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THE EUROPEAN UNION**

Brussels, 12 November 2002

**10476/3/02
REV 3 EXT 1**

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**EVAL 29
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EXTRACT FROM REPORT

From : the Collective Evaluation Working Party
To : Coreper / Council
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Subject : Revised country report on Lithuania

III. CONCLUSIONS

A. Border security

The legal basis for effective border management is in relatively good order. The new legislation is functional and coherent and gives border authorities the legal basis to carry out their tasks according to Schengen principles. Legal texts are not yet fully supported by internal regulations. There are no sanctions against carriers who transport aliens without necessary travel documents. Inter-agency co-operation is not based on legislation and co-operation in practice is, due to technical and psychological reasons, sometimes inefficient. The administrative capacity to create an integrated national border security strategy requires closer co-operation between different law enforcement authorities as well as inter-ministerial monitoring. Training facilities are poor and border guards' language skills need to be enhanced. Border checks are not fully implemented according to Schengen principles. Data flow management is insufficient and cumbersome.

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It should be mentioned that most of these problems are well known by the Lithuanians. There are good intentions and plans to improve the situation. The distance between plans and real life implementation however sometimes seems to be very long. Budgetary shortages far too often mean less patrolling and slow implementation of development plans. Lack of a tradition-of co-operation and of genuine willingness to engage in a multi-agency approach has an impact on the current situation. The "knowledge is power" - attitude is still very strong. Habits from the past are also still inside the system. Many of the remaining practical problems are related to the Kaliningrad-issue. As long as transit passengers are allowed to travel without real checks and Kaliningradians can travel without proper travel documents to Lithuania, it is very difficult for border guards to fulfil they tasks according to Schengen principles.

Missing legal acts like carriers' responsibility should be put in place and implemented. One authority should have the national responsibility of migration control stipulated in law. It is also necessary to guarantee sufficient budgetary resources for the Border Guard to maintain its well improved daily operative efficiency and –even more important– to continue to develop its still partially limited capacity to implement Schengen requirements. It is also necessary to clarify co-operation and co-ordination of responsibilities between the different bodies involved in border security. It is recommended to regulate this co-operation by an Act, covering the whole spectrum of cross-border co-operation, i.e. joint risk analysis, exchange of experience, co-operation on training, co-operation on investigation etc. A practical multi-agency approach is necessary and therefore co-operation between all law enforcement authorities involved in border security should be improved and remaining obstacles removed. Especially co-operation between police, customs and border guard is of utmost importance. There must be a clear leading authority for combating illegal immigration in order to be able to effectively co-operate with the EU and combat illegal immigration. Strategic plans of all law enforcement authorities should be made in a co-ordinated way (ministerial level co-ordination). Border crossing procedures and practical border checks should be harmonised according to Schengen provisions.

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B. Migration

With regard to the formal acquis, Lithuania has to ensure full implementation of its visa policy and practices with those of the EU. Russians of Kaliningrad, together with other categories, may still enter Lithuania without a visa. Therefore, the visa system is not applied to the most important and recurrent flux of foreigners although Lithuania has undertaken to align to EU and Schengen requirements in this respect before accession. Provisions on detention before expulsion still do not respect human rights. Administrative capacity is improving and but there are still some serious shortages since there are no on-line connections available for consulates.

Lithuanian consulates are experienced in issuing visas, but the issuing-conditions are far from the Schengen ones concerning the proof of accommodation/resources and the on-line connection to national databases. Above all, the consular (and border) system for coping with the introduction of visas to Russians of Kaliningrad and other passenger categories, is not yet in place. Lithuanian new passports meet EU-requirements but it takes several years before old and easily forged passports are out of circulation. A modern information system, integrated and shared, is still lacking.

