>	
8.	The court shall enforce the decision referred to in point 7 of this table.	Article 634. (4) of the CPL
<b>Issues, solutions and the best practice</b>	In this step of the action, it can be observed that <b>the Prison Administration requests a copy of the court decision on the sentence with a note of entry into force.</b> <i>It would be advisable to send a copy of the decision to the relevant authority with a note of entry into force immediately after the decision enters into force.</i>	
9.	About the decision referred to in point 7 of this table shall be notified the sentenced person, MoJ, the competent authority of another EU member state.	—
<b>Issues, solutions and the best practice</b>	In this step of action, it can be observed that <b>the decision of the Latvian court is sent without a note of entry into force.</b> <i>It would be advisable to send a copy of the decision to the person and/or authority concerned, with a note of an entry into force, immediately after the decision enters into force.</i>	
10.	Upon receipt of the court notification, the MoJ informs the EU member state concerned of the completion of the execution of the sentence.	Article 763. (2) 5) of the CPL
<b>Issues, solutions and the best practice</b>	In this step of action, it can be observed that the <b>Latvian court almost never provides the information specified in Article 763. (2) 5) of the CPL.</b> <i>It would be advisable for Latvian courts to provide information on the completion of the execution of the sentence.</i>	

### 5.1.1. Practical case examples in connection with Framework Decision 2008/909

*The essence of the case: two judgments of EU member states on serving a custodial sentence in Latvia in relation to one and the same person*

Participating EU member states: Sweden, Latvia, Belgium

#### 1. Request from Sweden for execution of a custodial sentence - Person A (Latvian citizen)



Latvia decided to agree to recognize and enforce the judgment of the court in Sweden

Person A was served his sentence in Latvia and was released (the address of residence is unknown)

#### 2. Request from Belgium for enforcement of the judgment to the same Person A.

- The court found that the conditions for conditional release prior to completion of punishment were better in Belgium than in Latvia

There are no grounds for a Latvian court to declare a search of a person in the territory of Latvia without a request for temporary detention of a person made by the competent authority of Belgium

#### Actions of the Latvian court?

1. The Latvian court informs the competent authority of Belgium of conditions of conditional early release in Latvia and requests an opinion on the maintenance/withdrawal of the request
2. The Latvian court informs Belgium that the person has served a custodial sentence in accordance with a judgment made by Sweden court and has been released from custody; the address of residence is unknown.

**OR**

3. A Latvian court decides to refuse to recognize and enforce a judgment of a court in Belgium on the grounds that Belgium has more favourable conditions for conditional release prior to completion of punishment, thus respecting the human right to liberty under Article 5 of the European Convention on Human Rights and Article 5 of the Charter of Fundamental Rights of the European Union (provided that the person has not expressed an opinion on serving the sentence in Latvia).

#### Belgium's reaction?

4. A reply from Belgium on the withdrawal of the request is awaited due to the more favourable conditions for conditional release prior to completion of punishment in Belgium

5. It is possible that Belgium will submit a request for temporary detention of a person, on the basis of which a Latvian court will be able to declare a search for a person in Latvia.

*The essence of the case: an EU member state has decided that a person will serve a custodial sentence in Latvia, the person is in Latvia*

Participating EU Member States: the Netherlands, Latvia

### 1. Request from the Netherlands for the enforcement of a custodial sentence in the territory of Latvia (the person is in Latvia)

Has the Netherlands requested temporary custody of a person?

CPL Article 780. - If a person convicted in a European Union member state is in Latvia, such person shall be detained, temporary arrest and security measure shall be applied thereto in accordance with the procedures and within the time period specified in Articles 770., 771. and 772. of CPL.

- 1) in accordance with Article 770. of the CPL, the actions of the MoJ in connection with the detention of a person
- 2) Article 771. (3) - Temporary custody may also be applied by a judge who is reviewing a request for the execution of a custodial sentence imposed abroad, if there is reason to believe that the person sentenced therein will avoid the court.

The judge postponed the decision on the recognition and enforcement of the judgment made in the Netherlands, due to the fact that he requested additional information from the competent authority of the Netherlands due to inaccurate and incomplete information provided in the special form certificate. -> The Netherlands provided additional information.

BUT

The court reiterated its request to the competent authority of the Netherlands to clarify the information by setting a deadline of **one month** for the submission of the information.

*Article 9 1. (a) of Framework Decision 2008/909 provides that the certificate referred to in Article 4 is incomplete or manifestly does not correspond to the judgment and has not been completed or corrected within a **reasonable deadline** set by the competent authority of the Executing State, the competent authority of the Executing State may refuse to recognise the judgment and enforce the sentence.*

The set court deadline of one month is not an acceptable deadline, as the following criteria must be taken into account, when setting the deadline for providing additional information:

- duration of preparation/transmission/receipt of documents,
- as well as the duration of the translation of documents.



The Netherlands failed to comply with the request of the Latvian court within one month, as a result of which the court decided to refuse to recognize and enforce the judgment of the competent court of the Netherlands in the territory of Latvia.

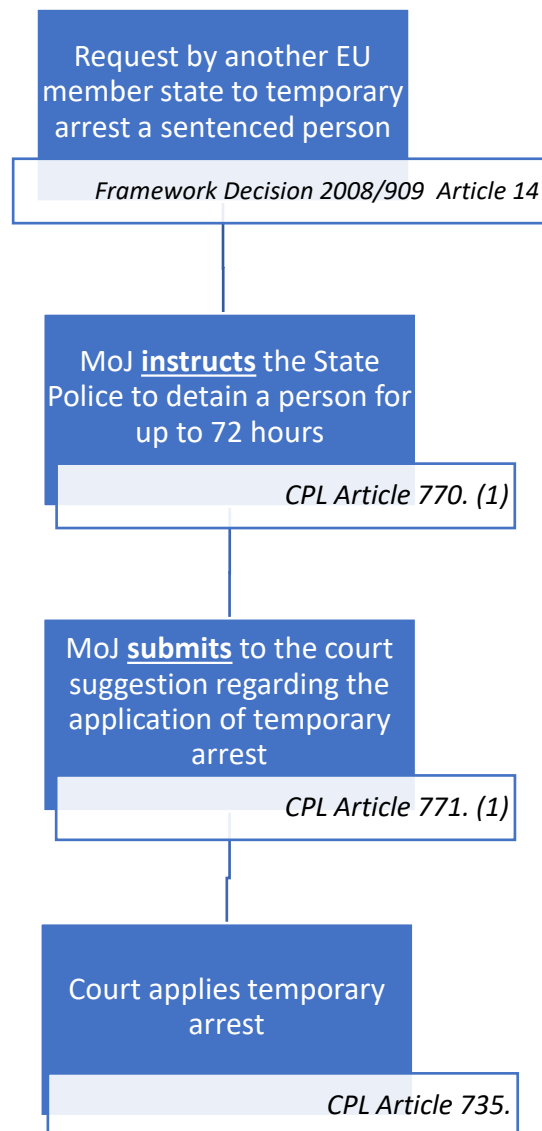
### 5.1.2. Explanation of an informative nature regarding the application of the security measure

Explanation of an informative nature for the action of the MoJ and the Latvian court, in case it is recognizing the judgement of another EU member state and the sentenced person is located in Latvia.

#### Criteria for ensuring the temporary arrest of a sentenced person:

- the sentenced person is in Latvia;
- a request from another EU member state has been received or the intention to request the execution of a custodial sentence in Latvia;
- provision of temporary arrest:
  - o **takes place before** the judgment and the special form certificate are received, or
  - o **prior to** the adoption of the decision on recognition and enforcement.

#### Schematic solution of activities:



If another EU member state has requested temporary arrest **before** sending the judgment and the special form certificate, the MoJ shall **inform** the EU member state concerned of the application of the temporary arrest and **request** the submission of the judgment and the special form certificate within 18 days (CPL Article 770. (3)).

## 5.2. Lithuania

The actions to be taken, when Lithuania is acting as Issuing and Executing State in accordance with Framework Decision 2008/909 and the Law on Mutual Recognition of the Judgements of the Courts in the European Union in the Criminal Matters of the Republic of Lithuania (hereinafter – the Law), as well as references to practical application issues, solutions and best practices, are set out in the table below.

Nr.	Activity description	Reference to the article of Law
In case Lithuania is an Issuing State and it is necessary to execute a custodial sentence imposed in Lithuania in another EU member state		
1.	<p>The Lithuanian court sends a special form certificate to the EU member state together with the judgment and the sentenced person's opinion.</p> <p>About the sending of the judgment and the certificate to the EU member state, the Ministry of Justice of the Republic of Lithuania shall inform the proposal or request submitter.</p>	<p>CCP Article 342</p> <p>Article 23 of the Law on Mutual Recognition of the Judgements of the Courts in the European Union in the Criminal Matters (hereinafter– the Law)</p>
<b>Issues, solutions and the best practice</b>	<p><b>The executing authority provides the court with the special form certificate and relevant documents. The information on the consent of the convicted person to send the judgement to another EU member state shall be indicated in the special form certificate.</b></p> <p><b>The court may ask the Ministry of Justice of the Republic of Lithuania to consult with another EU member state.</b></p>	
2.	<p>After being informed by another EU member state of its decision regarding the judgment and the special form certificate sent to that state, the court shall notify the sentenced person, the executing authority, the Ministry of Justice of the Republic of Lithuania, and other institutions that implement the transfer of the sentenced person if a person is in Lithuania (i.e. Public Security Service under the Ministry of Interior and Lithuanian Criminal Police Bureau).</p>	<p>Article 24 paragraph 1 and Article 12 paragraph 2 of the Law</p>
<b>Issues, solutions and</b>	<p>At this stage of the action, it should be noted that <b>sometimes EU member states do not take decisions on the sent judgment and the special form certificate within the time limits set out in Framework Decision 2008/909.</b> As far as possible, <i>the relevant court sends</i></p>	

Nr.	Activity description	Reference to the article of Law
the best practice	<p><i>reminders to the EU member states if no information on the decision taken by another EU member state has been received within the set deadline.</i> Also, <b>sometimes the unknown senders (if e-mail is used) are blocked automatically.</b></p> <p><i>Closer cooperation may be considered as a possible solution encouraging institutions to act within the terms of procedure.</i></p>	
3.	The transfer (by Public Security Service under the Ministry of Interior and Lithuanian Criminal Police Bureau) of the sentenced person shall be done within not more than 30 days from the day when the member state took the final decision to recognise the judgment and execution of the punishment.	Article 24, Article 12 paragraph 3 and 4 of the Law
Issues, solutions and the best practice	<p><b>Due to unforeseen circumstances, the consultations with another EU member state may take place and the other date may be set – in this case the sentenced person shall be transferred not later than 10 days after the date is set (Article 12 paragraph 4 of the Law).</b></p>	
In case Lithuania is the Executing State to which the judgment of another EU member state has been forwarded for recognition and enforcement in Lithuania		
1.	Having received a request (judgment and special form certificate) of another EU member state regarding the execution of a punishment imposed therein, the Ministry of Justice of the Republic of Lithuania shall, within 5 working days, send the documents to the relevant court.	CCP Article 365 (5) and Article 7 of the Law
Issues, solutions and the best practice	<p><b>The Ministry of Justice of the Republic of Lithuania may carry the consultations upon the request of the Issuing State of its own initiative, also there are some cases where the consultations are compulsory (Article 6 of the Law).</b></p> <p>In case the sentenced person is in Lithuania, the Ministry of Justice of the Republic of Lithuania sends to him/her the standard notice, provided by the Issuing State institution (Article 7 of the Law).</p>	

