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Report on Lithuania

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THE EUROPEAN UNION**

**Brussels, 26 October 2012**

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**GENVAL 76**

Evaluation report on the sixth round of mutual evaluations:

"The practical implementation and operation of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and of the Council Decision 2008/976/JHA on the European Judicial Network in criminal matters."

Report on Lithuania

## TABLE OF CONTENTS

<u>1.</u>	<u>Executive summary</u> .....	3
<u>2.</u>	<u>Introduction</u> .....	7
<u>3.</u>	<u>General matters and Structures</u> .....	9
	<u>3.1. General information</u> .....	9
	<u>3.2. Implementation of the Eurojust national coordination system (ENCS)</u> .....	11
	<u>3.3. National desk at Eurojust</u> .....	12
	<u>3.4. EJM contact points</u> .....	14
	<u>3.5. Conclusions</u> .....	16
<u>4.</u>	<u>Exchange of information</u> .....	22
	<u>4.1. Exchange of information from judicial and law enforcement authorities to Eurojust</u> .....	22
	<u>4.2. Feedback by Eurojust</u> .....	24
	<u>4.2.1. E-POC project</u> .....	25
	<u>4.3. Conclusions</u> .....	25
<u>5.</u>	<u>Operational aspects</u> .....	27
	<u>5.1. Practical experience in relation to Eurojust</u> .....	27
	<u>5.2. Allocation of cases to Eurojust or the EJM or others</u> .....	29
	<u>5.3. Experience of cases in relation to the competences attributed to Eurojust</u> .....	29
	<u>5.3.1. Cases related to the tasks of Eurojust acting through its national members (Article 6)</u> .....	30
	<u>5.3.2. Cases related to the tasks of Eurojust acting as a College (Article 7)</u> .....	32
	<u>5.3.3. Cases related to the powers exercised by the national member</u> .....	32
	<u>5.4. Practical experience related to coordination meetings</u> .....	34
	<u>5.5. Use of the On-call coordination (OCC)</u> .....	35
	<u>5.6. Conclusions</u> .....	36
<u>6.</u>	<u>Cooperation</u> .....	38
	<u>6.1. Relation with law enforcement authorities (Europol national unit, Sirene, ...)</u> .....	38
	<u>6.2. Participation of national members in joint investigation teams (JITs) (Article 9f)</u> .....	38
	<u>6.3. Cooperation with other EU agencies</u> .....	40
	<u>6.4. Cooperation with third states</u> .....	41

6.5.	<a href="#">Practical experience of the EJM</a>	42
	6.5.1. <a href="#">The EJM Website</a>	43
6.6.	<a href="#">Conclusions</a>	43
7.	<a href="#">Special investigative techniques</a>	47
	7.1. <a href="#">Controlled deliveries (Article 9d (a))</a>	47
	7.2. <a href="#">Other special investigative techniques (SITs)</a>	48
	7.3. <a href="#">Conclusions</a>	48
8.	<a href="#">Training and awareness raising</a>	50
	8.1. <a href="#">Promotion of the use of Eurojust and the EJM</a>	50
	8.2. <a href="#">Specific training for national members and EJM contact points</a>	51
	8.3. <a href="#">Conclusions</a>	52
9.	<a href="#">General observations and final remarks</a>	54
	9.1. <a href="#">Conclusions</a>	55
10.	<a href="#">Recommendations</a>	57
	10.1. <a href="#">Recommendations to Lithuania</a>	57
	10.2. <a href="#">Recommendations to the European Union, its institutions and agencies, and to other Member States</a>	60
	10.3. <a href="#">Recommendations to Eurojust/the EJM</a>	61

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1. EXECUTIVE SUMMARY

1. In line with Article 2 of the Joint Action 97/827/JHA of 5 December 1997, the Working Party on General Matters including Evaluations (GENVAL) decided at the Meeting on 22 June 2011 that the sixth round of mutual evaluations will be devoted to the practical implementation and operation of the Decisions on Eurojust and the European Judicial Network in criminal matters.
2. No national legal provisions were deemed necessary in order to implement these decisions in Lithuania. The acts issued for the purpose of transposition the Council Decision were three orders of the Prosecutor General. However, orders of the Prosecutor General are considered as secondary law, they regulate only matters that fall within the competence of the Prosecutor General.
3. Lithuania is a small country, where every agency knows each other. As a consequence, the system created is working in an effective manner. However, some issues under domestic legislation and practice may give rise to questions as to the scope of implementation of the decisions.
4. The ENCS is in the process of being implemented. Practise of the ENCS is limited. The goal is to find the most flexible system. The ENCS has daily contact with investigation authorities of Lithuania. Lithuania has had one meeting of the ENCS in the context of a Eurojust "marketing seminar" a few weeks before the evaluation mission to Lithuania. The aim is to have a meeting each quarter.
5. One prosecutor is appointed to the Lithuanian national desk at Eurojust. Furthermore, the national desk has a secretary, who is employed by Eurojust. The National Member of Eurojust for Lithuania and her Deputy are appointed by the Prosecutor General for a term of four years. The national member theoretically has full prosecutorial powers. However, the National Member of Eurojust for Lithuania and her deputy are not granted with the powers specified in Article 9c paragraph d) (the right to personally authorise controlled deliveries), Article 9d paragraph a) (the right to personally authorise controlled deliveries) and paragraph b) (the right to personally execute urgent requests for or decisions on judicial assistance) of the decision.

6. The EJM contact points in Lithuania were selected from three sectors which have different roles in cooperation in criminal matters: six contact points and one tool correspondent from the Prosecution Service (pre-trial stage, functions of Central Authority); two contact points from the Ministry of Justice (trial stage- Central Authority functions), and one judge from the court system (trial stage – executive functions).
7. Efforts had been put into place by Prosecutor General's Office to implement Article 13. There have been some five cases where the Eurojust Article 13 template was used.. There is some uncertainty whether the way some of the instructions are phrased could in practice limit the scope of the exchanges of information when compared to the Eurojust Decision.
8. Lithuania is an observer in the E-POC project and has made an application for the continued project as a co-beneficiary.
9. It is a daily routine to find a best solution for the allocation of cases between Eurojust and the EJM on a case-by-case basis. The personal contacts between the Lithuanian National Member at Eurojust and the Lithuanian prosecutors are so close that the national member is more likely to be contacted than the EJM.
10. Lithuania has been involved in some 10 coordination meetings per year. The results are positive and contacts have been useful also in other cases. The meetings have been deemed as being of high quality. Lithuania has not really identified problems related to coordination meetings, but believe that Lithuania in future must be more active in initiating more cases.
11. Lithuania presented an interesting example of merging judicial cooperation at the pre-trial stage of criminal proceedings with law enforcement and intelligence cooperation. Such practice seem to create a potential which could prove generally useful in the fight against cross-border organised crime.
12. The OCC is known in Lithuania, but in practice calls are always made directly to the national member.

13. There is exchange of information between the national member at Eurojust and the national liaison bureau at Europol. Members of the ENCS from the Prosecutor General's Office keep contacts outside the ENCS, for instance at the Ministry of Justice or the police, inter alia the SIRENE and Europol systems. As for the police, in every case of communication with Eurojust, Europol is always used for assistance.
14. Lithuania has experiences with JITs in money laundering and organised crime cases. In one JIT, Europol was involved. Practitioners in Lithuania referred to experiences involving Eurojust such as JITs as very positive and there was widespread confidence and use of the Eurojust national member. Not all authorities are aware of the possibility of financial and logistical assistance to JITs that could be obtained from Eurojust.
15. Reporting on the EJM Website and its tools, in general it meets the expectations of the Lithuanian competent authorities. However, some improvements are desirable, as national authorities still find it difficult to obtain necessary information as regards, for instance, the implementation or application of certain Framework Decisions and the MLA Convention.
16. In Lithuania, there are two different stages of a controlled delivery, the operational stage and the pre-trial stage. The procedure for controlled deliveries differ between the two stages. In urgent cases a prosecutor decides on a controlled delivery and gets a ruling from a judge within three days. If the controlled delivery is not accepted by the judge, all evidence gathered is inadmissible in court.
17. Lithuanian national authorities have cooperated with Eurojust relating to other special investigative techniques (SITs), related to telephone interception, covert surveillance, controlled delivery and undercover officers.

18. No specific trainings have been organised to national authorities by contact points of the Ministry of Justice. However, judges and prosecutors are periodically trained on the topics of international cooperation in criminal matters and on the EAW. Apart from training, national authorities in Lithuania are made aware of the existence and role of Eurojust and of the EJM (including the EJM website) in various ways, for instance in a "marketing seminar" a few weeks prior to the evaluation visit. There are no specific trainings in Lithuania organised exclusively for EJM contact points. However, the EJM contact points are trained on regular basis as practitioners who are dealing with international cooperation.
19. According to Lithuania, in general terms, Eurojust bring great added value to judicial cooperation. As for further suggestions in view to assist Eurojust and the EJM to meet the expectations placed on them, Lithuania identifies a few areas for improvement, including improvements of the EJM website.

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## 2. INTRODUCTION

Following the adoption of the Joint Action 97/827/JHA of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime has been established.

In line with Article 2 of the Joint Action, the Working Party on General Matters including Evaluations (GENVAL) decided on 22 June 2011 that the sixth round of mutual evaluations should be devoted to the practical implementation and operation of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime as amended by Decisions 2003/659/JHA and 2009/426/JHA and of the Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network repealed and replaced by Council Decision 2008/976/JHA on the European Judicial Network in criminal matters.

The evaluation aims to be broad and interdisciplinary and not focus on Eurojust itself but rather on the operational aspects in the Member States. This is taken into account to encompass, for instance, how police authorities cooperate with Eurojust national members, how the National Units of Europol will cooperate with the Eurojust National Coordination System and how feedback from Eurojust is channelled to the appropriate police and customs authorities. The evaluation emphasises the operational implementation of all the rules on Eurojust and the EJM. Thus, the evaluation will also cover operational practices in the Member States as regards the first Eurojust Decision, which entered into force in 2002. Experiences from all evaluations show that Member States will be in different positions regarding implementation of relevant legal instruments, and the current process of evaluation could provide useful input also to Member States that may not have implemented all aspects of the new Decision.

The questionnaire<sup>1</sup> for the sixth round of mutual evaluations was adopted by GENVAL on 31 October 2011. As agreed in GENVAL on 17 January 2012, Eurojust was also provided with a questionnaire<sup>2</sup>. The questionnaire to Eurojust was adopted by GENVAL on 12 April 2012. The answers to the questionnaire addressed to Eurojust have been provided to the General Secretariat of the Council on 20 July 2012, and have been taken into account in drawing up the present report.

The order of visits to the Member States was adopted by GENVAL on 31 October 2011.<sup>3</sup> Lithuania was the second Member State to be evaluated during this round of evaluations.

In accordance with Article 3 of the Joint Action, a list of experts in the evaluations to be carried out has been drawn up by the Presidency. Experts with substantial practical knowledge in the field were nominated by Member States pursuant to a written request on 15 July 2011 to delegations made by the Chairman of GENVAL.

The evaluation teams will consist of three national experts, supported by two staff from the General Secretariat to the Council and observers. For the sixth round of mutual evaluations, GENVAL agreed with the proposal from the Presidency that the Commission, Eurojust and Europol should be invited as observers.