With regard to implementation of the fight against illegal immigration (and bearing in mind that the main issue (circulation to and from Kaliningrad) is not yet coped with), it is possible to say that Lithuania acts and obtains results. The question of re-admission agreements with Russia and Belarus needs EU support. Efforts are still needed in the fields of forced expulsion of non-Russian illegals, and of trafficking in women. Admissions rules need amendments on workers and on family unification. The whole matter of admission is hampered in practice by the lack of co-ordination between the Migration Department on the one hand, the police and border guards on the other hand. There is a need for a computerised link between the different bodies involved. A central register of foreigners and a central visa database should be established according to plans.

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C. Asylum

With regard to the formal *acquis*, the current Lithuanian legislation complies apart from the admissibility procedure and the regulations on detention of asylum seekers. The administrative capacity has improved. Yet, the financial involvement of authorities in asylum related issues is still weak and detention conditions at the borders are harsh. The recognition rate tends towards zero and the notions 'safe third country' and 'safe country of origin' are not properly implemented'.

Although clear progress on the alignment of legislation to the asylum *acquis* has been made, the admissibility procedure at the border in case of manifestly unfounded applications is too expeditious; the time span of 48 hours is too short and the appeal against the decision has no suspensive effect. The regulation on the detention of asylum seekers does not respect all human right principles; the lack of a time limit, of safeguards such as the right to be informed, the reasons for detention etc.¹. Despite an improved administrative capacity, there is a lack of a shared information system, of information on countries of origin, of training of judges, legal assistance and interpretation. Accommodation conditions have been improved at the Foreigner Registration Centre and the Refugee Reception Centre has been improved, including special provision being implemented for minors and vulnerable persons.

Alignment to the asylum *acquis* must continue. The procedure on admissibility should be adapted in the sense that it includes issues such as time limit and the necessary safeguards². The regulations on the detention of asylum seeker need to be modified so that all human right principles are respected³. Lithuania should further continue to improve the administrative capacity, by establishing a central register for foreigners and a shared information system on asylum seekers (a project which will be decided upon in 2002). Further, there is a need to establish an information Centre on countries of origin, to provide training to judges as well as a need for more financial resources to provide legal assistance and interpretation. The detention conditions at the border need to be improved. Implementation of the legislation should be continuously be monitored, especially as regards the rates of recognition and the underlying causes. Monitoring the proper implementation of the notions 'safe third country' and 'safe country of origin' is also necessary.

¹ viz. Chapter and conclusions Human Rights

² right to be informed, reasons for detention, right to challenge the decision to detain and the right to review the detention order

³ viz. Chapter and conclusions Human Rights

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D. Police and customs

The measures that have been taken with a view to restructure the police service constitutes a good progress, but need to be further developed in order to complete the implementation of the Law on Police Activities.

Modern technical equipment and forensic technology is not yet sufficient despite significant recent efforts. Improvement is necessary in order to develop the capacity of the police in this field.

In general, the State budget covers staff and training at a lower level. Extra investment should be made in equipment, infrastructure and the development of new methods in the coming years. The present system cannot ensure implementation of the police-training programme in a flexible way. Police training has gone through many changes and adaptations over recent years. However, a complete and coherent professional training strategy for the police must be developed in the near future in order to ensure that police officers obtain specialised training. Measures should be taken in order to implement the new model for training.

The people's trust in the police is still quite low. It is necessary to improve the relationship with the public in the coming years and any mistrust that exists must be eradicated.

There is full awareness of the high level of corruption within the police force in general and the traffic police in particular. The salaries of police personnel are low. Many police officers are forced to take a second job or to move into another sector

Organised crime has increased progressively each year. Training of specialist staff responsible for combating organised crime should be stepped up. Expertise is also needed in other new types of crime (financial crime, money laundering, high-tech crime). The investigative process is mainly ad hoc at present. It is necessary to develop a strategy for criminal investigations. With a strategy, separate investigations can be put into a broader context and cases can be linked. Broadening the approach to organised crime requires more intensive co-operation between the different sections of the Police and between the police and other law enforcement agencies.