Nr.	Activity description	Reference to the article of Law
2.	<p>A judge of a district (city) court shall, within 30 days, examine a request of a foreign country regarding execution of a punishment imposed in the foreign country in a written procedure.</p> <p>If information provided by another EU member state is insufficient, the court may request additional information or documents, the term for decision is suspended until the requested information or documents are received.</p>	<p>Article 7 of the Law</p> <p>Article 8 and 10 of the Law</p>
<p><b>Issues, solutions and the best practice</b></p> <p><b>Issues, solutions and</b></p>	<p>In this step of action, it can be observed that:</p> <ul style="list-style-type: none"> <li>- There are cases when <b>Lithuanian courts, without requesting additional information, make a decision on refusal to recognise and execute the judgment of another EU member state on the execution of custodial sentence.</b></li> </ul> <p><i>It is recommended that the Lithuanian court examine this category of cases more carefully, and in case of doubt, always use the opportunity to request additional information. Failure to request additional information may violate the sentenced person's human rights.</i></p> <ul style="list-style-type: none"> <li>- <b>Lithuanian courts sometimes, upon receipt of a request from another EU member state - a judgment imposing a custodial sentence - do not recognize and enforce the judgment within 30 days,</b> but usually it is due to the reasons set in law and Framework Decision 2008/909.</li> </ul> <p><i>Courts are encouraged to use other ways to make the recognition process faster, e.g. use more effective communication tools.</i></p> <p><b>In addition, Article 12 of Framework Decision 2008/909 provides that a decision must be taken within 90 days on whether to consent to the transfer of a person to serve a further custodial sentence. Article 15 of Framework Decision 2008/909, on the other hand, provides for the transfer of a natural person within 30 days. When in exceptional cases it is not practicable for the competent authority of the Executing State to comply with the period of 90 days, it shall without delay inform the competent authority of the Issuing State by any means, giving the reasons for the delay and the estimated time needed for the final decision to be taken.</b></p>	

Nr.	Activity description	Reference to the article of Law
<b>the best practice</b>	<b>The cooperation with competent authority of another EU member state is carried in many ways: by mail, electronic mail, fax, telephone, video conferencing, etc.</b>	
3.	The judge of the district (city) court, having assessed the conditions of execution and the reasons for refusal, shall make one of the following decisions within 30 day:	Article 7 of the Law
3.1.	Decision on recognition of the judgment and execution of the punishment imposed in the foreign country	Article 7 of the Law
<b>Issues, solutions and the best practice</b>	<p>In this step of action, it can be seen that:</p> <p><b>In the Law it is explicitly noted that the court makes a decision to recognise the judgement on the custodial sentence (Article 7 of the Law). It should be noted that the Framework Decision 2008/909 (Article 8) explicitly states that the competent authority of the executing state shall recognise a judgment.</b></p> <p>In practice, Lithuanian courts sometimes indicate in the decision, that they satisfy the request of the competent authority of the Issuing State (or the request of the Ministry of Justice of the Republic of Lithuania) and conclude the recognition of the judgement, etc.</p>	
3.2.	Decision on refusal to recognise the judgment and execute the punishment imposed in the foreign country	Article 8 of the Law
4.	<p>After making the decision referred to in point 3, the court shall immediately, but not later than the next day, send the copy of the decision to sentenced person, defence attorney, prosecutor. The decision is subject to appeal in accordance with CCP, Article 364 (or Article 405 paragraph 6, if the sentenced person is subject to medical treatment).</p> <p>After the court decision comes into force, the judge not later than 3 days after the decision came into force or the case is returned</p>	Article 7 of the Law

Nr.	Activity description	Reference to the article of Law
	<p>from the appellate instance, orders to execute the judgment on deprivation of liberty and sends it (altogether with duplicates of decision and judgment) to (i) if the convict resides in another EU member state – to the competent institutions responsible for the transition of the person, or (ii) if the convict resides in the Republic of Lithuania – to the place of imprisonment, where the person is kept, or police institution in which jurisdiction the convicted resides. The copies are also sent to the prosecutor and the Ministry of Justice of the Republic of Lithuania.</p> <p>Takeover of a person convicted in the European Union member state shall take place in accordance with the procedures laid down in Article 12 of the Law.</p>	Article 14 of the Law
5.	The decision is enforced under the CCP and the specifics set in Article 14 of the Law.	Article 14 of the Law
6.	The institution responsible for the execution of the sentence, immediately, but not later than within 5 working days, informs the competent institution of another EU member state.	Article 16 of the Law



### 5.3. Croatia

The actions to be taken, when Croatia is acting as Issuing and Executing State in accordance with Framework Decision 2008/909 and the Judicial Cooperation in Criminal Matters with EU Member States Act (hereinafter – the Act), as well as references to practical application issues, solutions and best practices, are set out in the table below.

Nr.	Activity description	Reference to the article of the Act
In case Croatia is an Issuing State and it is necessary to execute a custodial sentence or measures involving deprivation of liberty imposed in Croatia in another EU member state		
1.	<p>The Croatian competent court which issued the judgement imposing custodial sentence or measure involving deprivation of liberty fills in the relevant certificate.</p> <p>Competent court shall inform the sentenced person on its intention to send the judgement to another EU member state with the aim of its execution.</p> <p>Decisions issued by the Croatian competent court which are forwarded to another EU member state shall be translated into that state’s official language or other language that is accepted by that state.</p>	<p>Article 7 paragraph 3 of the Act</p> <p>Article 105 paragraph 5 of the Act</p> <p>Article 9 paragraph 2 of the Act</p>
<p><b>Issues, solutions and the best practice</b></p>	<p>It is observed that sometimes <b>Croatian competent courts encounter problems regarding inadequate translations, due to the fact that the courts do not receive official and verified translation by a permanent court interpreter.</b></p> <p><i>It would be advisable for EU member states to send an official translation of the documents with a note/mark on the translation of the adequacy/accuracy of the translation.</i></p>	
2.	<p>The Croatian competent court directly forwards to another EU member state a judgement with aim of its recognition and execution, accompanied by the relevant certificate and previously obtained sentenced person’s written consent.</p> <p>Exceptionally, it is not necessary to obtain the sentenced person’s consent if the judgement and certificate are forwarded to:</p> <ul style="list-style-type: none"> <li>- the EU member state of that person’s nationality in which that person has residency;</li> <li>- the EU member state of nationality to which sentenced person will be deported, once he or she is released from enforcement of sentence, on the</li> </ul>	<p>Article 105 paragraph 1 of the Act</p> <p>Article 105 paragraph 2 of the Act</p>

Nr.	Activity description	Reference to the article of the Act
	<p>basis of an expulsion or deportation order included in the judgement or decision of another competent Croatian authority; or</p> <ul style="list-style-type: none"> <li>- the EU member state to which sentenced person has escaped or has returned in any other way with aim to evade criminal proceedings and execution of the consequently imposed sentence.</li> </ul>	
<p><b>Issues, solutions and the best practice</b></p>	<p><b>In this stage of action, it is observed that the certificate is usually issued when a sentenced person, who is serving a prison sentence in Croatia or he shall enter serving sentence and he is currently in Croatia, has expressed a desire and has given his consent to serve prison sentence in another country related to him.</b></p> <p><b>Before issuing the certificate, if Executing State is not the state of his/her citizenship or he/she will not be deported to it after serving his/her sentence, some factors such as age, health conditions, personal, family and property circumstances of the sentenced person as well as the possibility of his/her successful resocialization and integration in society are taken into account.</b></p>	
<p>3.</p>	<p>Croatian competent court shall consult the competent authorities of the Executing State in cases when it sends the judgement, with the certificate and the sentenced person's consent, to the EU member state whose competent authority gave consent to send the subjected judgement and the certificate, when:</p> <ul style="list-style-type: none"> <li>- that EU member state is not the state of sentenced person's citizenship or residency; or</li> <li>- the EU member state in which he has citizenship but in which he/she does not have residency if the measure of deportation or expulsion to that member state was imposed by judgement issued by the court or by another decision of Croatian competent authority, after the person is released from enforcement of sentence.</li> </ul>	<p>Article 103 paragraph 3 of the Act</p>
<p>4.</p>	<p>The Ministry of Justice of the Republic of Croatia is the central authority that provides assistance to Croatian competent authorities and competent authorities of other EU member states, assisting in establishment of contact and judicial cooperation in criminal matters, with regard to another EU member state's decisions.</p>	<p>Article 5 paragraph 5 of the Act</p>

Nr.	Activity description	Reference to the article of the Act
	The Ministry of Justice of the Republic of Croatia usually has part in the procedure when it comes to fulfilling the condition from the Article 91, Paragraph 1, item 3 of the Act and provides information in case the Issuing State seek the consent to forward a certificate to Croatia.	
5.	Transfer of the sentenced person to the Executing State must be executed in the period of 30 days, counting from the day when the decision of recognition of Croatian judgement became final.	Article 108 paragraph 1 of the Act
6.	The Croatian competent court shall, without delay, inform competent authorities of the Executing State about all the decisions and measures which are the reason why the custodial sentence cannot be executed any more, or which are the reasons why custodial sentence cannot be enforced after certain period.	Article 111 of the Act
In case Croatia is the Executing State to which the judgment of another EU member state has been forwarded for recognition and enforcement in Croatia		
1.	<p>Having received the judgment/decision and the relevant certificate of another EU member state regarding the recognition and execution of a punishment, the competent court starts the procedure for recognition and execution and examines <i>ex officio</i> the submitted judgement and the certificate, in accordance with the Act.</p> <p>Decisions rendered by the competent judicial authority of the Issuing State shall be executed if those decisions, and the submitted relevant documentation, are translated to the Croatian language. In emergency cases, a translation to the English language shall be accepted, under the condition of reciprocity.</p>	<p>Article 91 paragraph 1 of the Act</p> <p>Article 9 paragraph 1 of the Act</p>
<p><b>Issues, solutions and the best practice</b></p>	<p>When applying Article 91, paragraph 1, item 2 of the Act, <b>as the Executing State the courts encounter the practical problem of recognizing a judgement when a sentenced person is national of Croatia, but he does not have permanent or temporary residence in Croatia.</b></p> <p><i>In such cases the competent court demands that sentenced person will be explicitly deported to Croatia, once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation</i></p>	