The experts charged with undertaking this evaluation were Taina Neira (Finland), Vineta Lecinska-Krutko (Latvia) and Beata Ziorkiewicz (Poland). Three observers were also present: Elsa Garcia-Maltras (DG Justice, Commission), Raivo Sepp (Eurojust) and Stephanie Bovensiepen (Eurojust), together with Hans G Nilsson and Peter Bröms from the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in Lithuania between 21 and 25 May 2012, and on Lithuania's detailed replies to the evaluation questionnaire together with their detailed answers to ensuing follow-up questions.

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<sup>1</sup> Doc. 12384/3/11 GENVAL 76 COPEN 176 EUROJUST 106 EJM 87.

<sup>2</sup> Doc. 5241/2/12 GENVAL 3 COPEN 6 EUROJUST 3 EJM 2.

<sup>3</sup> Doc. 13040/2/11 GENVAL 82 COPEN 184 EUROJUST 111 EJM 91.

**3. GENERAL MATTERS AND STRUCTURES**

**3.1. General information**

For the evaluation, the Member States were requested to indicate all relevant legal or statutory provisions, if any, they had to introduce or amend in order to bring national law into conformity with the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime as amended by Decisions 2003/659/JHA and 2009/426/JHA ("the Eurojust Decision"), or indicating intentions in this respect, and all relevant legal or statutory provisions, if any, which they had to introduce or amend in order to implement Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network as well as Council Decision 2008/976/JHA adopted on 16 December 2008 and repealing the Joint Action ("the EJM Decision")

As regards Lithuania, Council Decision 2002/187/JHA and 2009/426/JHA respectively, after the accession of the Republic of Lithuania to the European Union, the National Member of Eurojust, the Deputy National Member of Eurojust and National Correspondent as well as the National Correspondent of Eurojust for Terrorism Matters were appointed by an order of the Prosecutor General.

On 15 June 2006 the Prosecutor General passed Instruction No. N-9 on the provision of data about the investigation of terrorist offences. Under the Instruction the prosecutors shall supply information about the investigation of crimes classified as terrorist offences to the National Correspondent of Eurojust for Terrorism Matters, who shall refer such information to the National Member.

The new National Member, National Correspondent and the National Correspondent for Terrorism Matters have been appointed since 3 July 2006.

Subsequent legal acts:

- Order of the Prosecutor General on the appointment of the National Member of Eurojust for Lithuania, Deputy National Member of Eurojust, National Correspondent and National Correspondent of Eurojust for Terrorism Matters No. I-31 of 21 February 2008. The order defined the functions of the National Member of Eurojust for Lithuania in accordance with the Council Decision 2002/187/JHA of 28 February 2002. (The order has been replaced by a new one in 2011);
- Order of the Prosecutor General No. I-182 of 31 December 2009 on the appointment and empowerment of the National Member of Eurojust, Deputy and Assistant National Member of Eurojust, National Correspondent, National Correspondent of Eurojust for Terrorism Matters, National Correspondent for the European Judicial Networks, Contact Points for the European Judicial Network, Contact Points for the Networks of Joint Investigation Teams, Contact Point for the Network of Genocide, Crimes against Humanity and War Crimes, Contact Point for the Network of Cooperation between the Asset Recovery Offices and the Contact Point for the Network of Fight against Corruption at Eurojust. The order implemented the Council Decision 2009/426/JHA and established the Eurojust National Coordination System (ENCS).
- Currently in force is the Order of the Prosecutor General No. I-182 of 3 August 2011 on the appointment and empowerment of the National Member of Eurojust for Lithuania, Deputy and Assistant National Member of Eurojust, National Correspondent, National Correspondent of Eurojust for Terrorism Matters, National Correspondent for the European Judicial Network, Contact Points for the European Judicial Network, Contact Points for the Networks of Joint Investigation Teams, Contact Point for the Network of Genocide, Crimes against Humanity and War Crimes, Contact Point for the Network of Cooperation between the Asset Recovery Offices and the Contact Point for the Network of Fight against Corruption at Eurojust,
- The Regulations of the Eurojust National Coordination System were approved by the Order of the Prosecutor General No. I-290 of 28 October 2011;

- On 28 October 2011 the Prosecutor General passed Decision No. N-10 on the supply of data to the National Member of Eurojust for Lithuania.

As regards Joint Action 98/428/JHA as well as Council Decision 2008/976/JHA, according to Lithuania, no national legal provisions were required in order to implement these Decisions. The appointment in 2009 of the Contact Points – Prosecutors for the European Judicial Network was implemented by the aforementioned order of the Prosecutor General No. I-182 of 31 December 2009 (the order is no longer valid). Currently in force is the order of the Prosecutor General on the appointment of the Contact Points – Prosecutors for the European Judicial Network No. I-182 of 3 August 2011.

### **3.2. Implementation of the Eurojust national coordination system (ENCS)**

With respect to the implementation of the Eurojust national coordination system (ENCS), as already indicated, Lithuania has appointed one National Correspondent of Eurojust and one National Correspondent of Eurojust for Terrorism Matters. Their powers were granted by the Order No. I-182 of 3 August 2011.

The main function of the National Correspondent of Eurojust is to take lead of the ENCS and to coordinate its activities.<sup>4</sup> Each member of the ENCS carries out the functions prescribed to him/her by the rules adopted, i.e. stores and keeps the legal information and the information about the best practice within the specific area of his/her activities, participates in the activities of the respective network, cooperates with the judicial authorities of foreign states, renders assistance to Lithuanian prosecutors and law enforcement officers.

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<sup>4</sup> The detailed description of the functions of the National Correspondent of Eurojust is provided in the Regulations of the Eurojust National Coordination System approved by the Order of the Prosecutor General No. I-290 of 28 October 2011 (Section 7, paragraphs 14-25).

Under paragraph 5 of the rules the National Correspondent of Eurojust and the National Correspondent of Eurojust for Terrorism Matters have access to the Eurojust Case Management System (CMS), and if necessary, other members of the ENCS may address them and ask for information required. According to the Lithuanian authorities, the access to the Eurojust CMS may also be granted to the contact points for the European Judicial Network, contact persons for the Corruption Network, contact points for the Network of Joint Investigation teams, contact points for the Network of Genocide, Crimes against Humanity and War Crimes and to the contact points for the Network of Cooperation between Asset Recovery Offices in the field of tracing and identification of proceeds from crime or any other property related to crime. This has however not been implemented yet.

No requirements are set as to how many working hours the members of the ENCS should devote exclusively to the operation of the ENCS. Each member plans his/her working time independently and devotes his/her working hours to the operation of the ENCS, when it becomes necessary.

The contacts with the Europol National Unit and the SIRENE bureau are mostly maintained through the National Correspondent of Eurojust, while other law enforcement authorities of the Republic of Lithuania may be contacted directly.

In Lithuania, there are no other authorities than those referred to in Article 12 of the Eurojust decision designated within the ENCS in Lithuania, such as contact points for OLAF, Europol or others. The contact points for cooperation with OLAF are designated within the Prosecution Service by the Prosecutor General's Orders on the competence of prosecutors.

### **3.3. National desk at Eurojust**

One prosecutor is appointed to the Lithuanian national desk at Eurojust. Furthermore, the national desk has a secretary, who is employed by Eurojust. The National Member of Eurojust for Lithuania, her Deputy and other members of the National Coordination System are appointed by the Prosecutor General for a term of four years. When appointing the National Member, the Prosecutor General takes into consideration the following criteria: professionalism, compliance with the applicable requirements and professional experience in the area of international cooperation.

The National Member presents on a regular basis written and oral reports about the activities carried out at the national desk or performs the specific tasks given by the high-level officials of the Prosecutor's Office, and annually submits a detailed activity report. The activity report of the National Member of Eurojust for Lithuania is a constituent part of the Annual Activity Report of the Prosecutor's Office. Besides, the National Member once a year submits the Activity Report to the Committee on European Affairs and to the Committee on Legal Affairs of the Seimas (Parliament) of the Republic of Lithuania.

The powers of the National Member of Eurojust for Lithuania and his Deputy are provided for under paragraph 2 of the Order of the Prosecutor General No. I-182 of 3 August 2011. In cases, and under the procedure specified by legal acts, the National Member of Eurojust for Lithuania (his Deputy) within the scope of his/her competence submits reasoned requests regarding the organisation of criminal prosecution to Prosecutor's Offices, acts as the competent national liaison officer with foreign authorities, EU institutions and international organisations and performs other functions within the powers granted to him. In addition to this, the National Member of Eurojust for Lithuania retains all powers attributed to a prosecutor with the following exceptions.

The National Member of Eurojust for Lithuania (his Deputy) is not granted with the powers specified in Article 9c paragraph d) (the right to personally authorise controlled deliveries), Article 9d paragraph a) (the right to personally authorise controlled deliveries) and paragraph b) (the right to personally execute urgent requests for or decisions on judicial assistance) of the Decision.

The National Member does not have the direct access to any national database. According to the Lithuanian authorities, in practice this does not impede receiving the required information on a timely basis and to the appropriate extent. The Deputy National Member, however, has direct access to the Information System of the Prosecutor's Office (IPS) and, if necessary, may obtain the information from other databases.



According to the Lithuanian authorities, the Eurojust CMS is administered in accordance with the principles of lawfulness, good faith, proportionality and necessity and in accordance with the Rules of procedure on the processing and protection of personal data at Eurojust as adopted unanimously by the College of Eurojust during the meeting of 21 October 2004 and approved by the Council on 24 February 2005.

According to Lithuania, pursuant to Article 18 of the Eurojust Decision, only the National Members, their Assistants and the authorised personnel of Eurojust are granted the right to access personal data processed at Eurojust. Only the National Member of Eurojust for Lithuania may grant and grants access to the Lithuanian national part of the CMS by determining the period and the type (full or limited) of such access (Article 26 of the said Rules).

Due to technical reasons the state authorities have not got access to the Eurojust CMS so far. At the national level, there is an integration project ongoing of the IT systems of police (PRIR), the prosecutor (IPS) and the courts (LITEKO). The goal is to establish in the future an integrated information system of the penal process (IISPP) including customs and the prison authorities. This is prioritised and the reason why Lithuania has no connection to the CMS, a project being lower in priority.

#### **3.4. EJM contact points**

As regards selection and appointment of the contact points, the contact points in Lithuania were selected from three sectors which have different roles in cooperation in criminal matters:

- Six contact points and one tool correspondent from the Prosecution Service (pre-trial stage, functions of Central Authority);
- Two contact points from the Ministry of Justice (trial stage- Central Authority functions);
- One judge from the courts system (trial stage – executive functions).



The two contact points in the Ministry of Justice were selected from the International Law Department, which performs functions of the Central Authority pursuant to various international instruments on cooperation in criminal matters. Moreover, the legal experts of the Department are taking part in the adoption of new EU instruments in cooperation in criminal matters and they are partly or wholly responsible for their implementation. Hence, according to Lithuania, their theoretical and practical knowledge as well as their foreign language skills provide an added value while performing tasks of the EJM contact points.

The contact points (prosecutors) for the European Judicial Network are appointed by order of the Prosecutor General. The contact points are appointed from those prosecutors who are directly involved in the area of judicial cooperation within the competence of the Prosecutor's Office. The contact points maintain continuous relations with the national competent authorities (prosecutor's offices, courts). They are advised to use the EJM website and informed about the possibility to address the contact point of another Member State and request for assistance in the case concerned. The average time to reply to requests from other Member States is 10 days.