Trafficking in women continues to be a problem and stronger efforts to combat it should be made. It is necessary to improve the measures and programmes directed towards preventing women from becoming victims of this type of crime

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Concerning money laundering legal alignment reached a good level, but there is still a long way to go in terms of improvement. There is a lack of knowledge and experience. Lithuania should comply as soon as possible with the *acquis* and other international standards on the fight against the misuse of the financial system, in particular money laundering, including directive 2001/97 EC amending Directive 91/308EEC. Lithuania must align its legislation to the Convention on Protection of the Communities' Financial Interests and its Protocols.

In the field of drug is necessary to develop the implementation of the National Drug Control and Prevention Programme

There is no overall national program for crime prevention. There are, however, strategies in different areas. These specific strategies are quite detailed but often lack the necessary resources. The police should make a more active contribution towards crime prevention. Attention for prevention is still too limited and seems to be restricted to a relatively small group of officers.

Preparations for full participation in the work of Europol should continue, so that a co-operation agreement can be signed as soon as possible. In addition, a network of police liaison officers needs to be established. Lithuania should continue its efforts to reinforce bilateral co-operation with other EU countries.

Concerning the administrative capacity of the Customs Service, in spite of efforts a number of measures still remain to be adopted, e.g. a long term strategy for training. Substantial training will be needed to improve the intelligence capacity of the Customs service.

Lithuania should complete the process of alignment with the customs related *acquis*, accelerate implementation of its IT strategy and implement the customs ethics policy.

E. Justice

As to formal *acquis*, Lithuania has made considerable progress with its adoption. A number of issues still need to remain tackled; the entry into force of the new Criminal Code and Code of Procedure -foreseen for 1 January 2003- should bring Lithuanian legislation largely in line with the current *acquis*. A number of instruments both in the area of criminal law (drugs and terrorism) and civil law remains to be signed/ratified. With regard to the administrative capacity, there are some vacancies of judges' posts but overall, the numbers of judges, prosecutors and other personnel, apart from the number of lawyers, seem to be sufficient. Training of judges, prosecutors and other

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personnel has become top priority and modernisation of the courts is underway. The courts' infrastructure still leaves to be desired. With regard to implementing performance, the new Law on Courts, which entered into force on 1 May 2002, should effectively guarantee the independence of the judiciary vis-à-vis the executive. The efficiency of the legal system is considered to be at a medium level. Confidence of the public in the judiciary is low. Enforcement of judgements is still problematic. The new Criminal Code and Code of Procedure should shorten the currently long criminal procedures and detention times.

Lithuania is not only making considerable progress with the adoption of the *acquis*, it is also closely following and adapting to the new developments. Lithuania is aware of the fact that vacancies in the judiciary have to be filled, and has agreed that (long-term) training of the judiciary, on EU Law but also on its new Codes, is crucial. It has also undertaken to modernise all courts and provide them with the necessary access to case law. However, the budget allocations with regard to court infrastructure and equipment seems to have lagged behind. This goes especially for the prosecution, in terms of equipment and training. The decisions of the Constitutional Court in 1999 have been taken into account in the new Law on Courts. Thus, it is clear that despite the lack of public respect for the judiciary and of political support for the principle of clear separation of powers, Lithuania has understood that these principles must be respected in order to be able to accede. Lithuania is further making efforts to improve the system of Court bailiffs/enforcement of judgements, in order to tackle the current problems of non-enforcement.

Lithuania should continue its current pace and efforts to align its legislation to the entire (including the new) *acquis*. It should be monitored that the Criminal Code and Code of Procedure enter into force at the time currently foreseen, and that their provisions are effectively implemented. In that respect, the training of the judiciary on the new Codes, which is in the planning, should indeed be carried out. Lithuania should continue its improvement of the judiciary's administrative capacity, by filling the current vacancies, set forth the modernisation of courts as well as the training efforts. It should be monitored that the Law on Courts is effectively implemented in practice, and that enforcement of judgements is improved within due time. These two efforts combined would most probably contribute to higher confidence in the judiciary and the judicial system.