Nr.	Activity description	Reference to the article of the Act
	<p><i>order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment.</i> The competent court also seeks expulsion or deportation order as additional documentation when it is necessary. If a deportation or expulsion was imposed without indication of the country – Croatia, according to the Article 91 Paragraph 1 Item 2 of the Act and judicial practice of Croatia's Supreme Court, the court must refuse to recognize the judgment and enforce the sentence. Competent courts find such action as a difficulty in these procedures.</p>	
2.	<p>In cases when the Ministry of Justice of the Republic of Croatia gives consent to the Issuing State to forward the judgement imposing custodial sentence or measures involving deprivation of liberty to Croatia, with aim of its recognition, with consent of the sentenced person, the Ministry of Justice of the Republic of Croatia will take into account the aim of easier social rehabilitation of the person.</p> <p>The Ministry of Justice of the Republic of Croatia shall determine, through the Service for Probation, the sentenced person's residence or his family's residence and whether the person has any property in Croatia, or any other relevant personal or social circumstances that connect that person with Croatia.</p>	Article 91 paragraph 2 of the Act
<p><b>Issues, solutions and the best practice</b></p>	<p><b>When Croatia is the Executing State, competent courts are taking into account health, characteristics, family and property circumstances as well as other relevant circumstances related to the sentenced person.</b></p> <p><b>Croatia usually issues certificate when the sentenced person is on the territory of the Republic of Croatia at the moment of the certificate issuing procedure and has requested or agrees to forward judgement and the certificate.</b></p>	
3.	The competent court shall decide on recognition and execution of foreign judgement in period not longer than 90 days.	Article 93 paragraph 1 of the Act
<p><b>Issues, solutions and the best practice</b></p>	<p>Although the procedure on recognition is urgent, <b>the competent authorities of the Issuing State sometimes do not provide additional information and documentation within the 7-day time limit required by national law.</b> As the Executing State Croatia is sometimes faced with delay and exceeding deadlines most often due to the need to request some additional information or documentation relevant to the decision. <i>In such cases electronic mails are sent repeatedly in order to speed up the procedure.</i> In case of non-submission of additional information, the decision is made on the basis of the existing file documentation. On the other hand, as the Executing State, Croatia is trying act particularly speedily in all cases.</p>	

Nr.	Activity description	Reference to the article of the Act
4.	<p>The competent court can render a decision for recognition and execution of foreign judgement or a decision for refusal of recognition and execution of foreign judgement, when the requirements for each type of decision, regulated by the Act, are met.</p> <p>The competent court renders those decisions in the form of a judgement.</p>	<p>Article 93 paragraph 1 of the Act</p> <p>Article 94 of the Act</p>
<p><b>Issues, solutions and the best practice</b></p>	<p>Regarding the grounds for non-recognition and non-enforcement, so far in Croatia have been encountered all grounds listed in the Article 94 paragraph 1 of the Act.</p> <p>The certificate was incomplete or manifestly does not correspond to the judgment and has not been completed or corrected within a time limit no longer than seven working days set by the court, also the criteria set out in Article 91, paragraph 1, items 1 and 2 of this Act are not met (nationality, residence/expulsion or deportation), enforcement of the sentence would be contrary to the principle of <i>ne bis in idem</i> and the offence on which the judgment is based does not constitute an offence under domestic law.</p>	
5.	<p>The sentenced person and the competent State Attorney's Office have the right to file an appeal against the decision for recognition and enforcement of the foreign judgement, in the period of 8 days counting from the date of service of judgement to them.</p> <p>There is a right of appeal to the Supreme Court of the Republic of Croatia against the decision of the County court within eight days from the date the first instance decision has been received by the parties. The Supreme Court must decide upon this appeal within fifteen days from the date of the reception.</p>	<p>Article 93 paragraph 2 of the Act</p>
6.	<p>When the competent court has established the requirements for partial recognition of a foreign judgement, it shall, before deciding whether to refuse recognition and enforcement of the sentence, contact the competent authority of the Issuing State in order to reach an agreement on partial recognition of the sentence and the enforcement of the sentence, if such an agreement is possible.</p>	<p>Article 95 of the Act</p>
<p><b>Issues, solutions and</b></p>	<p>Regarding partial recognition and enforcement, <b>Croatia has applied this legal institute in cases where the Issuing state has issued a certificate for several criminal offenses, and some of the offenses are not felonies under domestic law (like possessing of drugs which is misdemeanour under Croatian law).</b></p>	

Nr.	Activity description	Reference to the article of the Act
<b>the best practice</b>	In several cases of partial recognition and enforcement that has been encountered, the competent authority of the Issuing state was contacted and an agreement was reached on partial recognition of the judgment and execution of the sentence for those offences which are felonies and for which are fulfilled legal conditions for recognition.	
7.	Croatian competent court shall postpone the decision on recognition and execution of the judgement if relevant certificate is not complete or not in accordance with the submitted judgement.  In this case, the court shall determine the period, not longer than seven working days, during which the Issuing State can submit amended or corrected certificate.	Article 96 of the Act
8.	Before issuing the decision for refusal of recognition and execution of another EU member state judgement, the competent court shall contact and consult with the competent authority in the Issuing State and, if necessary, ask for additional data/information.	Article 94 paragraph 3 of the Act
<b>Issues, solutions and the best practice</b>	Croatia <b>have been encountered with a situation of seeking additional data. In that case the period was established, not longer than seven working days, for delivering of the data.</b>  Although the procedure on recognition is urgent, <b>the competent authorities of the Issuing State sometimes do not provide additional information and documentation within the 7-day time limit required by national law. In such case electronic mails are sent repeatedly in order to speed up the procedure.</b> In case of non-submission of additional information, the decision is made on the basis of the existing file documentation.	
9.	Competent court shall directly inform, in written form, the competent authority of the Issuing State on the decision rendered (among other circumstances on which the court shall inform the Issuing State, as regulated by the Act).	Article 93 paragraph 4 of the Act
10.	If the location of the sentenced person is in the Issuing State, that person will be transferred to Croatia in a period of maximum 30 days counting from the day on which the subjected decision became final.	Article 99 of the Act
<b>Issues, solutions and the best practice</b>	As Executing State, Croatia has encountered the situations when a prison sentence was changed during the procedure of recognition of the judgment, due to the fact that its duration was not in accordance with the domestic law. For example, a life sentence is not prescribed by the criminal legal framework of the Republic of Croatia, therefore, in Croatia this	

Nr.	Activity description	Reference to the article of the Act
	<p>sentence has been harmonized in accordance with the Article 8 of Framework Decision 2008/909 by imposing the strictest prison sentence according to the Article 22 of the Act.</p> <p>Furthermore, as Executing State Croatia has encountered <b>problems related to the counting time of deprivation of liberty already served in the Issuing State</b> because some Issuing States express the time of deprivation of liberty in days, which when converted into years and months do not correspond to the documentation submitted by the Issuing State.</p>	

## 6. ACTIONS TO BE TAKEN BY THE ISSUING AND EXECUTING STATE IN ACCORDANCE WITH FRAMEWORK DECISION 2008/947 AND THE NATIONAL LAWS, REFERENCES TO PRACTICAL APPLICATION ISSUES, SOLUTIONS AND THE BEST PRACTICE

The actions to be taken by the Partner Countries, when acting as Issuing and Executing State in accordance with Framework Decision 2008/947 and national laws, as well as references to practical application issues, solutions and best practices, are set out in the following subsections below.

### 6.1. Latvia

The actions to be taken, when Latvia is acting as the Issuing and Executing State in accordance with Framework Decision 2008/947 and the CPL, as well as references to practical application issues, solutions and the best practice, are set out in the table below:

Nr.	Activity description	Reference to the article of CPL
In case Latvia is an Issuing State and it is necessary to send the decision on alternative sanctions made in Latvia for execution in another EU member state		
1.	<p>If it is not possible to execute the ruling made in Latvia on an alternative sanction because a convicted person has returned or submitted a submission that he or she wishes to return to the permanent place of residence in another EU member state, the court that rendered the judgment in first instance shall decide the matter in a court hearing and shall send the decision together with a special form certificate to the MoJ.</p> <p>In accordance with Framework Decision 2008/947 and the laws and regulations of the Republic of Latvia, a prosecutor's penal order may also be sent for enforcement in another EU member state.</p>	<p>Article 841. (1) of the CPL</p> <p>Framework Decision 2008/947 Article 2 (1) and (2), Article 5.</p>
<b>Issues, solutions and the best practice</b>	<p>In this step of action, it can be observed that:</p> <ul style="list-style-type: none"> <li>- <b>It would be good practice for the State Probation Service, for example, by sending a proposal, to inform the court about the probation measures/obligations imposed on the sentenced person during the conditional sentence.</b></li> </ul>	



Nr.	Activity description	Reference to the article of CPL
	<p>In Lithuania the practice is that the probation service provides the court with the project of the special form certificate, the decision on the alternative sanction and the request of the sentenced person, if it is submitted. The court, when delivering the decision, also indicates the measures imposed.</p> <p>In Croatia, the courts are competent authorities which render a decision imposing probation measures on the sentenced person during the conditional sentence, therefore, the competent court specifies the obligations imposed on the sentenced person in its decision/judgement.</p> <ul style="list-style-type: none"> <li>- In Croatia prosecutor' penal order might be recognized, according to the Article 112 paragraph 1 of the and the Article 1 paragraph 2 of the Framework Decision 2008/947, in Croatia shall be recognized: <ul style="list-style-type: none"> <li>1) a judgment imposing a custodial sentence or measure involving deprivation of liberty when the conditional release of the sentenced person is granted, and a judgment imposing a suspended or conditional sentence or alternative sanction;</li> <li>2) probation decisions;</li> <li>3) the transfer of responsibility for the supervision of probation measures and alternative sanctions;</li> <li>4) any other decision of the competent authorities related to those under items 1 to 3 listed above.</li> </ul> </li> </ul>	
2.	Sending a decision on alternative sanctions made in Latvia to another EU member state for enforcement:	Article 841. or Article 842. of the CPL
<p><b>Issues, solutions and the best practice</b></p>	<p>In this step of the action, it can be observed that <b>the probation measures/obligations specified for the sentenced person are not indicated in the decision</b>, due to the fact that in Latvia, in accordance with Article 119.<sup>1</sup> of the Sentence Execution Code of Latvia, this is the competence of the State Probation Service.</p> <p><i>It would be advisable to indicate the obligations provided for in Article 155 of the Sentence Execution Code of Latvia, which are mandatory for all conditional sentences in accordance with the law, in a special form certificate.</i></p>	
2.1.	<p>Sending for execution to another EU member state where the permanent place of residence of a sentenced person is located.</p> <p>Having received the decision together with a special form certificate, the MoJ shall ensure the translation of the special form certificate, prepare information regarding the limitation period for</p>	<p>Article 841. of the CPL</p> <p>Article 841. (5) of the CPL</p>