The contact points-prosecutors of the EJM use the information available on the EJM website on a daily basis in practice. Such information is necessary for the preparation of requests for legal assistance and forwarding them abroad. The contact points of other Member States are occasionally addressed directly, when it is necessary to obtain specific information, or to assist in the coordination of the execution of a request for legal assistance when its execution is performed by several territorial counties.

According to Lithuania, there has not been any necessity for the contact points of the EJM for Lithuania to hold a meeting yet as all issues are usually coordinated and settled remotely. However, some of the contact points-prosecutors of the EJM took part in the training of contact points which was arranged by the Secretariat of the European Judicial Network on 18-22 October 2010 in Spain. The meetings of the contact points are assessed positively because they provide a possibility for the contact points to share their experience, learn the specific characteristics of the legal systems of other countries, enjoy informal communication, etc.

### 3.5. Conclusions

- Lithuanian authorities and in particular the Prosecutor General's Office have made important efforts to put into place structures and mechanisms required by the Decisions on Eurojust and the EJM. The regulation and organisation of judicial cooperation in criminal matters in Lithuania has been ensured by the issuing of orders by the Prosecutor General as the head of the prosecution service in Lithuania reporting directly to the Parliament. These instructions form a set of rules which are binding to all prosecutors due to the hierarchical structure of the Lithuanian prosecution service. The main advantage of such rules (compared to statutory law) is that they are easily adopted, easy to amend and they take into account the needs and experience of practitioners. The orders, ordinances, instructions and other regulations establishing the procedure for organising procedural actions and work, issued by the Prosecutor General (or his Deputy) are communicated to all prosecutors and these documents are public and easily accessible via the Prosecutor's Office website or on the Intranet. Such an approach is commendable, not only for information-sharing purposes but also as it enhances transparency as regards such orders, etc.
- The fact that no legislative act has been adopted in Lithuania in respect of the implementation of the Decisions on Eurojust and the EJM could present problems because the aforementioned orders are only binding to all prosecutors and the investigation agencies<sup>5</sup>, but not the Ministry of Justice or the courts, since all of them are separate bodies organised independently from each other. However, this has not led to any problems in practice so far, as almost all practitioners in the field of international cooperation are familiar with the orders and, at the moment, there are no conflicting orders in place in other bodies involved in international cooperation. In addition, the legal acts of Lithuania (Code of Criminal Procedure) define the functions and limits of competence of the Ministry of Justice, the Prosecutor's Office and other authorities involved in the area of judicial cooperation.

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<sup>5</sup> As the orders of the Prosecutor General related with the organisation and performance of the pre-trial investigation are mandatory to all pre-trial investigation authorities.

- The general impression is that the system created is working in an effective manner. Nevertheless, there is an ongoing discussion in Lithuania on the necessity to adopt a law on the implementation of the Decisions on Eurojust and the European Judicial Network which at this stage may appear "sectorial", not clearly exhaustive and uncertain as to its durability (for instance, should general powers of the national member be regulated at the same non-legislative level as the appointment of concrete members?). During the evaluation visit, the Prosecutor General's Office also acknowledged the possibility of further improvement and will take amendments to the existing orders into consideration.
- The orders of the Prosecutor General do not implement all Articles of the Decisions on Eurojust and the European Judicial Network. They focus on the practical daily work of the prosecutors affected by the Decisions. Articles on other topics, for instance Article 19 of the Eurojust Decision on the right of access to personal data, are not specifically addressed in the orders. This may give rise to questions as to the scope of implementation of the Decisions. There are legislative gaps which do not seem to create serious problems at this early stage after the system has been put in place, but may cause problems in the future.
- On the issue of the right of access to personal data, no authority has been appointed for the purpose of answering questions related to the right of access to personal data (Article 19(2) of the Eurojust decision). If requested, it will be forwarded to the relevant authority, most often the national member. According to the experts, this is not sufficiently implementing Article 19 of the Council Decision. It stipulates that every individual shall be entitled to have access to personal data concerning him which are processed by Eurojust, or to have them checked in accordance with Article 20 of the Council Decision. In order to exercise this right, individuals are entitled to submit free of charge requests to an authority appointed for this purpose by each Member State. This provision has important safeguard value for individuals whose rights may have been infringed.<sup>6</sup>

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<sup>6</sup> The main authority responsible for the protection of personal data in Lithuania is the State Data Protection Inspectorate. The State Data Protection Inspectorate performs the functions of the supervisory authority as provided for in the Law on the Protection of Personal Data Processed in the Framework of Police and Judicial Cooperation in Criminal Matters, which has implemented Council Framework Decision 2008/977/JHA of 27 November 2008. In Lithuania's opinion, such implementation of Article 19 is sufficient.

- The ENCS is in place since October 2011 and is in the process of being implemented. Practise of the ENCS is limited. The idea is that the ENCS works as the central unit for the prosecutors in Lithuania. However, in these early days Lithuania requires information about ongoing investigations to help form the practise of working with Eurojust. Lithuania is small country where all colleagues know each other, which allows for a flexible setup. Contacts between the members of the ENCS are facilitated by telephone conversations or e-mail. Lithuania has had one meeting of the ENCS in the Eurojust marketing seminar a few weeks before the evaluation mission to Lithuania. The contact points from the Ministry of Justice were not there due to other obligations, but they were replaced with other representatives of the Ministry of Justice, who are involved in the area of judicial cooperation. The aim is to have a meeting each quarter as the members of the ENCS would welcome the opportunity to meet in person regularly.
- Whilst the representatives of the Prosecution Service to the ENCS are appointed and their powers are set up by order of the Prosecutor General, the Prosecutor General is not competent to appoint the representatives of the Ministry of Justice or judges or to define their powers. However, according to Lithuania, the national correspondent for the EJM de facto is a part of the Lithuanian ENCS.<sup>7</sup> This issue should be further addressed in the ongoing discussion in Lithuania on further modifications of the existing legal framework on the implementation of the Decisions on Eurojust and the European Judicial Network.

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<sup>7</sup> In addition, Article 13 of the ENCS regulations provides that there is cooperation with the national correspondent for the EJM, therefore providing a legal regulation.

- As for the pre-trial investigation authorities, according to Art. 118 of the Constitution of the Republic of Lithuania and Art. 164 Part 1 of the Criminal Procedure Code of the Republic of Lithuania, a pre-trial investigation is organised and directed, and prosecution on behalf of the State is upheld by a prosecutor. The pre-trial investigation officers coordinate all actions of the pre-trial investigation with the prosecutor. Decisions and instructions by a prosecutor are mandatory to the pre-trial investigation officers, so the binding effect of the Prosecutor General's orders is transferred upon the pre-trial investigation officers as well. It is usually a prosecutor who makes the decision to involve Eurojust, is responsible for the exchange of information with Eurojust, and in general facilitates the contact. Due to these reasons, in the opinion of Lithuania, it is neither necessary nor expedient to include the pre-trial investigation officers in the ENCS.
- The National Member for Lithuania is a prosecutor. In practise, a judge or police will never be appointed as national member. Formally, the national member is fully empowered as prosecutor. In practise, this is not the case. The national member is granted the powers of a competent national authority as regards the transmission of information (Article 9(b) of the Eurojust Decision). However, the national member may not authorise controlled deliveries or take any decisions on investigative measures in concrete cases (Articles 9(c) and 9(d) of the Eurojust Decision). This is due to the fact that, according to Lithuanian Law, one prosecutor is assigned to each case. Only this prosecutor is in charge of making decisions regarding this case. The National Member does not have any cases of her own. Moreover, the fact that the Lithuanian National Member may coordinate the procedures in Lithuania upon their consent (see answer to 3.C.1. in the questionnaire) seems unwieldy. As a matter of fact, it seems that the answer in 3.C.8. in the questionnaire is also affirming that the National Member has the right to coordinate controlled deliveries

- In addition, according to the Lithuanian Criminal Procedure Code, a prosecutor in a pre-trial investigation may take decisions regarding investigative measures or controlled deliveries without obtaining a court order first only in urgent cases. However, the prosecutor has to subsequently argue this ad hoc decision within three days in court to obtain an ex-post authorisation from an investigative judge who will examine the legality of the measure. So far, no problems have arisen in this regard because there is an on-call-system of prosecutors in place in Lithuania. According to Lithuania, it is therefore ensured that the National Member can always reach a prosecutor able to take all necessary decisions without delay. However, in the case where urgent action would in fact be needed, for instance if the national member were requested to take part in a controlled delivery, this would create a lot of work involving information travelling back and forth between The Hague and Vilnius, with the risk of introducing delays.
- There is no specific law on the procedure of the appointment of the national member of Eurojust in Lithuania. In practice, the national member has been appointed by order of the Prosecutor General. There is a possibility that the term of office of the national member could be renewed. The maximum period for which a prosecutor may fulfil the functions of national member has not been foreseen. It has to be noted, however, that the Eurojust Decision requires a *minimum* period of four years. As regards changing the order, for instance if a person has changed his or her position, in practice it could be done in two ways: either by issuing a new order or by making amendments to the existing order.

- The deputy national member is also National Correspondent, however, he takes on functions of national member only in exceptional cases as he resides in Vilnius. The National Correspondent coordinates work of the ENCS, and is the first link to the national member. Contact points are, according to Lithuania, the bridge between Eurojust and the Prosecutor General's Office and the regional offices, providing best practices and support. Here, there is room for improvement since, today, it appears that the Eurojust national correspondent is not automatically informed if he is not involved in the case at hand, which means that he cannot fulfil his coordinating role in full. This is compounded by the fact that, as witnessed above, the ENCS does not formally cover the Ministry of Justice which in practice may prevent the ENCS from complying to a "centralising" function for instance as regards exchange of information, statistics, etc. One could also reflect on whether the link with investigative agencies is sufficient, and if the National Correspondent and the members of the ENCS could play a further role in coordination and cooperation with them.
- The National Member has no direct access to all national databases accessible to any national prosecution office. The Deputy National Member, who is based in Lithuania, has direct access to the Information System of the Prosecutor's office (IPS). Upon inquiry, all officials in Lithuania will provide information from their databases to the national desk. Those inquiries are in practice usually done by telephone calls as the fastest means of communication.

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#### 4. EXCHANGE OF INFORMATION

In June 2011, Eurojust developed a form to assist the national authorities with the obligation to transmit information to Eurojust pursuant to Article 13(5) to (7) of the Eurojust Decision in a structured manner, and which has recently been released as version 2.0. In the period May 2011 to April 2012 inclusive, a total of 72 notifications under Article 13 have been registered in the CMS. A majority of notifications (25) are registered under “Article 13(6)(a) (serious crimes)”, followed by “Article 13(5)(JIT)” and “Article 13(6)(b) (involvement of criminal organisation)”.

##### 4.1. Exchange of information from judicial and law enforcement authorities to Eurojust

As regards Lithuania, the obligation to exchange information under Article 13(5) to (7) of the new Eurojust Decision is provided for in the Decision of the Prosecutor General of the Republic of Lithuania No. N-10 of 28 October 2011 “On the supply of data to the National Member of Eurojust for Lithuania” under which the prosecutors of the Department of Criminal Prosecution and the Organised Crime and Corruption Investigation Department of the Prosecutor General’s Office as well as territorial Prosecutor’s Offices are directed to supply to the National Member of Eurojust for Lithuania on a constant basis the data about all initiated, pending, arranged or controlled investigations into criminal offences in cases defined under Article 13 paragraphs 5-7 of the Council Framework Decision No. 2009/426/JHA.