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F. Human rights

Almost the entire formal *acquis* has been ratified. Gaps remain in the Refugee Law and the Law on Legal Status of Foreigners. The policy towards minors is currently not yet satisfactory. There is (yet) no comprehensive EU anti-discrimination legislation¹ and existing legislation was not effectively enforced. Despite some progress, pre-trial detention and prison conditions remain poor. Problems as overcrowdedness, poor hygiene and medical treatment and physical violence worsen the situation. Despite human rights training to police, reports on excessive actions, ill treatment and existence of corruption continue to appear. Action (undertaken) against police abuse is not yet fully effective. Pre-trial detention can be very long and sometimes legal actions were initiated against suspects without having any concrete evidence. Prosecutors often publicly labelled the defendants as perpetrators, thereby violating their right to be considered innocent before proven guilty. Also, basic procedural rights were not always respected during trials and there is a lack of sufficient public lawyers to provide free legal counsel. Sentences tended to be harsh: the average prison term being 4 1/2 years and alternative forms of punishment being rarely imposed. Apart from incidents with asylum seekers, the new Refugee Law (regulating their detention) suffers from shortcomings. In particular general detention of aliens before expulsion remains poorly regulated. As a rule, there are long delays in transfer of asylum seekers to appropriate accommodation and prolonged detention of minors. There is also lack of access to health care and social security for persons with subsidiary protection status.

Trafficking in human beings has become an increasing problem, but only very few crimes were registered and only one investigation was completed. Investigation of missing persons has been ineffective. Social and legal protection schemes, appropriate assistance for victims, national programmes for their rehabilitation and reintegration or proper long-term prevention programmes for youth were lacking. The situation of Roma remained difficult.

¹ as required by the EU Race Equality Directive

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As to legislation on asylum, Lithuania is in the process of aligning its legislation to the *acquis* and the Law on Legal Status of Foreigners is being amended. The policy dealing with minors does not yet include the prevention and protection of child victims/witnesses. The main reason for the poor prison situation and lack of training has been the lack of (national state) funding. However, with financial assistance from and co-operation with international organisations, the situation is improving in some prisons and a reform of the penitentiary system is underway (e.g. improving the physical conditions, setting up rehabilitation and educational schemes, reconstruction of prisons and construction of new ones). Despite the fact that training on human rights for police is given, and that it will start for judges, it seems that the action that can be undertaken against police abuse has not yet been very effective and that the recommendations of the Committee on the Prevention of Torture have not yet all been taken on board. The problems related to the long pre-trial detention, the conduct of the prosecutors (in respect of the need to prove one's innocence) and non-respect of some basic procedural rights may change with the entry into force of the new Criminal Code and Code of Procedure. A new draft Code of Execution of Punishments was foreseen to be completed in the first half of 2002. The fight against trafficking in human beings has been very ineffective, as has the investigation of missing persons. Lithuanian authorities did not have a computerised system for searching for missing persons, and the police had no specialised unit dealing specifically with trafficking or missing persons. As a result, information on missing persons did not reach all police stations and border police posts, thus hampering efficient investigations. Furthermore, international agreements with other countries concerning the search for missing people abroad did not function properly. With regard to the situation of Roma, despite the Government's renewed commitment to improve their conditions and the implementation of a new Roma Integration Programme, problems remain as the latter may not adequately encompass the minority's priorities or pay enough attention to the problem of discrimination (employment, housing, education and health care).