Nr.	Activity description	Reference to the article of CPL
	execution of a judgment of conviction specified by the Criminal Law and send these documents to the relevant EU member state. The MoJ shall send all materials concurrently only to one EU member state.	
<p><b>Issues, solutions and the best practice</b></p>	<p>In this step of the action, it is observed that <b>the special form certificate is not completed completely and accurately, i.e. point (g) 1. and point (j) 4. of the special form certificate are very rarely completed.</b></p> <p><i>It would be advisable to fill in point (g) 1. of the special form certificate, i.e. to provide complete and accurate information on the facts and circumstances, nature, legal classification of the criminal offense, for example, by indicating/copying in the special form certificate an extract from the relevant Article of the Criminal Law of the Republic of Latvia, also pay attention to point (j) 4. of the special form certificate.</i></p>	
2.2.	<p>Sending for execution to another EU member state, to an EU member state which is not the permanent place of residence of a sentenced person</p> <p>Having received the decision together with a special form certificate from a court, the MoJ shall ensure the translation of the special form certificate, prepare information regarding the limitation period for execution of a judgment of conviction specified by the Criminal Law and send these documents to the relevant EU member state in accordance with the procedures laid down in Article 841. of CPL.</p>	<p>Article 842. of the CPL</p> <p>Article 842. (5) of the CPL</p>
<p><b>Issues, solutions and the best practice</b></p>	<p>In this step of the action, it is observed that <b>the special form certificate is not completed completely and accurately, i.e. point (g) 1. and point (j) 4. of the special form certificate are very rarely completed.</b></p> <p><i>It would be advisable to fill in point (g) 1. of the special form certificate, i.e. to provide complete and accurate information on the facts and circumstances, nature, legal classification of the criminal offense, for example, by indicating/copying in the special form certificate an extract from the relevant Article of the Criminal Law of the Republic of Latvia, also pay attention to point (j) 4. of the special form certificate.</i></p>	

Nr.	Activity description	Reference to the article of CPL
3.	<p>If necessary, additional information may be requested, such as:</p> <ol style="list-style-type: none"> <li>1) Information on the obligations of the sentenced person (subject to probation supervision) during probation supervision;</li> <li>2) Request for information/ to supplement the special form certificate, and other additional information.</li> </ol>	—
<p><b>Issues, solutions and the best practice</b></p>	<p>In this step of action, it can be seen that <b>some EU member states, when requesting additional information, set a deadline by which information must be provided. Often the deadline is not reasonable, therefore, Latvia cannot manage to prepare the necessary documents.</b></p> <p><b>It would be recommended:</b></p> <ol style="list-style-type: none"> <li>1) <b>For EU member states to set a reasonable deadline for submission of additional information, taking into account the following criteria:</b> <ul style="list-style-type: none"> <li>- <b>time required for sending of documents;</b></li> <li>- <b>time required for preparation of translation of documents;</b></li> <li>- <b>time required for preparation of documents.</b></li> </ul> </li> <li>2) <b>For Latvian courts to comply with the reasonable deadline set by the EU member states and to provide accurate additional information.</b></li> </ol>	
4.	<p>If a request regarding the execution of alternative sanction in another EU member state has been sent and a consent has been received, the MoJ shall inform the submitter of the request and a court controlling complete execution of a judgment, the sentenced person, as well as his or her representative in cases when the representative has submitted a request.</p>	Article 812. (1) of the CPL
5.	<p>After receipt of information of another EU member state regarding the end of serving the punishment, the MoJ shall inform a court and the institution executing the punishment thereof.</p>	Article 812. (2) of the CPL

Nr.	Activity description	Reference to the article of CPL
<p><b>Issues, solutions and the best practice</b></p>	<p>In this step of action, it can be observed that <b>often EU member states do not provide information on the implementation of Latvia's probation measures.</b></p> <p>Accordingly, however, <b>it would be advisable for the courts to monitor the implementation/execution of probation measures.</b> For example, after some time, if no information has been received from another EU member state for a long time, <b>a Latvian court (and, where applicable, a probation authority) should send a reminder to another EU member state requesting information on the progress of execution of the case.</b></p>	
<p>In case Latvia is the Executing State to which the judgment of another EU member state has been forwarded for recognition and enforcement in Latvia</p>		
1.	<p>MoJ, after receiving a decision of another EU member state on the imposition of alternative sanctions and a special form certificate, within 10 days, but if the amount of materials is particularly large, within 30 days, review and verify the materials in accordance with Article 754. of the CPL.</p>	<p>Article 754. and Article 804. of the CPL</p>
2.	<p>Following the verification, the MoJ shall immediately send the decision on the alternative sanction together with the materials to the court, informing another EU member state.</p>	<p>Article 754. (4) and Article 804. (1) of the CPL</p>
3.	<p>Within 30 days, a district (city) court judge shall examine in a written procedure a request of another EU member state for the enforcement of a sentence imposed in that state and, after assessing the conditions of execution and reasons for refusal, decide on recognition and enforcement of the decision on alternative sanctions pursuant to conditions and procedures set in Articles 759. and 760.</p> <p>If information provided by another EU member state is insufficient, the MoJ or a court with the intermediation of the MoJ may request additional information or documents, specifying a deadline for the submission thereof.</p>	<p>Article 750., 751., 759., 802., 803. and Article 805. (1) of the CPL</p> <p>Article 754. (5) of the CPL</p>

Nr.	Activity description	Reference to the article of CPL
<b>Issues, solutions and the best practice</b>	<p>In this step of action, it can be observed that <b>Latvian courts do not always request additional information, and therefore Latvian courts decide on refusal to recognize the judgment and execute the sentence imposed in another EU member state.</b></p> <p><i>In order to facilitate the execution of the prescribed probation measures, <b>Latvian courts would need to use the opportunity to request additional information more often.</b></i></p>	
3.1.	Decision on consent to recognise the judgment and execute the punishment imposed in another EU member state	Article 759. (1), 802. and Article 805. (1) of the CPL
<b>Issues, solutions and the best practice</b>	<p>In this step of action, it can be observed that <b>in practice Latvian courts incorrectly formulate a court decision.</b> In practice, Latvian courts take a decision, for example:</p> <ul style="list-style-type: none"> <li>- to satisfy the request and take over/transfer the citizen;</li> <li>- to satisfy the request and execute the judgment.</li> </ul> <p><i>According to Article 759 of the CPL, a Latvian court must make a decision on consent to recognise the judgment and execute the punishment (i.e. the specified alternative sanctions) imposed in another EU member state.</i></p>	
3.2.	Decision on refusal to recognise the judgment and execute the punishment imposed in another EU member state.	Article 759. (1), 803. and Article 805. (1) of the CPL
<b>Issues, solutions and the best practice</b>	<b>According to Article 759. of the CPL, a Latvian court must make a decision on refusal to recognise the judgment and execute the punishment (i.e. the specified alternative sanctions) imposed in another EU member state.</b>	
4.	<p>The decision referred to in point 3 of this table is not subject to appeal, and the judge will notify the sentenced person in another EU member state of the decision taken and, through the MoJ, the judge will notify another EU member state and the sentenced person if he or she is in that member state.</p> <p>Concurrently with the notification regarding the decision referred to in point 3 of this table a judge shall inform a person convicted in another EU member state and a prosecutor regarding the right,</p>	<p>Article 759. (3) of the CPL</p> <p>Article 760. (4) of the CPL</p>

Nr.	Activity description	Reference to the article of CPL
	within 10 days from the day of receipt of the notification, to submit objections against the determination of the punishment (i.e. alternative sanctions) to be executed in Latvia in a written procedure, to submit recusation for a judge, to submit an opinion on the punishment to be executed in Latvia, as well as on the day of availability of the decision.	
5.	After taking of the decision referred to in Article 759 (1) 1) of CPL a judge shall determine a punishment to be executed in Latvia in a written procedure, if a person convicted in a another EU member state and a prosecutor does not object thereto.	Article 760. (1) and (4), Article 805. (1) of the CPL
6.	The judge takes a decision on determining the alternative sanction to be enforced in Latvia.	Article 760., 802. and 805. of the CPL
<b>Issues, solutions and the best practice</b>	<p>In this step of the action, it can be observed that <b>there are cases in which the State Probation Service asks to specify from which moment the sentence to be served in Latvia should be started/counted.</b></p> <p><i>It would be advisable to specify in the decision on the determination of the alternative sanction to be enforced in Latvia from which moment the sentence to be served in Latvia should be started/counted.</i></p>	
7.	The court shall give the decision referred to in point 6 of this table for execution.	Article 634. (4) of the CPL
8.	The decision referred to in point 6 of this table shall be notified to the person subject to the alternative sanction, MoJ, the competent authority of another EU member state.	—
<b>Issues, solutions and the best practice</b>	<p>In this step of action, <b>there is observed a tendency, that the decisions to be sent to another EU member state for information purposes, are not marked with a note of an entry into force.</b></p> <p><i>When sending decisions to another EU member state, it would be advisable for the Latvian court to provide information on the date on which the decision entered into force.</i></p>	

Nr.	Activity description	Reference to the article of CPL
9.	Upon receipt of the court notification, the MoJ informs the relevant EU member state of the completion of the execution of imposed alternative sanction.	Article 763. (2) 5) of the CPL
<b>Issues, solutions and the best practice</b>	<p>In this step of action, <b>it is often the case that information on the completion of execution of probation/alternative measures is not provided.</b></p> <p><i>It would be advisable for Latvian courts to monitor the execution process and to provide timely information on the completion of execution of probation/alternative sanctions imposed by another EU member state on Latvian territory.</i></p>	

In view of the above action steps to be taken by the Issuing and Executing State in accordance with the Framework Decision 2008/947 and the CPL, as well as references to practical application issues, solutions and best practices, it would be advisable for Latvian courts to develop a uniform court practice with regards to probation/alternative measures identification and implementation in EU member states, to facilitate the provision of complete and accurate information to EU member states.

## **EU case law in relation to Framework Decision 2008/947**

On 26 March 2020, the First Chamber of the Court of Justice of the EU gave a judgment<sup>21</sup> in connection with Framework Decision 2008/947 and the fact that courts in Latvia do not specify probation measures in court decisions or special form certificate when imposing a conditional sentence. As a result of such actions by courts in Latvia, EU member states do not understand which probation measures have been imposed and which probation measures must be complied with.

When imposing a conditional sentence in accordance with Article 55. of the Criminal Law of the Republic of Latvia, the obligations provided for in Article 155. of the Sentence Execution Code of Latvia are simultaneously determined for the person, which are mandatory for all conditional convicts according to law, regardless of whether these obligations are specified in a court judgment or State Probation Service decision, they must be indicated in a special form certificate.