The National Correspondent must refer incoming communications without delay to the National Member of Eurojust for Lithuania, and the latter exchanges the information with other national members of Eurojust (when there is such a need and on the basis of the order given by a competent authority) by ensuring the confidentiality of such information.



The obligation to exchange information under Article 2 of Council Decision 2005/671/JHA on the implementation of specific measures for police and judicial cooperation to combat terrorism is provided for in the Decision of the Prosecutor General of the Republic of Lithuania No. N-9 of 15 June 2006 “On the supply of data about the investigations of terrorist offences”. Here, the prosecutors of the Organised Crime and Corruption Investigation Department and the Pre-trial Investigation Control Division (at present – Department of Criminal Prosecution) of the Prosecutor General’s Office, as well as territorial Prosecutor’s Offices, are directed to supply to the National Correspondent of Eurojust on a constant basis the data about all initiated, pending, arranged or controlled investigations into the offences defined in Articles 1, 2 and 3 of Council Framework Decision 2002/475/JHA. The National Correspondent must refer the incoming communications without delay to the National Member of Eurojust for Lithuania, who, if necessary, exchanges the information about the investigation of terrorist offences with Europol.

The abovementioned obligations related with the provision of information are performed by transmitting the information in a structured form, that is, by using the templates developed by Eurojust in accordance with Council Decision 2009/426/JHA of 16 December 2008 and its Annex I.

The templates developed by Eurojust are available on the Intranet website of the Prosecutor’s Office of the Republic of Lithuania. The information of the template is transmitted via the secure connection administered by Eurojust. Sometimes such information (depending on its importance, scope or other circumstances) may be transmitted by e-mail or by fax. It should be noted that such exchanges should also take place in secure environments.

The exceptions provided for under Article 13 paragraph 8 of the Eurojust Decision are specified in paragraph 2 of the Decision of the Prosecutor General of the Republic of Lithuania No. N-10 of 28 October 2011 “On the supply of data to the National Member of Eurojust for Lithuania”.

The prosecutors and employees of the Prosecutor General’s Office have access to the following databases: the Departmental Register of Suspected, Accused and Convicted Persons; the Residents’ Register; the Register of Real Property; the Information System of the Courts – LITEKO.

Although the National Member of Eurojust for Lithuania does not have the direct access to the aforementioned databases, according to the Lithuanian authorities, this has never caused any difficulties in practice from a technical point of view, because the necessary information may be expeditiously obtained by contacting the prosecutors or employees of the Prosecutor General's Office via e-mail or by any other means of communication.

#### **4.2. Feedback by Eurojust**

As regards feedback from Eurojust, Lithuania notes that there is no exchange of information within the meaning of Article 13 of the Eurojust Decision. However, exchange of information between the National Member of Eurojust and competent judicial authorities is performed on a constant basis, has mutual character and is regarded as very useful. The information is not exchanged automatically, but only on request or when there are links with the previous requests.

Lithuania has not encountered any practical or legal difficulties so far when exchanging information with Eurojust, and does not have suggestions regarding how to improve this information exchange in the future in relation to the exchange of information under Article 13 of the Eurojust Decision because of limited experience.

According to Eurojust's answers to the questionnaire submitted to them, Eurojust does not hold a statistical overview of the information sent to competent national authorities under Article 13a of the Eurojust Decision. Eurojust routinely provides operational and strategic information and feedback to these authorities. Information and feedback are provided mostly informally via direct contact between the national member, deputy national member and assistants, and the authorities of his/her Member State. Eurojust expects to expand the extent and nature of its feedback as a result of an increase in case-related information received from national authorities pursuant to Article 13, in particular paragraphs 1, and 5 to 7. The extent and nature of this feedback greatly depends upon the amount, timing and contents of the information sent to Eurojust. Additionally, new types of operational and strategic feedback can be provided in connection with the new powers granted to Eurojust and to its obligation under Article 13(a).

#### 4.2.1. *E-POC project*

Lithuania has participated in the E-POC IV project as an observer and has currently applied for participation in the E-POC V project.

A main issue to be considered within the framework of the project is the integration of national case management systems with the Eurojust CMS for the purposes of ensuring an automated exchange of information as provided for under Article 13 of the Decision. Lithuania considers that the added value of this project is that it aims at developing a standardised and uniform system for the exchange of information between the Member States and Eurojust. The only impediment is that only some of the Member States participate in the project.

#### 4.3. **Conclusions**

- Order No. N-10 of the Prosecutor General, dated 28 October 2011, implements Article 13 of the Eurojust Decision. All prosecutors interviewed were familiar with the obligations under Article 13 of the Eurojust Decision. Under Lithuanian law, only the prosecutor in charge of the case can make the decision to exchange information on a concrete case. Therefore, no special information has been disseminated among investigation officers, police officers and other officials. Nevertheless, this would have been useful in order to raise awareness among all relevant law enforcement agencies (police, customs, Financial Intelligence Unit, etc.) and other officials including courts, that there is an obligation on Lithuania (not only the Prosecutor General's Office) to send in information to Eurojust, thereby increasing their involvement and sense of responsibility.
- Many efforts have been put into place by the Prosecutor General's Office to implement Article 13. In addition to the setting up of the ENCS, the Article 13 form is available to all prosecutors on the Intranet in Lithuanian. A contact person is appointed to help with all questions regarding the use of the form. The contact details are also provided on the Intranet. When the form is completed, a secure connection provided by Eurojust is used to transmit the information. Assigning a contact person in particular is a best practise worth duplication elsewhere.

- The initiative taken by Eurojust to create a form for the structured transmission of the information to Eurojust is generally welcome. However, the form is criticised as not being user friendly and complicated to use. Due to the lack of practical experience (used around five times), the concrete complications were not elaborated in further detail. In the words of a prosecutor, it is new, so it is a question of learning.
- There is some uncertainty whether the way some of the instructions as regards information exchange are phrased could in practice limit the scope of the exchange of information when compared to the Eurojust Decision which should be clarified or solved. Two examples to this effect include whether certain information related to conflicts of jurisdiction or controlled deliveries will only be transmitted in cases of "difficulties in cross-border pre-trial investigations", and whether the national member would need prior authorisation to exchange information with other Eurojust national members. In addition, as the obligation and awareness seems to affect prosecutors only, this could compromise the completeness of the information exchange (excluding the Ministry of Justice and the courts).
- The theoretical possibility is there to arrange a connection with the CMS at Eurojust, but technically it is not in place. Lithuania is currently involved in a project of integrating national systems (courts, police, prosecutors) foreseen over the coming two years. The CMS issue is outside the scope of this project. Lithuania wants to make the system work first (it has been going on for some years), allowing for a CMS connection the future. A connection will be considered when the planned integration of databases of the prosecution service and the pre-trial investigation agencies is implemented. This pragmatic approach is understandable, however Lithuania should strive towards arranging a connection with the CMS at Eurojust as soon as possible. It should be noted however that, according to Eurojust's answers to the questionnaire submitted to them, access to the CMS by ENCS members has not yet been implemented. However, Eurojust has initiated a series of projects with a view to enabling that connection.

## 5. OPERATIONAL ASPECTS

The main objectives of Eurojust under Article 3 of the Eurojust Decision are to stimulate and improve the coordination of investigations and prosecutions in the Member States, to improve cooperation between the competent authorities of the Member States as well as to otherwise support the competent authorities of the Member States in order to render investigations and prosecutions more effective.

### 5.1. Practical experience in relation to Eurojust

The Lithuanian desk at Eurojust keeps substantial statistics over cases where Lithuania has been involved, comprising requests for assistance from other Member States as well as when other Member States requests assistance from Lithuania.

- Lithuania as requesting country: A total of 53 operational cases (34 newly opened and 19 still open from previous years) were handled in 2011.
- Lithuania as requested country: There were 73 cases (59 new and 14 from previous years) where Lithuania was the requested country.

The grand total case load of the Lithuanian desk was 126 cases. Although the amount of requesting cases decreased, the grand total of the caseload (including cases still open from previous years and requested cases) increased by 12.5 per cent compared to the year 2010.

The number of coordination meetings decreased from 20 in 2010 to 13 in 2011. Europol was present in two-thirds of the Lithuanian coordination meetings. Five coordination meetings took place in Vilnius. One case had two coordination meetings within the same year.

Countries involved in the casework include Latvia (4), Italy (4), United Kingdom (3) and Spain (3) as the most frequently requested countries by Lithuania. Lithuania was most frequently requested by Estonia (6), Austria (4), Sweden (4), United Kingdom (4), France (3) and Luxembourg (3).

The prevailing majority of crime types involving Lithuania was a crimes against property, drug trafficking, money laundering, THB and crime against life.

In 2011, the overall focus of the Lithuanian desk was to decrease the existing case backlog from prior years and to provide assistance to other Member States in cases where Lithuania was the requested country. In 2011, there were 112 closed cases: 50 cases where Lithuania was the requesting country and 62 cases where Lithuania was the requested country. The majority of the closed cases were cases from previous years meaning that the backlog was significantly reduced.

As regards kind of cases which were referred to Eurojust, for which reasons and at which stage of the proceedings they are frequently referred to Eurojust, according to the prosecutors, on most occasions such cases are complex. The main reasons for referring a case to Eurojust include when:

- the case is bilateral or multilateral (bilateral cases occurring more frequently);
- there is a need to coordinate urgent joint actions between the law enforcement authorities of several countries during the investigation of criminal offences committed on the territories of different countries;
- there is a need to improve communication between the competent authorities of different countries, which is often done in order to solve the problems related with the improper or delayed execution of requests for legal assistance.

The cases are referred to Eurojust at different stages of the proceedings, least frequently during the hearing of the case in court.

According to the Lithuanian Criminal Police Bureau, there were three cases when Eurojust was asked for assistance. These cases related to serious crimes: a complicated fraud, trafficking in human beings, cargo vehicle, semi-trailer with cargoes thefts, customs fraud. Eurojust was addressed to establish the location of further pre-trial investigation implementation, to speed up the execution of a request for Mutual Legal Assistance, and to assist in obtaining the necessary information.

According to the Customs Criminal Service, they most often request assistance from Eurojust when complicated, complex and large scale investigations are performed, and when crimes are carried out or have been carried out in three or more countries and when there is a necessity to perform certain actions in different Member States.

## **5.2. Allocation of cases to Eurojust or the EJM or others**

The national correspondent decides whether Eurojust or the EJM should be addressed in a particular case. Usually Lithuania addresses Eurojust when complex cases are at hand or when desirable results have not been obtained from the EJM. There are no formal criteria which define when it is necessary to address Eurojust or the EJM. The National Member of Eurojust has prepared a Memorandum for Lithuanian authorities about Eurojust and the activities of the National Member, which provides recommendations on the cases when the authorities may address Eurojust.

The EJM is more often addressed if advice is necessary or when initial information is required.

## **5.3. Experience of cases in relation to the competences attributed to Eurojust**

As regards the issue of how the tasks of the national member, deputy or assistant are exercised in practice in relation to operational cases, upon receipt of the request, the National Member for Lithuania registers it with the Eurojust Register of Cases, notifies the Eurojust College about the new case and addresses the National Member, his Deputy or Assistant of the relevant Member State concerning the execution of the request.