Lithuania must continue to completely align its legislation to the *acquis* in the field of asylum and discrimination. It should be monitored that with the entry into force on 1 January 2003 of the new Criminal Code and Code of Procedure, the remaining shortcomings such as the need to prove one's innocence in certain cases, the severity of minimum sentences and the violation of basic (procedural) rights come to an end. The policy as regards minors should include the prevention and protection of child victims/witnesses. The completion, adoption and implementation of the new (currently draft) Code of Execution of Punishments should equally be monitored. The same goes for the situation regarding (too) long pre-trial detentions. The reform of the prison system should

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continue but include the necessary funding. Respect by police of human rights must improve: the recommendations of the CPT should be fully taken on board, and the action undertaken in case of police abuse must become more effective. The fight against corruption and against trafficking in human beings should be stepped up, as especially the latter is becoming increasingly serious. However, this too should be accompanied by the necessary financial and material resources as well as by the provision of social and legal protection schemes, appropriate assistance for victims of crime, prostitution or trafficking, a national programme for their rehabilitation and reintegration and proper long-term prevention programmes for youth. With regard to the situation of Roma, it should be monitored that the Integration Programme effectively includes the community's priorities and that sufficient attention is paid to the current problem of discrimination in several sectors.

G. Corruption

In the legislative field, the Civil Law Convention on Corruption has been signed but not yet ratified. In January 2002, Parliament adopted the National Anti-Corruption Programme, comprising the National Anti-Corruption Strategy and the Action Plans for the implementation of the Strategy.

Lithuania has during the last years taken extensive action against corruption and a number of inter-institutional anti-corruption co-operation initiatives have been established. The Special Investigation Service (SIS) is the main responsible body in this respect, i.e. for co-ordinating anti-corruption activities and promoting an integrated approach. Although Lithuania seems to be affected by corruption on an important scale, it is among the least affected transitional countries of central and Eastern Europe.

Lithuania ranks 38 on *Transparency International's* (TI) Corruption Perception Index 2001 with a score of 4.8, an improvement compared to previous years. A majority of the general public and entrepreneurs however do, according to TI, consider corruption as a widespread and increasing phenomenon, the institutions perceived as most corrupt being the courts, the government and the Seimas (parliament); the Traffic Police, Border Police, Tax Police, and penitentiary institutions. Both the customs and border guards are believed to be very corrupt, and human right groups blame them for neglecting the fight against trafficking in human beings.

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The bureaucracy of the public bodies in Lithuania is generally slow and bribes are commonly used by the private sector in order to speed up procedures. There still seems to be insufficient public control over government decisions. The laws provide for control, but it is rarely exercised in practice. Furthermore, civil society is weak, and civic groups do not play a sufficiently strong role in the policy-making process. There is a general lack of research, including data and official statistics as a solid fundament for measures to be deployed in the future.

In January 1999, the Government approved the National Program for the Prevention of Organised Crime and Corruption. The tasks and goals of the program however seemed too broad and too abstract, while the time-table for its implementation was overly extended in time, therefore, specific actions might prove to be inadequate when faced with reality and specific demands. Although the authors of the program did take into account some of the criticism, they failed to create a uniform, consistent and effective control mechanism for the implementation of the program. Sectoral anti-corruption strategies should be developed in each of the individual agencies (i.e. Customs, Border Guard), in order to support implementation of the National Anti-Corruption Programme.

In general the main emphasis seems to be on the enforcement of repressive rather than preventive methods.

It would therefor seem useful to devote more attention to the preventive side in the broad sense, strengthening anti-corruption prevention measures in order to strike a good balance between preventive and repressive measures.

A number of legal and organisational measures have been taken. The efforts made over the past years should be sustained and reinforced. Interagency co-ordination should be further strengthened in order to avoid overlap of operations and ensure efficient exchanges of information. Greater involvement of civil society in the fight against corruption should be encouraged. Also, in-depth assessments with regard to certain institutions where there are particular problems of corruption would be of great value.

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The authorities should reconsider the overall responsibility for the co-ordination of anti-corruption policies, with the view to establishing a specific body or, alternatively, to entrust an existing body with this responsibility and to consider the possibilities of strengthening anti-corruption preventive measures, in order to strike a good balance between preventive and repressive measures.

Transparency of public authorities vis-à-vis media and the wider public should be improved, in particular, with regard to access to public documents and information.

Finally the mechanism for the collection and analysis of data should be further developed so as to provide a picture of corruption and organised crime, and of the offenders.

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