The mandatory obligations set out in Article 155. of the Sentence Execution Code of Latvia would comply with the following probation or alternative sanctions set out in point (j) 4. of the special form certificate:

- the obligation for the sentenced person to inform a specific institution of the change of residence or place of work;
- an obligation involving restrictions on leaving the territory of the Executing State;
- obligations relating to the behaviour, residence, education, training, leisure activities or conditions of professional activity;
- the obligation to report to a specific institution at specified times;
- the obligation to cooperate with the probation officer or the social service representative with responsibilities in relation to sentenced persons.

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<sup>21</sup> See Judgement of the Court (First Chamber) of 26 March 2020 in Case C-2/19. Available: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=224731&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=924713>. Reviewed: 01/07/2020.



## 6.2. Lithuania

The actions to be taken, when Lithuania is acting as Issuing and Executing State in accordance with Framework Decision 2008/947 and national laws, as well as references to practical application issues, solutions and best practices, are set out in the table below.

Nr.	Activity description	Reference to the article of Law
In case Lithuania is an Issuing State and it is necessary to send the decision on alternative sanctions made in Lithuania for execution in another EU member state		
1.	If a convicted person has returned or submitted a submission that he or she wishes to return to the permanent place of residence in another EU member state, the district court within the territory the probation service act upon the request of the probation service or by its own initiative decide the matter in a court hearing and shall send the decision together with a special form certificate to the competent authority of another EU member state or its central authority, if appointed.	Article 33, 35 and 36 of the Law
<b>Issues, solutions and the best practice</b>	<b>The probation service provides the court with the project of the special form certificate, the decision on the alternative sanction and the request of the sentenced person, if it is submitted (Article 34 of the Law).</b>	
2.	The court shall hear the case in oral hearing. The court summons the prosecutor, sentenced person, if he is in the Republic of Lithuania, defence attorney, representative of the probation service. Their absence shall not suspend the procedure, unless court deems their presence compulsory. After the adoption of the decision, court announces the decision to the convict and his advocate, representative of the probation service and prosecutor;	Article 35 of the Law

Nr.	Activity description	Reference to the article of Law
	they are also provided with the copies of the decision. The court sends the copies of the decision to the persons that were not present at the announcement immediately, but not later than on the next working day. The decision is subject to the appeal (in accordance the CCP Article 364).	
3.	When the decision to send the decision comes into force, the certificate shall be filled within 3 working days. The court shall send the certificate altogether with the decision on the sanction not related to the deprivation of liberty or the decision on probation directly to the competent authority of another EU member state or the central institution, if it is appointed. The related decision is transferred by any means that provide the possibility to transfer the written document and allowing another EU member state to determine the authenticity. The documents may be transferred to one EU member state at a time. The court ensures the translation of the certificate.	Article 36 of the Law
4.	Under the request of the competent authority of another EU member state, the court shall transfer the originals or certified copies of the decision and/or certificate not later that within 10 days, as well as the translations into the above mentioned language the decision or its essential parts. When sending these documents, the court may ask to provide the information about the maximum sanction for the action the person is sentenced related to the deprivation of liberty or other measure, which could be imposed if the person avoids execution of the sanction.	Article 36 of the Law

Nr.	Activity description	Reference to the article of Law
<p><b>Issues, solutions and the best practice</b></p>	<p>There are some cases, when after the certificate and the decision are sent to the competent authority of another EU member state, the court in Lithuania regained the right for execution since the sentenced person had no place of residence in that EU member state. <b>One of the reasons this situation occurred is that the Probation service did not collect and provide the court with all the information together with request for the court (sometimes it would take too long to acquire specific information).</b></p> <p><i>It is recommended for Probation Services and competent authorities of other EU member states to cooperate more closely and to determine the information required through the consultations even more precisely.</i></p> <p><b>There are examples of good practices, when the competent authorities of the other EU member states are interested in the procedure and request for additional information.</b></p>	
5.	<p>After receiving the notice of the competent authority of another EU member state, that the decision to recognize and execute the decision on the sanction not related to the deprivation of liberty or decision on probation was delivered, the court shall inform the sentenced person, if he is in the Lithuania, and the probation service.</p>	Article 37 of the Law
6.	<p>The Probation Service informs the competent authority of another EU member state about the need to change the alternative sanction or probation service; as well as the regaining of the rights for the execution of the decision (if some of the rights are kept by the Lithuanian authorities).</p>	Article 38 of the Law
<p>In case Lithuania is the Executing State to which the judgment of another EU member state has been forwarded for recognition and enforcement in Lithuania</p>		

Nr.	Activity description	Reference to the article of Law
1.	<p>District (city) court judge shall examine in a written procedure a request of another EU member state for the enforcement of a sentence imposed in that state and, after assessing the conditions of execution and reasons for refusal, decide on recognition and enforcement of the decision on alternative sanctions. The decision shall be made not later than 45 days after receiving a decision of another EU member state on the imposition of alternative sanctions and a special form certificate</p> <p>In cases prescribed by the law, the court shall consult in due manner with the competent authority of another EU member state before the decision and asks for additional explanations or other information in certain term if necessary. If the necessary information is not received within set term, the court delivers a decision to refuse to recognize the decision. The court may apply to the competent authority of another EU member state for additional information in other cases as well. The term of 45 days is suspended and is renewed when requested documents and information is received.</p> <p>The court shall send the copy of the decision to the sentenced person, defence attorney, the prosecutor immediately, but not later than on the next working day.</p> <p>The final decision shall be taken not later than 60 days after the judgement and certificate are received. In exceptional cases, if the final decision is not delivered within the later term, the court shall inform the competent authority of another EU member state about</p>	<p>Article 26 and 29 of the Law</p> <p>Article 29, 27 and 26 of the Law</p>

Nr.	Activity description	Reference to the article of Law
	the delay and the reasons, as well as the preliminary time need for the delivery of the decision.	
<b>Issues, solutions and the best practice</b>	In this step of action, it can be observed that <b>the requested information is not always received.</b>	
1.1.	Decision to recognise the judgment and execute the punishment imposed in another EU member state	Article 26 of the Law
1.	Decision on refusal to recognise the judgment and execute the punishment imposed in another EU member state.	Article 26 and 27 of the Law
2.	The decision referred in point 1 of this table may be subject to appeal under the CCP article 364.	Article 26 of the Law
3.	The alternative sanction is executed in Lithuania according to the Lithuanian law.	Article 31 of the Law
4.	After the court decision (types are set in law) comes into force, the judge not later than within 5 business days directly informs the competent authority of another EU member state. The probation service shall immediately, but not later than within 5 business days, inform the competent authority of another EU member state on the issues set out in law.	Article 30 of the Law
5.	The Probation Service notifies the competent authority of another EU member state about the completion of the execution of imposed alternative sanction.	Article 30 of the Law

### 6.3. Croatia

The actions to be taken, when Croatia is acting as Issuing and Executing State in accordance with Framework Decision 2008/947 and the Act, as well as references to practical application issues, solutions and best practices, are set out in the table below.

Nr.	Activity description	Reference to the article of the Act
In case Croatia is an Issuing State and it is necessary to send the decision on alternative sanctions made in Croatia for execution in another EU member state		
1.	When the decision imposing probation measures or alternative sanctions is rendered, the competent authority which rendered it shall send the decision to the competent court with the aim of forwarding that decision to the Executing State.	Article 128 of the Act
<b>Issues, solutions and the best practice</b>	Competent courts have encountered with the application of the Framework Decision 2008/947 usually as the Issuing State, in cases when Croatia had issued the certificate in accordance with the Article 129 of the Act and the fact that a sentenced person to whom a probation measure (in all Croatia's cases it was community service) was imposed, was at the moment in Croatia. Therefore, the sentenced person has requested to do community service in another EU member state, Executing State related to him/her. <b>Before issuing the certificate, especially if Executing State is not the state of his/her citizenship or he/she will not be deported to it after the expiration of probation measure in Croatia, some factors such as age, health conditions, personal, family and property circumstances of the sentenced person as well as other relevant circumstances and the possibility of his/her successful resocialization and integration in society are taken into account.</b>	
2.	The Ministry of Justice is central authority that provides assistance to Croatian competent authorities and competent authorities of other EU member states, assisting in establishment of contact and judicial cooperation in criminal matters, with regard to another EU member state's decisions.	Article 5 paragraph 5 of the Act
3.	Competent court shall directly forward the decision rendering probation measures or alternative sanctions with the relevant certificate to the competent authority of the Executing State, with the aim of its recognition and execution.	Article 129 paragraph 1 of the Act
4.	Decisions rendered by the Croatian courts which shall be forwarded to another EU member state by the competent judicial authority, with aim of its execution, shall be translated to the official language of the Executing State or other language which that state accepts.	Article 9 paragraph 1 of the Act

Nr.	Activity description	Reference to the article of the Act
In case Croatia is the Executing State to which the judgment of another EU member state has been forwarded for recognition and enforcement in Croatia		
1.	When Croatian competent court receives foreign judgement or decision imposing probation measures or alternative sanctions, and the relevant certificate, it starts the procedure of its recognition and execution and examines the submitted judgement/decision and the certificate, in accordance with the Act. Decision rendered by the foreign judicial authority shall be executed if decision and the submitted relevant documentation are translated into Croatian language. In cases of emergency, the translation to the English language shall be accepted, under the condition of reciprocity.	Article 115 paragraph 1 of the Act  Article 9 paragraph 1 of the Act
2.	Croatian competent court shall render, in the period not longer than 60 days, a decision for recognition and execution of foreign judgement/decision, unless it postpones the decision (in order to obtain corrected or adapted certificate from the Issuing State) or establishes the existence of certain legal basis for refusal of recognition and execution, in accordance with the Act, in which case it renders the decision for refusal of recognition and enforcement of foreign decision.	Article 119 paragraph 1 of the Act  Article 115 paragraph 5 of the Act
3.	Competent court shall contact the competent authority of the Issuing State before it renders a decision for refusal of recognition and enforcement of foreign judgement/decision.	Article 127 paragraph 2 of the Act
4.	Competent court shall postpone the decision on recognition and enforcement of foreign judgement/decision if the relevant certificate is not complete or not in accordance with the submitted judgement. In that case the court shall determine the period of no longer than 7 days, in which period the Issuing State can submit the adapted or corrected certificate.	Article 116 of the Act
5.	The sentenced person and the competent State Attorney's Office have the right to file an appeal against the decision for recognition and enforcement of foreign judgement, in period of 8 days counting from the day of service of the judgement to them. Higher instance court shall render a decision on an appeal in the period of 15 days.	Article 119 paragraph 2 of the Act
6.	Competent court shall immediately inform the Issuing State in written form, on the decision	Article 125 paragraph 1 of the Act

Nr.	Activity description	Reference to the article of the Act
	rendered (among the other circumstances on which the court shall inform the Issuing State, as regulated by the Act).	
7.	Competent court shall, in the period of 8 days, send its final decision to the competent county court, in accordance with the Act. That county court sends the decision to the competent probation office and supervises its enforcement.	Article 115 paragraph 6 of the Act  Article 114 paragraph 1 of the Act



## 7. EXISTING ISSUES AND SOLUTIONS IN THE PROCESS OF APPLICATION OF FRAMEWORK DECISIONS AND NATIONAL LAWS

Within the application process of Framework Decisions 2008/909 and 2008/947 and national laws raises issues that are common throughout the application process and do not relate to a specific action step.