The subsequent task of the National Member is to ensure the exchange between the competent authorities of the respective Member States of the data about the pre-trial investigation or criminal prosecution of the cases which were referred to him.

If necessary, at the request of the respective prosecutor or the pre-trial investigation officer, the National Member arranges a coordination meeting for the representatives of the respective Member States.

If the request for legal assistance (which was transferred to Lithuania from another Member State, registered at Eurojust and referred to the National Member of Eurojust for Lithuania) is executed in part or improperly, the National Member as the competent national authority may address the Prosecutor General's Office, the Ministry of Justice, the Regional Prosecutor's Offices and other competent national authorities and require additional measures for the execution of the request in full.



In addition, upon receipt of the request from the central or competent authority of Lithuania, the National Member prepares and submits MLA requests in specific cases and refers them to the central or competent authorities of the respective Member States through their National Members.

The National Member may ask the competent authority to undertake certain investigation acts on the territory of the Republic of Lithuania. This happens if, during the coordination meeting arranged by Eurojust and attended by the representatives of the competent national authorities which are involved in the investigation, it is decided that such acts are necessary for the purposes of providing assistance to the related competent national authorities in specific investigations.

Upon receipt of the request to perform a controlled delivery, the National Member must immediately refer it to the competent authorities of Lithuania, and may coordinate its procedure in the Republic of Lithuania only upon their consent.

The cooperation between the national authorities and the National Member may be and is maintained directly, also through the National Correspondent or in an informal way. The formal requirements are applied to the provision of information to the National Member in cases specified under Article 13 paragraphs 5-7 of the Decision of the Prosecutor General No. N-10 of 28 October 2011.

#### *5.3.1. Cases related to the tasks of Eurojust acting through its national members (Article 6)*

According to Eurojust's answers to the questionnaire submitted to them, informal requests are an essential part of the daily business conducted by the national desks at Eurojust. The vast majority of requests are made informally, e.g. by phone or e-mail. In practice, informal operational guidance and recommendations are generally the result of early informal discussions between national members and their respective national authorities and they are favoured over the use of formal requests under Article 6 of the Eurojust Decision. These have, nevertheless been used, e.g. when specifically required by the national law of a Member State concerned, that formal requests are used. Also, the formal recording of these requests tends to occur when audit trails of decisions are a requirement of procedural arrangements in particular Member States. In general, it is Eurojust's experience that the respective judicial authorities provide sufficient information.



Replying to the question about experience of cases related to the tasks of Eurojust acting through its national members (Article 6), Lithuania followed the sequence of tasks listed under Article 6 of the Eurojust Decision.

Paragraph 1 subparagraph a):

- The competent authorities of Lithuania have not asked other Member States through their National Member to undertake investigations or prosecutions of specific acts. But Lithuania has received three requests of such type. The requests were not satisfied due to the insufficient amount of data about the commission of the criminal offence on the territory of Lithuania.
- There were several occasions when, during coordination meetings, it was decided to transfer the criminal prosecution from Lithuania or from another Member State to Lithuania by accepting that Lithuania or any other Member State or the third state is in a better position to bring the persons to criminal liability.
- At the request of the competent authorities of Lithuania, the National Member of Eurojust for Lithuania arranges, at an average, between eight and 10 coordination meetings per year. The national authorities have expressed their opinion that coordination meetings are one of the most useful instruments of Eurojust.
- The National Member of Eurojust for Lithuania has the right to request the Prosecutor General of the Republic of Lithuania to consider whether it is expedient to set up a joint investigation team in cases in which the acts of pre-trial investigation are coordinated or were initiated by Eurojust. Within the last four years such a request has not been submitted. However, the possibility of setting up a joint investigation team is considered during the coordination meetings or during the provision of assistance through Eurojust.
- The information that is necessary for the National Member of Eurojust to carry out his tasks is provided without delay.
- There has not been a need to apply these measures in practice yet.

The tasks provided under paragraphs b), c), d) and e) of the Article are performed on a regular basis, while the task under paragraph f) has not been necessary so far.

*5.3.2. Cases related to the tasks of Eurojust acting as a College (Article 7)*

Lithuania has no practical experience of cases related to the tasks of Eurojust acting as a college (Article 7).

According to Eurojust's answers to its questionnaire, Eurojust's continuous dialogue with judicial authorities and law enforcement agencies on operational matters normally takes place through direct contact by way of both informal and formal exchanges between the national desks involved. As a result of this fruitful dialogue, formal requests under Article 7 of the Eurojust Decision have normally not been considered necessary. (From Eurojust's casework, it appears that only a number of Member States, due to specific rules concerning the conduct of investigations, require formal written requests.)

With respect to Articles 7(2) and 7(3) of the Eurojust Decision, it should be noted that they only entered into force in June 2009 and that there has been no practical experience with these provisions. As a result of the absence thus far of deadlock situations where neither the national authorities nor the national members concerned have been unable to reach an agreement on how to resolve a case of conflict of jurisdiction, Eurojust acting as a College has not yet been asked to issue a written non-binding opinion on this matter according to Article 7(2) of the Eurojust Decision. It has to be kept in mind that Article 7(2) of the Eurojust Decision is a relatively new provision. Therefore there is no practical experience with such cases.

*5.3.3. Cases related to the powers exercised by the national member*

Under Order No. I-182 of 3 August 2011, the National Member of Eurojust for Lithuania was, according to the Lithuanian authorities, granted broad powers, including those which are provided for under Articles 9b and 9c of the Eurojust Decision (except Article 9c paragraph d). The Lithuanian experience is that all those powers are successfully implemented in practice.

The National Member for Lithuania constantly receives requests for and decisions on judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition, forwards them and conducts negotiations on the provision of more favourable conditions for their execution, acts as the liaison officer when deciding on the performance of any further acts, provision of supplementary information and its immediate transmission.

The National Member may request the national authorities to execute the request in full and indicate the measures, which should be applied during its execution.

In short, the National Member has been granted with the powers of the national competent authority, except the right to authorise controlled deliveries (but the National Member has the right to coordinate them), and the right to execute requests for or decisions on judicial cooperation (including regarding instruments giving effect to the principle of mutual recognition) which are referred to Lithuania.

As mentioned above, the National Member of Eurojust for Lithuania (his Deputy) is not granted with the powers specified under Article 9c paragraph d), Article 9d paragraphs a) and b) of the Decision. Nevertheless, the National Member retains all powers attributed to a prosecutor and therefore, by acting in accordance with the laws of the Republic of Lithuania, he may suggest the competent authority issuing urgent permission for the performance of a controlled delivery or for the execution of a request for or decision on judicial cooperation (including regarding instruments giving effect to the principle of mutual recognition), which has been referred to Lithuania.

On occasion, it sometimes happens that the representatives of national authorities address the National Member requesting urgent issuance of requests for legal assistance and decisions on judicial cooperation and their transfer to the competent authorities of another Member State through the national desk of that Member State at Eurojust. According to Lithuania, such activities performed by the National Member have always been very efficient.

#### 5.4. Practical experience related to coordination meetings

The coordination meetings arranged by Eurojust are assessed very positively by Lithuania. In their view, they are of a very high level. The necessary information is prepared in advance of the meetings, and all participants are provided with the possible issues that may arise during the meetings. Moreover, the logistics are well-organised and the simultaneous interpretation is of especially high quality.

According to Lithuania, the direct cooperation with law enforcement officers from different Member States, exchange of necessary supplementary information, discussion of possible problems, discussion of national legislation and the establishment of common priorities during the pre-trial investigation allow the performance of procedural acts with quality and efficiency by achieving the goals of the pre-trial investigation and obtaining the data significant to the investigation.

The fact that Eurojust is funding the participation of experts from the Member States in coordination meetings is also assessed very positively.

Coordination meetings are deemed especially useful before the signature of a JIT agreement. Prosecutors and police officers from different countries are provided with the possibility to discuss the provisions of the agreement, immediately solve the issues encountered by the participating countries and thus prepare the agreement, which is of the highest possible quality.

No major disadvantages have been observed by Lithuania. However, they note that some attention should be paid to the feedback of the coordination meetings.

According to Lithuania, in some cases the performance of coordinated actions and the execution of requests for legal assistance and European Arrest Warrants following coordination meeting was extremely expeditious and of high quality (especially with further intermediation of the National Member). In other cases, cooperation after the coordination meetings was not developed and the joint activities of the competent authorities were not performed.

Since the very beginning of the establishment of the ENCS, its members have participated in the coordination meetings on the establishment of the joint investigation team, problems of execution of requests for legal assistance or rejection thereof, and problems related with the instruments giving effect to the principle of mutual recognition. According to Lithuania, the role of the ENCS could be described by one word: “preparatory”. The participants of coordination meetings are informed about, inter alia, the possibilities of international cooperation and legal acts which regulate international cooperation.

#### **5.5. Use of the On-call coordination (OCC)**

According to Eurojust's answers to the questionnaire submitted to them, several requests have been processed through the On-call coordination (OCC). The OCC has proven to be useful because it gives Eurojust the opportunity to act immediately. Most national desks can also be contacted directly via their mobile phones outside of normal office hours, without the involvement of the technical infrastructure of the OCC System. This is a long-established practice, prior to the launch of the OCC. Eurojust is planning to conduct an evaluation on the functioning of the OCC system in 2012.

As regards Lithuania, the National Member as such also acts as the OCC unit. In practice there has been no cases of addressing the OCC yet. National authorities are informed about the existence of the OCC by means of written notification. All Lithuanian prosecutors, the Ministry of Justice, pre-trial investigation agencies and national judiciary administration are informed about the OCC and provided with its contact telephone number.

## 5.6. Conclusions

- There is a regular exchange of information with the national member, related also to operational issues. Contacts take place every second day or so, depending on operational needs. There are no problems with direct contacts with the national member. According to the Prosecutor General's Office, the National Correspondent would be informed about these contacts, inter alia in order to establish best practices, even if he is not directly involved in the work on specific issues. However, the regional level is quite discretionary in their approach. The regional prosecutors in Vilnius, for instance, sometimes inform the National Correspondent as regards contacts with the national member, but sometimes they do not. An ordinary request to speed up a request would not be reported whereas complex issues where prosecutors have to go abroad to coordinate cases in personal meetings would be. When direct contacts are taken by the regional prosecutor in Kaunas, the deputy national member in Vilnius is not always informed. This is not seen as necessary. It needs to be clarified to all parties involved that the obligation to inform the National Correspondent is absolute rather than discretionary. Otherwise, he would not be able to fulfil his functions to the fullest extent.
- There do not seem to be clear criteria that apply in practice as to how to channel cases through Eurojust or the EJM. The decision whether to contact the EJM or the National Member at Eurojust is taken on a case-by-case basis. The personal contacts between the Lithuanian National Member at Eurojust and the Lithuanian officials are so close that the national member is more likely to be contacted than the EJM.
- Lithuania has been involved in some 10 coordination meetings per year. The results are positive and contacts have been useful also in other cases. The meetings have been deemed as being of high quality. Lithuania appreciates that expenses are paid by Eurojust and that interpretation is provided. Lithuania has not really identified problems related to coordination meetings, but believe that Lithuania in future must be more active in initiating more cases. They also believe that Europol and Eurojust must coordinate their work better, and talk about trends, not only specific cases. This is a commendable approach.