### **Requesting and exchanging information at different stages of the process**

#### **Latvia**

In order to facilitate faster and more effective co-operation, between both the Issuing State and the Executing State, there is a need to communicate with each other on a regular basis at various stages of the process, for example, when requesting information or exchanging information.

In practice, courts often do not take the opportunity to request additional information, exchange information with another EU member state, resulting in a refusal to enforce a judgment in their territory. With regard to the exchange of information, it should also be noted that requests for additional information are often ignored, for example, Latvian courts do not provide the information on the conditions of conditional release prior to completion of punishment requested in point (j) 2. of the special form certificate, when receiving a request from another EU member state to take over a custodial sentence. Failure to provide such information may contribute to the violation of the sentenced person's human rights. Also, EU member states do not always provide additional information at the request of Latvian courts, thus delaying the review process of the request. If, after receiving a reminder from a Latvian court, an EU member state does not provide the necessary information, the Latvian court may decide to refuse to recognize and enforce the judgment of another EU member state.

It would be advisable for both the Issuing State and the Executing State to use the opportunity to request additional information, to exchange information in order to facilitate the social rehabilitation and reintegration of the sentenced person into society. It should be noted that the court, before refusing to execute the request, has the possibility to postpone the decision until further information is received. It is important to note that when requesting additional information, courts should respect the principle of good cooperation. It should be noted that the information needs to be provided within a reasonable time, i.e. taking into account the time of sending/receiving the document, as well as the time required for the preparation of the translation of the document.

#### **Croatia**

As the Executing State, when applying Framework Decision 2008/909, sometimes Croatian competent courts encounter difficulties when competent authorities of the Issuing State do not provide additional information and documentation in the reasonable time period. Therefore, as the Executing State, Croatia is sometimes faced with delay and exceeding deadlines most often due to the need to seek some additional information or documentation relevant to the decision. In such cases, electronic mails are repeatedly sent in order to speed up the procedure. In case of non-submission of additional information, the decision is made

on the basis of the existing file documentation. On the other hand, as the Issuing State, Croatia is trying to act particularly speedily in such cases.

### **Lithuania**

It may be observed that sometimes the Lithuanian courts do not receive requested information from competent authorities in requesting EU member state, which leads to the prolonged term for decision of recognition of the judgement.

It is observed, that sometimes Lithuanian courts, make a decision on refusal to recognise and execute the judgment of another EU member state on the execution of custodial sentence without requesting additional information or do not remind about the request. It also could be noted that in some cases the competent authority of the requesting EU member state provides a notice that further reminder is not needed. Nevertheless, such and alike communication issues may lead to the longer period of decision making or refusal to recognise the judgement in Lithuanian courts. Therefore, it is recommended to enhance better communication and cooperation at all levels, using different approaches (networks, meetings, trainings, etc.).

### **Information exchange form**

#### **Latvia**

In practice, it can be observed that the exchange of information in the process of applying Framework Decisions 2008/909 and 2008/947, and the CPL, generally takes place in paper form, more modern communication forms (e.g. electronic mail) are not used. There are some exceptions where one of the parties calls for the exchange of information to continue electronically in order to facilitate faster and more efficient cooperation, but even in such cases no exceptions are made and the exchange of information continues in writing in paper form.

In certain cases, such as when requesting/receiving additional information, it would be advisable to exchange information electronically, taking into account information provided by another EU member state on the possibilities for exchanging information.

The MoJ acknowledges that the MoJ, in its role as Central Authority, has direct contacts with the competent authorities of other EU member states, and in all cases requests are sent through the European Judicial Network. In cases of communication problems, the MoJ may use other channels of communication, such as the central authority of the EU member state concerned or, in individual cases, request assistance through diplomatic channels.

#### **Croatia**

In order to facilitate and speed up communication and data exchange, Croatian competent courts often use electronic mail as the instrument of correspondence. Also, as the Executing State, the courts inform the Issuing State via electronic mail about all the decisions that have been rendered in the procedures of recognition of the judgement and it is also possible to deliver to the Issuing State the first instance and second instance decisions via post with accompanying letter. Finally, competent courts also provide notice when the decisions become final according to domestic law.

#### **Lithuania**

The official mail usage is often accompanied by other means of communication: Lithuanian courts carry the cooperation with competent authority of another EU member state in different ways: by post, electronic mail, fax, telephone, video conferencing, etc. By these means the communication is speeded up.

### **Regularity of information exchange**

#### **Latvia**

In practice, it is not always the case that communication takes place on a regular basis, that timely responses are received from all parties involved.

In the absence of a timely response from any of the parties involved, it would be advisable to:

- 1) use the opportunity to write reminders;
- 2) review and/or change the communication channel, for example, by switching to electronic communication.

#### **Croatia**

When Croatian competent courts are the competent body from which the additional information or documentation is required, Croatian competent courts always are trying to provide the required information or documentation as soon as possible, without delay.

#### **Lithuania**

In case the additional documents or information are required from Lithuanian courts, being competent authorities, the response is provided as soon as possible without any undue delay. It should be noted, that sometimes, the translation of the documents or other required actions may take some time.

### **Inventory of cases related to Framework Decisions 2008/909 and 2008/947**

In practice, it can be observed that cases are registered both in the MoJ and in courts, but the proposal would be to set up a single e-platform for case listing, which could track information on each case from the moment the request is made until the decision is taken. In addition, bringing together, including, but not limited to, court decisions, would provide an opportunity to compile case law, analyse case law, and compile statistics.

### **Process of preparing translations**

In practice, it can be observed that other EU member states may also have problems with the preparation of translations into Latvian. An example is the specific case where the competent authority of Belgium could not find an interpreter to provide a translation of a special form certificate into Latvian. Upon receipt of the request, Latvia provided the translation, Belgium promised to cover all costs related to the translation of the documents. As a result:

- 1) in carrying out the sorting of the issue of the provision of translation, the time was delayed. In case if the translations of the request documents were received sooner, the Latvian court would be able to recognize and enforce the judgment sent by Belgium. But, in this case, the translation was received a week after the release of the sentenced person from detention due to enforcement of the judgement in another criminal proceeding;
- 2) Belgium covered expenditures for Latvia only after multiple reminders.

## **Quality of translations**

### **Latvia**

In practice, it is observed that very often the quality of translation of documents is low, which results in delays in the case processing process.

In case the court finds that the translation of documents is of poor quality, it is recommended:

- 1) to indicate to the submitter of the translation that the submitted translation of the documents has been prepared in low quality;
- 2) request a re-examination/improvement of the translation or ask the translation submitter to provide additional information in order not to delay the case review process.

Also, as the forms in the annexes to Framework Decisions 2008/909 and 2008/947 (i.e. the special form certificate) have been translated into all languages of the EU member states, it would be advisable for translators to use the officially certified translations (translations of Framework Decision 2008/909 and its annexes are available here: <https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=CELEX%3A32008F0909>, translations of Framework Decision 2008/947 and its annexes are available here: <https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=celex:32008F0947>).

### **Croatia**

Sometimes Croatian competent courts encounter problems regarding inadequate translations because they do not receive official and verified translation by a permanent court interpreter. On the other hand, Croatian competent courts use permanent court interpreter's services for translation of all the documents which are requested from the competent authorities of other EU member states in their native languages or English.

### **Lithuania**

Lithuanian courts receive translations that lack some quality at times as well. At the same time, Lithuanian courts use in office translation or out-source the service.

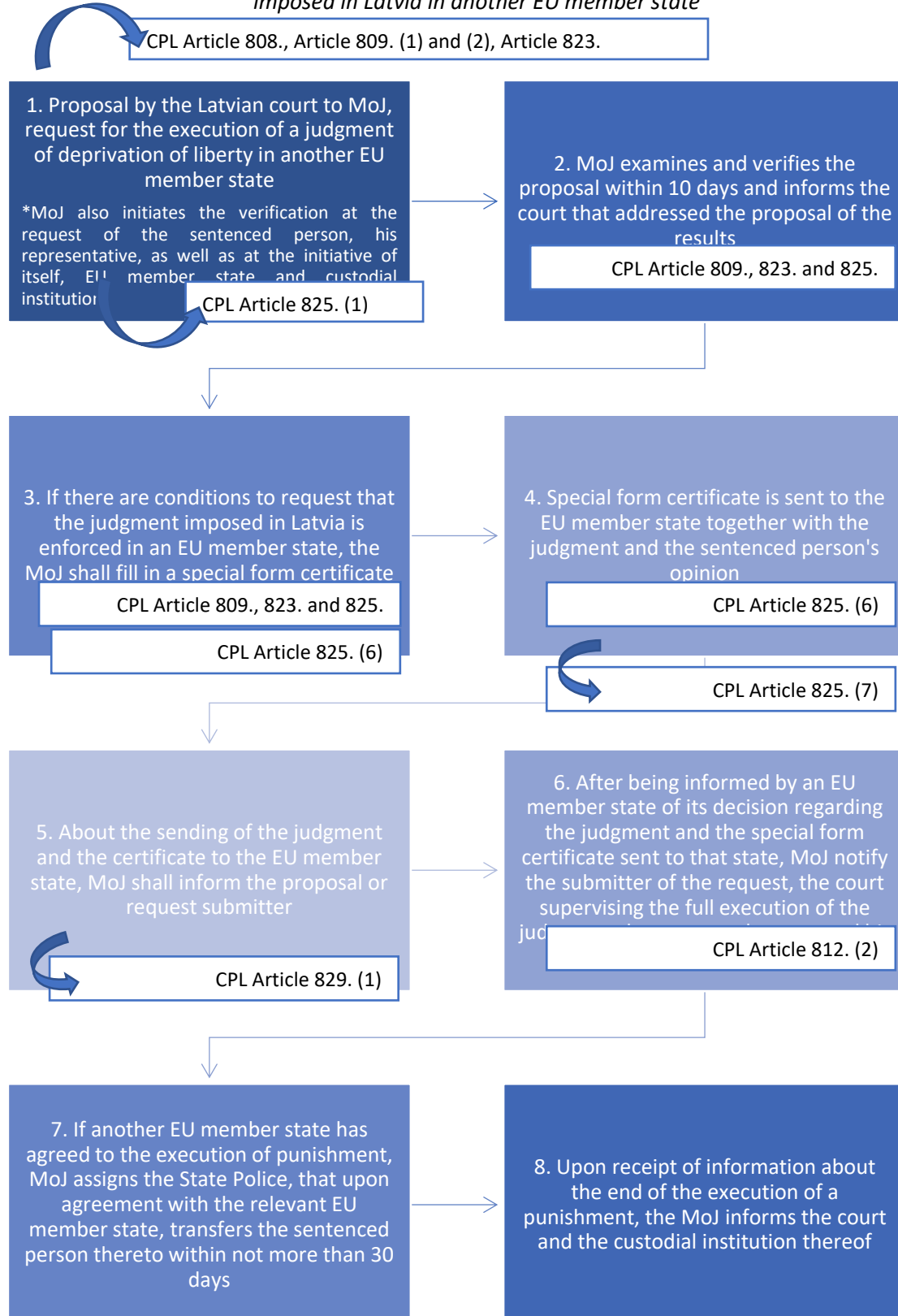
## **Completion of special form certificate**

MoJ after verifying the case materials, fills in/prepares a special form certificate. There are cases when a Latvian court sends a completed form to the MoJ, but the courts do not have to do so. The court submits a proposal for the enforcement of the sentence in another EU member state, but a special form certificate is filled in by the MoJ.