- During the evaluation visit and discussions with practitioners who were involved in coordination meetings in Eurojust, the experts learnt that there was at least one case where a representative of the police was invited from a Member State, which was not directly involved in the case at hand. Moreover, there was no pre-trial investigation initiated in that state. However, given the circumstances, this Member State could also have been affected by the crime committed by the same group of offenders. This was an interesting example of merging judicial cooperation at the pre-trial stage of criminal proceedings with law enforcement and intelligence cooperation. Such practice seem to create a potential which could prove useful in the fight against serious international crimes. In a sense, this represents an intelligence involvement in judicial cooperation. Both the prosecutor and the police sees the potential difficulties in that Europol meetings are in fact transferred to Eurojust or vice versa, but nevertheless consider this to be very useful and will consider doing this also in the future. It provides for an opportunity to engage both Eurojust and Europol in a case at an early stage, thereby promoting cooperation between the two bodies to the benefit of the case at hand.
- Information on the OCC is disseminated among Lithuanian officials, but they normally call the National Member directly at any time of the day. Her mobile phone number is widely known and direct contact is strongly encouraged by her. If the national member cannot answer the phone, the call is redirected to the Deputy National Member. This may be a practical solution, however it carries with it risks, such as communication difficulties during absences, that could arguably be better overcome through the full implementation and use of the OCC.



## 6. COOPERATION

### 6.1. Relation with law enforcement authorities (Europol national unit, Sirene, ...)

The contacts with the Europol national unit and the SIRENE bureau are mostly maintained through the National Correspondent of Eurojust, while other law enforcement authorities of the Republic of Lithuania may be contacted directly.

Cooperation between the ENU and the Prosecutor General's Office is basically about MLAs, the EAW and the setting up of JITs. The ENU is not much in direct contact with Eurojust, but mainly receives support from the national member if needed, for instance through phone calls in cases where clarity is sought on how to work with other Member States. There are formal meetings between the National Correspondent and the ENU in Vilnius twice a year, where best practices, problems and interpretations are discussed. Otherwise, there are good contacts between the two in between these formal meetings.

In general, cooperation between the police and the national member includes issues such as:

- Coordination meetings and awareness raising;
- Exchange of information;
- Mutual legal assistance, European arrest warrant – advice, support, coordination;
- Setting up of Joint Investigation Teams;
- Exchange of Information between the Eurojust national member and the National liaison bureau at Europol;
- Assistance in identification of investigation ownership;
- On-call coordination.

### 6.2. Participation of national members in joint investigation teams (JITs) (Article 9f)

According to Eurojust's answers to the questionnaire submitted to them, Eurojust assists practitioners in the area of joint investigation teams (JITs) in the drafting, amending and extending JIT agreements. From its frequent dealings in JITs, Eurojust has also developed expertise that allows it to advise on potential legal obstacles and help prevent other difficulties. Eurojust national members, deputies and assistants have participated either as competent national authorities or on behalf of Eurojust in 29 JITs during 2011, 20 JITs during 2010, and 7 JITs during 2009.

The role of Eurojust in assisting Member States has also been recognised in Article 13(5) of the Eurojust Decision which provides that Member States have to inform Eurojust of the setting up of JITs, established either under the 2000 MLA Convention or the Framework Decision [2002/465/JHA](#), and of the results of the work of such teams. Eight notifications were received at Eurojust under this provision in 2011, 11 in 2010, and 10 in 2009.

In addition to its practitioner advice, Eurojust has financially and logistically supported JITs via its JIT Funding Project, so that financial limitations are not an obstacle to the use of JITs in fighting organised crime groups. Eurojust has been able to support 34 JITs in 2011, 22 in 2010, and 5 in 2009.

As regards Lithuania, a few JITs have been set up, for example a team with Finland, another team with Estonia and Latvia, and a team with Germany. In case of the first mentioned team, funding was minimal; in the second case Lithuania did not apply for funding because at request of colleagues all pre-trial investigation actions were carried out in Lithuania, and discussions about these actions also took place in Lithuania. As for the joint investigation team with Germany, there was funding allocated to it.

This particular tool for cooperation is very well assessed by Lithuania, as it enables operational coordination and implementation of pre-trial investigation actions and exchange of information within short periods of time. Also, this tool assisted in achieving positive outcomes and concrete results such as the detention of persons in question and convictions made in Germany.

The Eurojust national member is actively involved in the activities of JITs, starting from the negotiations on the JIT agreement and finishing with discussions about the results achieved by the JIT. According to the Financial Crime Investigation Service, the participation of the national member of Eurojust or Europol experts in the joint investigation team play a key coordinating role in order that investigative actions, which can endanger a particular country's ability to reach its objectives, will not be carried out during the investigation process in the other states. Moreover, the participation of Europol experts in the meetings and Europol's potential contribution to the investigations in different countries is very useful for a more efficient use of resources and helps avoiding possible duplication of efforts.

### 6.3. Cooperation with other EU agencies

According to Eurojust's answers to the questionnaire submitted to them, OLAF carries out administrative investigations of crimes affecting the financial interests of the EU and transmits relevant information to Eurojust when it appears that a case directly involves judicial cooperation between the competent national authorities of two or more Member States, or where the case concerns a Member State and the European Union. Close cooperation between Eurojust and OLAF is essential to help ensure that the taxpayers of the EU are protected from cross-border fraud. OLAF and Eurojust cooperate on an institutional and operational level.

Europol is an important partner in Eurojust's work. Alongside continuous strategic cooperation, Eurojust has also developed intensive operational cooperation with Europol. Casework cooperation with Europol is increasing steadily. In 2011, Europol was represented at 89 of Eurojust's coordination meetings (1/3 of the total number of Eurojust coordination meetings), compared with 41 in 2010. Moreover, the exchange of operational information between Europol and Eurojust has improved throughout the years. Messages sent through the secure communication link between Eurojust and Europol increased by 35 per cent in 2011.

In addition, Eurojust is associated with 17 out of 23 Analysis Work Files (AWFs). Eurojust representatives are appointed for each AWF and participate in the respective meetings and support the work of the AWF by contributing with feedback on cases or trends from a judicial viewpoint. However, some Member States are opposed to offering Eurojust associate status in certain important AWFs, such as Islamic terrorism and domestic extremism. The negotiations on this are still ongoing.

Negotiations between Eurojust and Frontex with a view to concluding a Memorandum of Understanding in accordance with Article 26(1) of the Eurojust Decision are on-going. In 2011, Eurojust participated in the Frontex project "Trafficking in Human Beings Training for Border Guards" to develop specialised training for border guards within the European Union and the Schengen Associated Countries. Prosecutorial and judicial aspects were taken into account with a view to the development of common curricula.

As regards cooperation with other EU agencies, the Member States were asked to describe their policy, if any, with respect to the involvement of Eurojust in cases involving OLAF or other EU agencies such as Europol and Frontex.

In the case of Lithuania, OLAF was invited to participate in the coordination meeting organised by national desk of Lithuania at Eurojust regarding a case of cigarette smuggling affecting the financial interests of the EU. As a result, OLAF actively cooperated with competent authorities of the Member States and provided necessary assistance.

Europol is often involved in the cases of the Lithuanian national desk at Eurojust. Representatives and liaison officers are invited to participate in coordination meetings and are included in the operational procedures.

#### **6.4. Cooperation with third states**

Through efforts of the Eurojust national member and the ENCS, prosecutors, police officers and representatives of other competent authorities are being informed about Eurojust contacts in third countries. Law enforcement authorities in Lithuania often address Eurojust with requests for assistance in cases of international communication with third countries as well.

Eurojust is very valuable in providing possibility to address third states through its contact points. Usually it takes time to implement MLA requests in such cases, and therefore Eurojust is of significant help in facilitating coordination of legal assistance, joint actions and the execution of requests.

There was a number of cases when Eurojust was asked to use contact points in third states. In most cases Eurojust expedites the execution of a request for legal assistance, which eventually enables collection of important evidence in a shorter time period. Lithuania considers that it would be expedient if Eurojust could appoint liaison prosecutors in third states.

## 6.5. Practical experience of the EJM

No additional resources have been allocated to the contact points, national correspondent, and tool correspondent in order for them to fulfil their tasks.

Contact points-prosecutors handle 10-15 requests in average each year. These requests cover quite a wide range of issues, such as requests to accelerate the execution of MLA requests, requests for providing information about the competent agency which carries the MLA requests, or consultations about the ability to punish committed acts as prescribed in national laws.

The achieved outcomes vary, as some requests have been implemented immediately and successfully, whereas in other requests no replies have been received in a due time. Some questions are discussed by means of telephone conversations, which enables quick and effective results.

Each contact point (appointed by the Ministry of Justice) receives approximately five requests from other Member States per year, and sends two requests to other Member States. The outcome of the request is usually successful. The requests mostly concern the following types of intervention:

- provide information on foreign law;
- provide assistance during the preparation of a MLA request;
- provide assistance during the execution of a MLA request;
- provide information during the execution of a EAW.

In 2011, requests which were received by the contact points in the Ministry of Justice were mainly related to video conference hearings.

However, according to Lithuania, it is difficult to distinguish which activity refers to the contact point's activity scope and which could be assigned to the activities of the Central Authorities in judicial cooperation in criminal matters or activities of the competent authorities in EAW cases. Therefore it is impossible to provide precise statistic data on cases handled exclusively within the framework of the EJM.

As specified in the definition of the prosecutor's competence, in Lithuania contact points of the EJM (prosecutors) are allowed to contact all relevant authorities and exchange information, thus enabling them to perform their tasks.

#### 6.5.1. *The EJM Website*

Reporting on the EJM Website and its tools (such as the Atlas, EAW Wizard, Library...), Lithuania makes a positive assessment. In general, it does meet the expectations of the Lithuanian competent authorities. However, some improvements are desirable, as national authorities still find it difficult to obtain necessary information as regards, for instance, the implementation or application of certain Framework Decisions and the MLA Convention. As an example of suggested improvements Lithuania mentions more regular updates of information on contact points. In addition, they note that it would be more convenient if names of competent authorities of certain foreign states were accompanied by an English translation.

#### 6.6. **Conclusions**

- As regards international cooperation, according to the regional prosecutor in Vilnius, the international dimension is in a sense new. The internal rotation of personnel is quite intensive, and not all staff have the necessary experience of these issues. According to the evaluators, this situation also underlines the need for continuous training and exchange of expertise, to get all persons involved up to speed, as it were, as soon as possible. It also underlines the need for relying on systems and set procedures, and not only on persons and personal contacts.

- The responsibility for international cooperation is found within two institutions. When Lithuania asks for legal assistance, it depends on which stage the case is in. If it is at the pre-trial stage, then the Prosecutor General's Office is responsible. If the case is in court, then the responsibility is at the Ministry of Justice. As noted during the evaluation visit, however, whilst still retaining a significant position, the role of the Ministry of Justice is slowly diminishing. Issues are mainly tackled directly by the relevant agencies and bodies without involvement from the Ministry of Justice which is there to support. The assistance of Eurojust may be used in operational investigations and in the court phase, however practice shows that the possibilities of Eurojust are mainly exploited in the pre-trial investigation phase, and other tools are used in the operational and court phases, such as assistance of Europol or the EJM. This practical approach seems to work well, leaving it to the discretion of the prosecutor handling the case to choose the best avenue for pushing it further.
- Members of the ENCS from the Prosecutor General's Office deal with international issues every day. They also keep contacts outside the ENCS, for instance at the Ministry of Justice or the police, inter alia the SIRENE and Europol systems. As for the police, in every case of communication with Eurojust, Europol is always used for assistance. In fact, according to Lithuania, Europol is always included in all international investigations (which does not seem to be completely accurate as the below remarks about JITs will show). The use of Europol in conjunction with Eurojust is a commendable approach which should lead to more efficient investigations and speedier results.
- The Lithuanian authorities regard mutual legal assistance as a high priority. Requests are processed as soon as possible. A translation service is available within the prosecution service to ensure fast reactions. If a request cannot be carried out immediately, interim reports containing the reasons for delay and the expected timeframe, are sent. This is a best practice worth duplication elsewhere.



- According to the experience of several persons interviewed, not all Member States react within a timeframe that would be regarded reasonable in Lithuania. In one case, an MLA request has not been answered for over 2 years. In such cases, the National Member at Eurojust has been contacted in the past and was able to help speed up the process. This help is greatly appreciated.
- Conversely, on the issue of speed, it should be noted that Lithuanian law provides for very strict limitations on the storage of evidence. After a court has issued a final ruling, all physical evidence is in principle destroyed. Late requests or replies from other countries can lead to situations where some evidence regarding a certain case has already been destroyed.
- There is exchange of information between the national member at Eurojust and the national liaison bureau at Europol. There is an encrypted line between the desks at Eurojust and Europol, making it technically possible to exchange information this way, but it is unclear to Lithuania if this is needed in practice. Direct information exchange between the ENU in Vilnius and the Eurojust national member is not considered necessary as liaison officers at Europol could access everything from there.
- Lithuania has experiences with JIT's in money laundering and organised crime cases. Five JITs are currently active. Most of them concern cooperation with Germany. In one JIT, Europol was involved. Practitioners in Lithuania referred to experiences of involving Eurojust such as JITs and coordination meetings as very positive and there was widespread confidence and "use" of the Eurojust national member, whose intervention was also very positively assessed. According to Lithuania, the fact that Eurojust is involved in a JIT brings a substantial added value because it enhances operation of the JIT. During meetings which the evaluation team held in Lithuania with those involved in JITs, it turned out that not all of them were aware of the possibility of financial and logistical assistance to JITs that could be obtained from Eurojust, except one in Kaunas. Customs has no experience in JIT's. The police wants to set up more JIT's, but according to them, prosecutors are sometimes hard to convince. Based on the positive experiences there are, Lithuania should strive towards setting up more JITs, also involving Customs.

- Lithuania positively views the possibility to transmit data to third states and organisations following agreement from the Member States supplying the information (Article 26(a)). In case of an urgent need, Lithuania will definitely refer to Eurojust asking for a possibility to conclude an agreement with the third state or organisation concerned. In addition, Lithuania welcomes the possibility of posting Eurojust liaison magistrates to third states. A liaison magistrate would be especially appreciated in Russia. Most cases concerning international legal assistance in Lithuania are connected to this country. Mutual legal assistance at the moment is described as “complicated”. The issue of liaison magistrates in particular should be considered by Eurojust.
- All recognise the importance of the EJM tools. The National Correspondent recognises that the information related to Lithuania on the website has not always been regularly updated. Before the evaluation visit, it had been unclear to the Lithuanian authorities, whether the Tools Correspondent had the administrative rights to update the information on the EJM website. It was clarified during the visit that he has these rights. A regular update will be conducted in the future.

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**7. SPECIAL INVESTIGATIVE TECHNIQUES**

**7.1. Controlled deliveries (Article 9d (a))**

The competent authority to authorise or coordinate a controlled delivery in Lithuania depends on the stage of the investigation, meaning during the stage of an operational investigation or during the stage of a pre-trial investigation.

During the stage of an operational investigation, in accordance with the Lithuanian Law on Operational Activities, a controlled delivery may be implemented only on the basis of international agreements and arrangements (Article 3 Paragraph 21). A controlled delivery shall be authorised by the Prosecutor General or by the prosecutors of the Prosecutor General's Office or regional prosecutor's offices who have been authorised by him and who coordinate and control the lawfulness of operational actions subject to a reasoned application by the head of an entity of operational activities or his authorised deputy (Article 13 Paragraph 1).

During the stage of a pre-trial investigation, a controlled delivery is implemented in accordance with provisions of Article 158 of the Code of Criminal Procedure of the Republic of Lithuania. A controlled delivery shall be authorised by the ruling of pre-trial judge only, and the ruling shall be concluded on the basis of a prosecutor's request. Therefore, according to the answers provided by Lithuania, the national member-prosecutor has no power to authorise a controlled delivery, as this would contradict substantial principles of criminal procedure defined in the laws of the Republic of Lithuania. During the evaluation visit, however, it became clear from interviews that prosecutors could take a decision in urgent cases. The legality of that decision had to be submitted to a court within three days.

By Order of the Prosecutor General No. I-182 of 31 December 2009, the national member has powers to act as a competent national communication authority in the coordination of a controlled delivery (Paragraph 2.2.6). As regards Lithuania's overall assessment of the use of this possibility by Eurojust, they consider this possibility, arguing that, with the assistance of Eurojust, the coordination of a controlled delivery in a number of states is significantly facilitated. There were cases when permissions to arrange a controlled delivery in 3-4 states were received in extremely short time.

## 7.2. Other special investigative techniques (SITs)

Lithuanian national authorities have cooperated with Eurojust (acting through Lithuania's national member or as a college) relating to other special investigative technique (SIT). With the assistance of Eurojust requests of other states related to telephone interception, covert surveillance, controlled delivery and undercover officers are executed.

## 7.3. Conclusions

- In Lithuania, there are two different stages of a controlled delivery, the operational stage and the pre-trial stage. The procedure for controlled deliveries differ between the two stages. At the operational level, a controlled delivery starts on the decision of the prosecution. When the crime has already happened, it is the pre-trial investigation judge who decides on a controlled delivery. The Lithuanian setup separating the operational (intelligence) stage and the pre-trial stage is an interesting way to approach the inherent difficulties involved in the separation between intelligence and evidence, especially since the prosecutor is fully informed about events at both stages.
- In urgent cases a prosecutor decides on a controlled delivery and gets a ruling on the legality of the measure from a judge within three days. If the controlled delivery is not accepted by the judge, all evidence gathered is inadmissible in court. However, according to Lithuania, a controlled delivery is always a big police or customs operation that has to be well prepared and pre-coordinated. Thus, urgent controlled deliveries are, according to the Lithuania authorities, theoretically possible, but seldom there in practice. Other Member States may have different experiences.

- It is not clear to the evaluation team how the requirements in Article 9 would collide with fundamental aspects of the criminal justice system defined in the laws of the Republic of Lithuania (specifically Article 158 of the Code of Criminal Procedure), as a prosecutor (and consequently also the national member) in fact has these powers, not requiring the immediate involvement of a pre-trial judge. Even if it is clear that, according to Criminal Procedural Code requirements, the national member would have to return to Lithuania explaining why certain actions were taken before a court, unpractical as it may be, this is hardly in breach of fundamental aspects. Excluding the possibility of the national member to cover all requirements in Article 9 seems unnecessary and counterproductive to the use of the national member's full potential. This could be the case, as practise in Eurojust has shown, where Lithuanian authorities were not involved in a case, but where the criminals changed their plans.

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## 8. TRAINING AND AWARENESS RAISING

### 8.1. Promotion of the use of Eurojust and the EJM

No specific trainings have been organised to national authorities by contact points of the Ministry of Justice. However, judges are periodically trained on the topics of international cooperation in criminal matters and on the EAW. Such training sessions are organised by the Training Centre of the National Courts Administration several times a year. For instance, in 2011 the following seminars were organised for judges:

- “The EAW. Theoretical and practical aspects. Detention pursuant to the EAW” (3 hours);
- “International cooperation in criminal matters pursuant to the legal acts of the European Union” (1.5 hours);
- “International cooperation of law enforcement institutions in pre-trial investigations as regards corruption related criminal acts” (3 hours).

When speaking about EJM contact points-prosecutors, according to the laws of the Republic of Lithuania, training of prosecutors covers the in-service training of prosecutors (formation of professional skills) and improvement of qualification (expansion of professional knowledge and development of skills). A number of lectures on international cooperation which also includes a section on Eurojust and the EJM is included in the training of prosecutors.

Moreover, by initiative of the Eurojust national member for Lithuania, in 2009 a Eurojust marketing seminar for representatives of Lithuanian law enforcement authorities was organised. Another marketing seminar took place in May 2012, a couple of weeks prior to the evaluation mission to Lithuania.

Apart from training, national authorities in Lithuania are made aware of the existence and role of Eurojust and of the EJM (including the EJM website) in various ways. For instance, information on Eurojust including links to the Eurojust website is given in the Intranet of the Prosecutor's Office. Information booklets about Eurojust have been published and distributed amongst prosecutors during the marketing seminar as well as shared by email. Moreover, prosecutors and officers of pre-trial investigation agencies get information about the activities of Eurojust and the EJM (by post, telephone or email) in the course of everyday activities of a prosecutor of the Prosecutor General's Office, forming uniform practice for communication on legal issues, as well as sharing best practice.

As regards the EJM, a letter-guide, prepared by legal experts of the Ministry of Justice, was disseminated to courts on the implementation and application of EU instruments in criminal matters, providing information on the EJM. Information on the EJM can also be found on the website of the Ministry of Justice ([www.tm.lt](http://www.tm.lt)). Moreover, the contact points of the Ministry of Justice are in contact with the courts on a case-by-case basis by using various means of communication: phone, regular post, e-mail. In these cases, courts are advised to use the EJM website, consulted if certain problems arise when using it, and informed of the possibility to request a contact point of another Member State to provide assistance in the case concerned.

National authorities are informed about the projects on which Eurojust or the EJM are working, such as documents disseminated by Eurojust or the EJM through the national correspondent who has direct access to the entire Eurojust e-mail system and uses his own e-mail address which enables him to get all Eurojust documents directly on regular basis.

## **8.2. Specific training for national members and EJM contact points**

There are no specific trainings in Lithuania organised exclusively for EJM contact points. However, the EJM contact points are trained on regular basis as practitioners who are dealing with international cooperation. For instance, they are improving their foreign language skills by taking courses, and participate in various seminars on international cooperation in criminal matters.



### 8.3. Conclusions

- After introducing new rules concerning the implementation of the Council Decision and before the country visit of the evaluation team, the Lithuanian authorities organised a seminar which dealt in a comprehensive way with issues concerning cooperation with Eurojust. Some 130 different persons took part in the seminar representing different relevant national authorities. As a matter of fact, during the meetings that the evaluation team in Lithuania, representatives of different national bodies very often referred to this seminar as an important source of knowledge on cooperation with Eurojust. The idea introduced by Lithuania to organise a "marketing seminar" turned out to give very good results in terms of spreading knowledge and practical information on different aspects of cooperation with Eurojust. It was also a very good occasion for those involved in international cooperation to meet, exchange views and discuss actual problems they encounter and how to deal with them in the best way. This is a best practise for other Member States as well.
- Eurojust is well known in Lithuania, not only in the central authorities, but also in the regional units of the prosecution service and the pre-trial investigation agencies. Apart from the "marketing seminar" described above, several other seminars on Eurojust have been held in Lithuania. This is also a best practise.
- According to a regional prosecutor, everybody has received sufficient information about tools available and new possibilities as regards international cooperation, referring to the availability of information on the Intranet. In their view, there are really no problems in this regard. However, the experts team was told that more training is welcomed. Keeping information available and up to date on the Intranet is a good practice. This should be coupled with continuous (and compulsory) training as a necessary complement together with seminars where best practices can be exchanged.