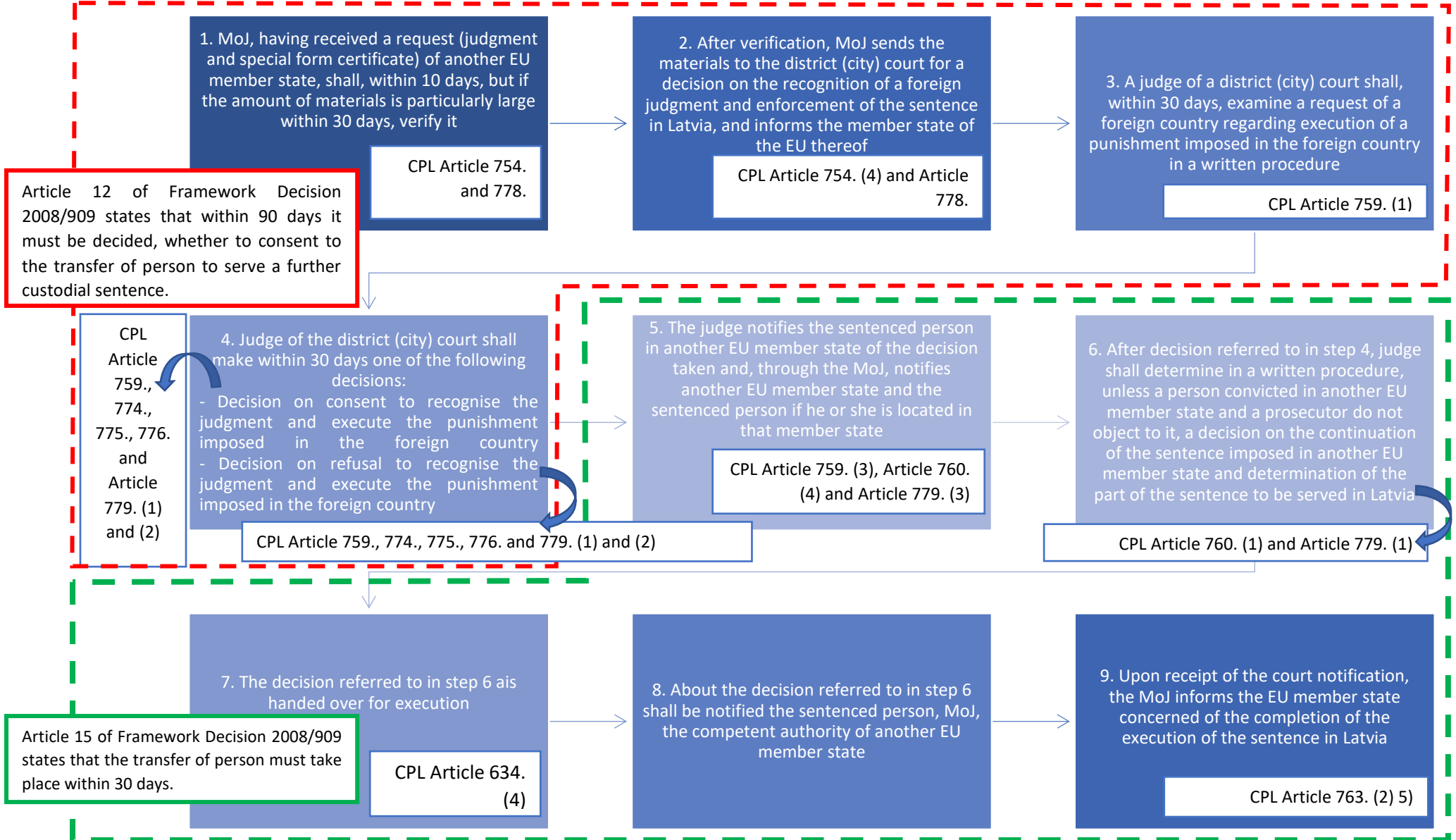
## 8. SUMMARY ANNEXES

### 8.1. Schematic representation of the actions to be taken by the Issuing and Executing State in accordance with Framework Decision 2008/909 and the CPL

*In case Latvia is an Issuing State and it is necessary to execute a custodial sentence imposed in Latvia in another EU member state*

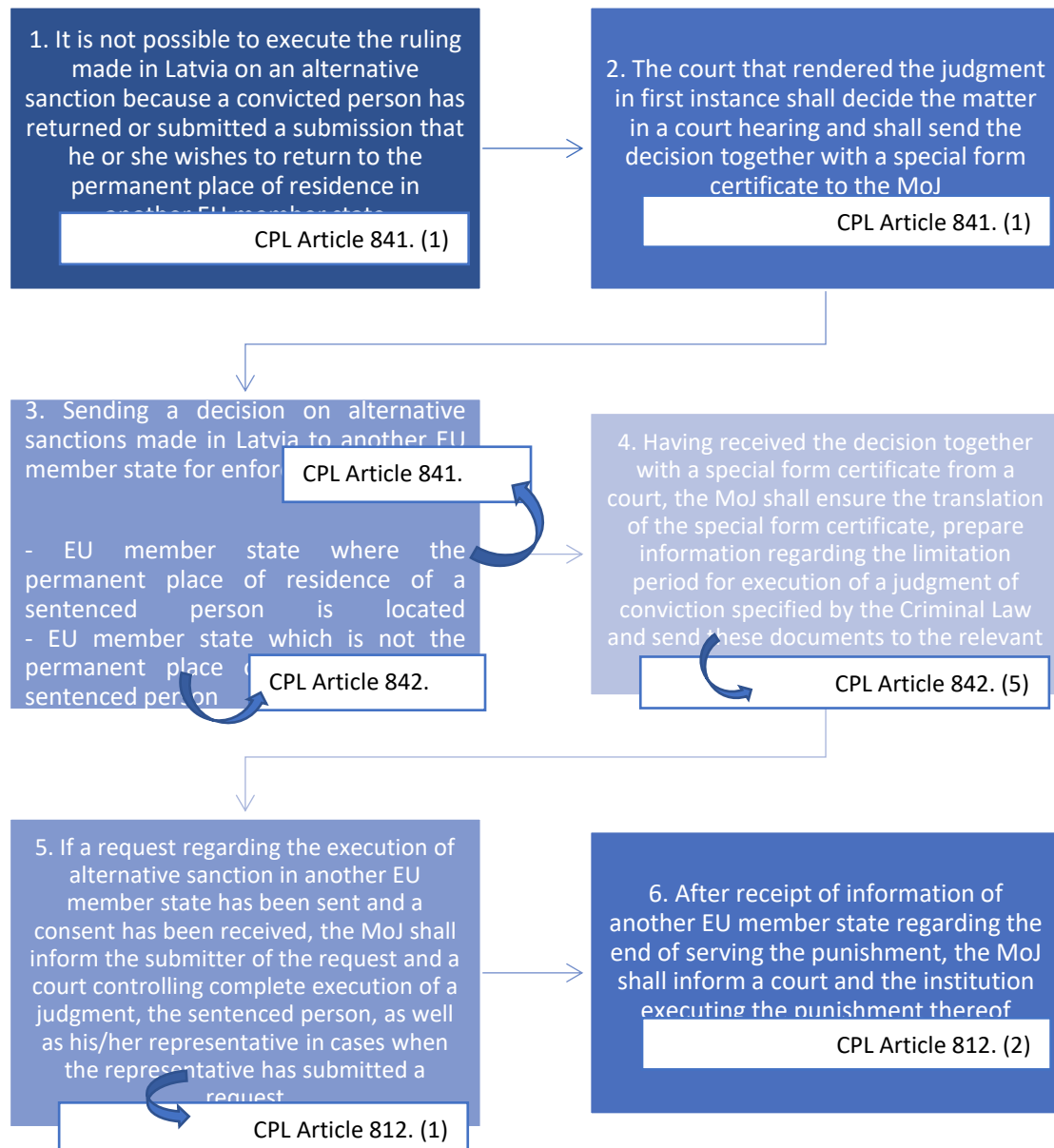


*In case Latvia is the Executing State to which the judgment of another EU member state has been forwarded for recognition and enforcement*

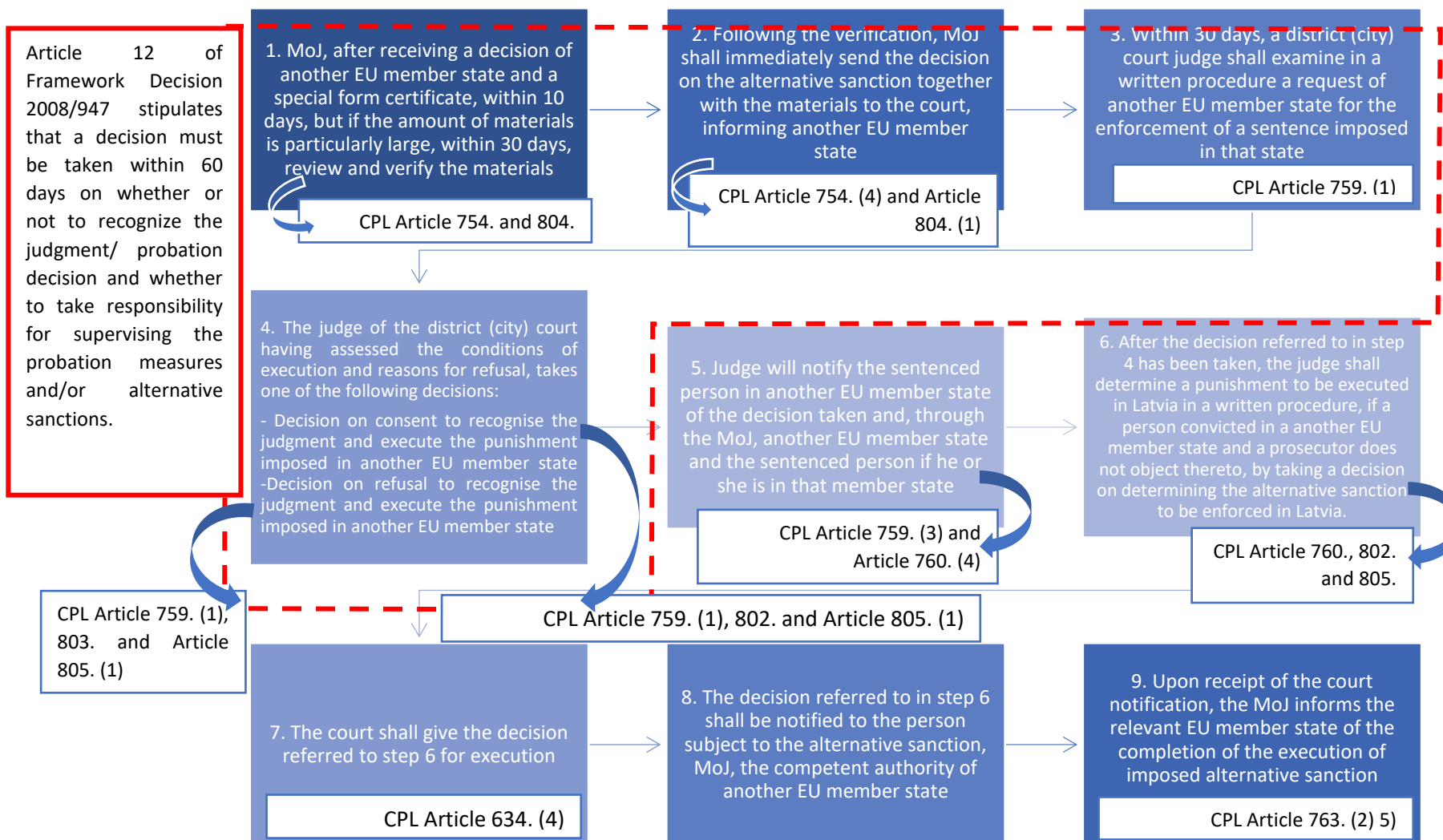


## 8.2. Schematic representation of the actions to be taken by the Issuing and Executing State in accordance with Framework Decision 2008/947 and the CPL

*In case Latvia is an Issuing State and it is necessary to send the decision on alternative sanctions made in Latvia for execution in another EU member state*



*In case Latvia is the Executing State to which the judgment of another EU member state has been forwarded for recognition and enforcement in Latvia*





8.3. Statistics on received, sent and executed requests for enforcement of sentences in connection with the Framework Decisions, for 2018 and 2019, for Latvia, Lithuania, Croatia

Framework Decision 2008/909						
2018						
Partner Country	Requests sent by Partner Countries to EU Member States			Requests sent by EU Member States to Partner Countries		
	EU Member State to which the request is sent	Quantity	Execution	EU Member State from which the request is received	Quantity	Execution
Latvia	Germany	1	-	Czech Republic	1	-
	Estonia	6	-	Germany	1	-
	Ireland	1	-	Denmark	2	-
	Lithuania	2	-	Estonia	5	-
	United Kingdom	6	-	Finland	3	-
				Italy	1	-
				Lithuania	7	-
				the Netherlands	1	-
				Sweden	2	-
				United Kingdom	8	-
<b>Total</b>	<b>16</b>	<b>-</b>	<b>Total</b>	<b>31</b>	<b>-</b>	
Lithuania	Latvia, Estonia	4	-	Austria, Belgium, Denmark, Estonia, Italy, United Kingdom, Latvia, Poland, the Netherlands, France, Finland, Sweden, Germany	75	65
Croatia	Germany, Italy, Sweden, France	3	2	Italy, Austria, Slovakia, Germany, Slovenia, France, Hungary	24	15

Framework Decision 2008/909						
2019						
Partner Country	Requests sent by Partner Countries to EU Member States			Requests sent by EU Member States to Partner Countries		
	EU Member State to which the request is sent	Quantity	Execution	EU Member State to which the request is sent	Quantity	Execution
Latvia	Germany	2	1	Czech Republic	1	1
	Estonia	3	3	Germany	1	1
	Spain	1	1	Lithuania	2	1
	Lithuania	2	2	Poland	1	1
	The Netherlands	3	2			
	Poland	2	2			
	United Kingdom	6	2			
	<b>Total</b>	<b>19</b>	<b>13</b>	<b>Total</b>	<b>5</b>	<b>4</b>
Lithuania	Germany, Latvia, Denmark	5	-	Austria, Belgium, Czech Republic, Denmark, Estonia, Spain, Italy, United Kingdom, Poland, France, Finland, Germany	57	38
Croatia	Italy, Austria, Germany, Slovenia, Romania	6	2	Denmark, Germany, Portugal, Austria, Sweden, Italy, Hungary, the Netherlands, Slovenia, Belgium	36	32
Framework Decision 2008/947						
2018						
Partner Country	Requests sent by Partner Countries to EU Member States			Requests sent by EU Member States to Partner Countries		

	EU Member State to which the request is sent	Quantity	Execution	EU Member State to which the request is sent	Quantity	Execution
<i>Latvia</i>	Lithuania	40 % (i.e. ~ 22)	-	Lithuania	7	-
	Estonia	40 % (i.e. ~ 22)	-	Poland	1	-
	The Netherlands, Germany, United Kingdom	20 % (i.e. ~ 10)	-	Sweden	1	-
	<b>Total</b>	<b>54</b>	<b>-</b>	<b>Germany</b>	<b>1</b>	<b>-</b>
				<b>Total</b>	<b>10</b>	<b>-</b>
<i>Lithuania</i>	Poland, Estonia, Germany	4	-	Spain, Latvia, the Netherlands, Sweden, Hungary, Germany	23	19
<i>Croatia</i>	Germany, Slovenia	2	-	Austria, Sweden	2	2

Framework Decision 2008/947						
2019						
<i>Partner Country</i>	Requests sent by Partner Countries to EU Member States			Requests sent by EU Member States to Partner Countries		
	EU Member State to which the request is sent	Quantity	Execution	EU Member State to which the request is sent	Quantity	Execution
<i>Latvia</i>	Lithuania	40 % (i.e. ~ 14)	-	Lithuania	10	-

	<b>Estonia</b>	40 % (i.e. ~ 14)	-			
	<b>The Netherlands, Germany, United Kingdom</b>	20 % (i.e. ~ 6)	-	<b>United Kingdom</b>	1	-
	<b>Total</b>	<b>34</b>	-	<b>Total</b>	<b>11</b>	-
<i>Lithuania</i>	<b>Latvia, Estonia, Germany</b>	4	-	<b>Latvia, Sweden, Spain</b>	8	6
<i>Croatia</i>	<b>Germany, Slovenia, the Netherlands</b>	5	-	<b>Czech Republic, Slovenia</b>	2	1

#### **8.4. Information on the most frequently used reasons for non-execution of the requests for enforcement of sentences, in Latvia, Lithuania and Croatia**

##### **Latvia**

In Latvia in relation to Framework Decision 2008/909, the most common reasons for non-execution are:

- a. the criminal offense is not a criminal offense in the Executing State;
- b. the term for execution of the sentence is too short;
- c. it will not be possible to take over/transfer the person until the end of the sentence;
- d. with respect to the human rights, in another EU member state the conditions for conditional release are more favourable;
- e. another EU Member State after several reminders do not provide additional information, that is relevant and required for the decision-making process.

##### **Lithuania**

In Lithuania the most common reasons for non-execution are:

- a. the length of the imprisonment or alternative sanction left is less than 6 months;
- b. no criminal liability in Lithuania (e.g. fine imposed in Latvia for the theft and the value of asset is not enough for criminal liability in Lithuania);
- c. different preconditions for probation;
- d. doubts if the judgement is final (not scattered by another EU member state institutions);
- e. the decision was delivered in absentia, the sentenced person would experience worse conditions in Lithuania;
- f. lack of additional information (e.g. on deportation procedure);
- g. the translation of the judgement is not provided;
- h. procedural issues, such as the defendant was not informed about the procedure, relevant court jurisdiction was not selected (no place of living declared; place declared, not checked by the Ministry of Justice of the Republic of Lithuania, etc.), the term of imprisonment left is less than 6 months, the judgement is recognized in another EU member state, not sufficient information from another EU member state (lack of information, failing to provide it upon request), residence in another EU member state became evident.

##### **Croatia**

As the most frequent reasons for non - recognition of judgements within the application of Framework Decision 2008/909, Croatian competent court (County court in Zagreb) has accentuated the following reasons:

- a. the criminal act from the submitted foreign judgement is not a criminal offence in accordance with domestic criminal law, but it is prescribed by the domestic law as misdemeanour (especially regarding possession of narcotic drugs);
- b. the sentenced person is a citizen of the Republic of Croatia, but he/she does not have active residence in its territory, and the subsidiary requirement prescribed in Article 91 paragraph 1 item 2 of the Act (Article 4 paragraph 1 item b. of the Framework Decision 2008/909) is not met, i.e. the measure of deportation or expulsion to the

Republic of Croatia, after his release from prison, was not imposed on the sentenced person by a judgement, administrative decision or other measure which is the consequence of the judgement. In this situation, competent courts have accentuated problems regarding application of the aforementioned provision of the Act, because the measure of deportation or expulsion is imposed on the sentenced person, but, at the same time, the factual deportation of that person to the Republic of Croatia, after his release from prison, does not stem from the text of the submitted judgement (regarding this problem, there is the relevant Supreme Court of the Republic of Croatia's judgement, no. Kž-eu-17/2019, dated 9th October 2019, accentuating that: "...*Unlimited ban of residence, in substantial and terminological sense, cannot be equalled in total to the measure of deportation or expulsion, therefore, at least for now, the conclusion of the first instance court, that all the requirements for recognition of foreign judgement prescribed by the Article 91 of the Act are met, is premature. Therefore, the appellant is right when stating that this legally relevant fact, which is related to the additional requirement prescribed by the Article 91 paragraph 1 item 2 of the Act, is not established in correct and undoubtedly way.*");

- c. when the Issuing State does not request the consent of the Ministry of Justice to forward the judgement, imposing prison sentence or other measure involving deprivation of liberty, accompanied by the certificate or the sentenced person does not give his/her consent to that, and that same person does not have residency in Croatia and the measure of deportation or expulsion is not imposed on that person.