- No special training takes place on Eurojust as such for the police, however in the general context of training on the EU *aquis*, essential elements of Eurojust are covered. More detailed training takes place when the Eurojust national member arrange special seminars, the last one being the "marketing seminar" held in May 2012, attended by 20 police officers. It is positive that the police were invited to the "marketing seminar". This involvement should continue, to increase knowledge, engagement and understanding of the requirements placed on Lithuania as regards international cooperation and information exchange.
- Furthermore, answering the question whether there is a formal system in place for accreditation and set curricula for training in international judicial cooperation, especially as regards Eurojust and the EJM, Lithuania responds that training for prosecutors is mandatory and consists of initial and continuous training. The continuous training includes international cooperation that covers both Eurojust and the EJM. This is commendable, however the importance of international judicial cooperation covering both Eurojust and the EJM needs to be further reflected in the training of prosecutors, investigators and judges. As far as possible, Lithuania should consider set training curricula even with accreditation mechanisms in place for all practitioners involved in international judicial cooperation, and shared training between all bodies that have a role to play in the subject matter, to increase knowledge, commitment and expertise.

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**9. GENERAL OBSERVATIONS AND FINAL REMARKS**

The creation of Eurojust and the EJM answers to the need to address fundamental challenges in the fight against serious crime and terrorism across the European Union, as well as to build on the judicial dimension of the European area for freedom, security and Justice after the creation of Europol.

According to Lithuania, in general terms, Eurojust brings great added value to judicial cooperation.

Legal assistance in complex criminal cases that cover criminal offences related with two or more states usually takes longer time and, therefore, Eurojust assistance is very valuable as it helps to collect important evidence in a much shorter time period. Also, during coordination meetings organised by Eurojust, law enforcement authorities are able to exchange information and evidence, and agree on particular issues related to the execution of MLA requests as well as other important questions on joint actions.

Moreover, the Eurojust national member is often addressed with a request for consultation on how a MLA request should be drawn up so that it can be accepted in the requested state despite differences in national laws. Therefore, the quality analysis of MLA requests performed by Eurojust helps to prevent future problems which could occur in the course of national procedures.

All Lithuanian authorities having cooperation experiences with Eurojust have noted that almost in all cases of addressing Eurojust, actual urgent assistance was received without requiring additional expenses of the applying state. Pre-trial investigation agencies which do not have experience of cooperation with Eurojust consider the merits provided by Eurojust and plan to address it and cooperate with it when necessary.

International cooperation is also much facilitated by the EJM, for instance through the possibility to address a contact point of other Member State regarding issues of legal assistance.

As for further suggestions (practical measures or legislative steps) in view to assist Eurojust and the EJM to meet the expectations placed on them, Lithuania identifies a few areas for improvement. For instance, the pre-trial investigation institutions in Lithuania noted interpretation during coordination meetings, especially the simultaneous translation done by freelance translators, taking into consideration the issue of confidentiality. So far, cases processed at Eurojust have been extremely sensitive and any transmissions of the information to third parties could in their view have caused irreparable damage on the course and results of the investigations.

As for the EJM, the EJM website could be improved by taking the following practical measures:

- launch the EJM website in a national language (frequently requested by national authorities);
- improve the EAW Atlas by adding the necessary information from notifications of Member States. For instance, add competent authorities for transit cases and information on the time required to receive the EAW;
- improve the MLA Atlas by adding certain categories of actions requested, for instance service of documents other than summons;
- introduce an Atlas for other measures, for instance financial penalties.

### 9.1. Conclusions

- The general assessment of the quality and efficiency of the support received from Eurojust by central and local authorities is very positive. Mutual legal assistance in general is a high priority for Lithuania. The added value of Eurojust in this field is greatly appreciated throughout the country. The Lithuanian desk at Eurojust is seen and described as a partner with which the contacts are frequent, easy and fruitful. Eurojust as an institution also enjoys a very good reputation. This is a very positive assessment strengthening the view of the evaluation team that Lithuania is on the right way as regards the practical implementation and operation of Council Decisions 2002/187/JHA and 2008/976/JHA respectively.

- The cooperation with Eurojust is informal and based on personal contacts and trust, which makes it user friendly and efficient, according to all persons interviewed. This is not unique in relation to Eurojust, but a general characteristic of the Lithuanian judicial system. Since the country is relatively small, most practitioners in the field of international cooperation know each other personally. This is also true for the National Member at Eurojust, as the national member is a well-known and respected Lithuanian prosecutor. The evaluation team can only positively acknowledge this setup and underline the importance of such informal contacts in an otherwise well structured and clearly defined system.
- As far as possible recommendations are concerned, the need to speed up the execution of requests was emphasised from the regional level. Interim reports would be helpful, stating such things as “we have received the request, the request is being worked on, we think we will be done with it at this date”. This is a very productive approach.
- Added value, according to Lithuania, can also come through information about legal rules so that some experiences of other countries can be introduced into the Lithuanian system. As noted before, Lithuania also hopes that added value could be brought forth if good contacts with Russia could be established through Eurojust. In general, according to Lithuania, getting answers via Eurojust also speeds up the process and a case gets to court faster. Based on the above, it is easy to draw the general conclusion that Lithuania is unwavering in its positive view on and support of Eurojust.

## 10. RECOMMENDATIONS

As regards the practical implementation and operation of the Decisions on Eurojust and the European Judicial Network in criminal matters, the expert team involved in the evaluation of Lithuania has been able to satisfactorily review the system in Lithuania. The visit was very well prepared by the Lithuanian authorities. The expert team held several meetings with representatives of a variety of Lithuanian authorities involved in cooperation within the framework of Eurojust and the EJM including the Prosecutor General in person, the Ministry of Justice, the police, the Financial Crime Investigation Service and other relevant bodies. The discussions were frank and open and the Lithuanian authorities provided additional information and materials aimed at clarification of issues that were raised during the meetings. Overall, the working principles and legal framework of the system is robust and functional and the various actors know their roles and responsibilities.

Nevertheless, certain recommendations can still be made, to contribute to the further development of the system in Lithuania. Furthermore, based on the various good and, without doubt, best practices of Lithuania, related recommendations to the EU, its institutions and agencies are also put forward.

Lithuania should conduct a follow-up on the recommendations given in this report 18 months after the evaluation and report on the progress to the Working Party on General Affairs, including Evaluations (GENVAL). The results of this evaluation should also, at some point, be examined by the Working Party on Cooperation in Criminal Matters (COPEN).

### 10.1. Recommendations to Lithuania

1. Lithuania is recommended to consider whether to insert Eurojust and the EJM in its legislation, with a view to giving them visibility also towards judges involved in pre-trial investigations. Therefore, Lithuania is recommended to continue discussions to adopt a legal act binding not only to prosecutors, but all practitioners involved in the field of international judicial cooperation on the implementation of the Decisions on Eurojust and the EJM.

2. Lithuania is recommended to raise awareness among the courts that there is an obligation on Lithuania (not only the Prosecutor General's Office) to send in information to Eurojust. Relevant law enforcement agencies (police, customs, Financial Intelligence Unit, etc.) could also benefit from similar awareness raising, thereby increasing their involvement and sense of responsibility.
3. The Lithuanian authorities indicate in their answers to the questionnaire (under 2.A.2.) that the National Member exchanges information with other National Members of Eurojust "when there is such a need and on the basis of an order given by a competent authority". This does not seem to be in conformity with the Eurojust Decision which does not foresee such a restriction. The Lithuanian authorities are recommended to make it clear that it is the National Member that decides on the exchange of information submitted to Eurojust.
4. Lithuanian authorities are recommended to clarify that information under Article 13(7) of the Eurojust Decision information related to conflicts of jurisdiction, controlled deliveries or repeated difficulties or refusals will not only be transmitted in cases of "difficulties in cross-border pre-trial investigations" as provided for in the order No. 10 of 28 October 2011 but should be transmitted in all such cases according to the Eurojust Decision.
5. Lithuania is recommended to consider giving full powers to the National Member as a competent national authority exercised in urgent cases, in accordance with the Eurojust Decision (Article 9(d)) as regards controlled deliveries and the right to execute requests or decisions on judicial cooperation. It may be envisaged that this power will be rarely used, but it may in certain urgent cases prove useful as experience has shown.
6. Lithuania is recommended to give direct access to the National Member to national databases. This may prove to be useful when the National Member participates in coordination meetings without any national authorities present.



7. Lithuania is recommended to review whether all Articles of the Decisions on Eurojust and the European Judicial Network have been implemented in full, including Article 19 on the right of access to personal data.
8. Lithuania is recommended to speed up the implementation of the ENCS in line with Article 12 of the Eurojust Decision. Lithuania is recommended to formally include in the ENCS the national correspondent for the EJM and to continue organising meetings of the ENCS which would include all actors involved, including the national correspondent for the EJM and EJM contact points that are situated outside the structure of the Prosecutor's Office, to facilitate contact and exchange best practices. The results of such meetings should be made known to practitioners, for instance via the Intranet.
9. Knowledge about the EJM does not appear to be spread widely enough among the practitioners in Lithuania. Lithuania is recommended to increase its efforts on awareness raising about the usefulness of the EJM.
10. Lithuania should be praised for the organisation of a "marketing seminar" on different aspects of cooperation with Eurojust and are encouraged to continue organising such events on a regular basis and to invite all practitioners involved in international cooperation.
11. Lithuania is recommended to continue to further explore the possibilities of the practice where judicial and law enforcement representatives from Member States not formally involved in a given case, but possibly affected by the crime, are invited to take part in coordination meetings at Eurojust.
12. Lithuania is recommended to spread information among interested parties on the possibility of being provided with financial and logistical support to JITs by Eurojust.
13. Lithuania should ensure the accuracy of the national data available on the EJM website.

**10.2. Recommendations to the European Union, its institutions and agencies, and to other Member States**

1. Member States should encourage the proper application of Article 13 of the Eurojust Decision by the issuance of practical guidelines and the provision of training. Member States are recommended to study the Lithuanian appointment of a contact person to help with all questions regarding the use of the Eurojust Article 13 form (best practice).
2. Member States should provide practical and simple guidelines and training on when to refer a case to Eurojust, the EJM and Europol.
3. Member States are recommended to study the possibilities of the Lithuanian example where judicial and law enforcement representatives from Member States not formally involved in a given case, but possibly affected by the crime, are invited to take part in coordination meetings at Eurojust.
4. Similarly, Member States are recommended to consider early contacts with third states that might be involved in cases dealt with in JTs (for instance, transit states for stolen goods). Useful information might be derived from these contacts.
5. Member States are recommended to follow the example of the Lithuanian "marketing seminar" on different aspects of cooperation with Eurojust, representing a "good practice" for others.
6. The Member States should ensure the facilitation of personal contact (meetings) between all national contact points.
7. A best practice from Lithuania which should be considered by other Member States would be to make the execution of mutual legal assistance requests a priority.
8. A best practice from Lithuania which should be considered by other Member States is the sending of interim reports when a request cannot be carried out immediately.
9. The Member States should ensure the accuracy of the national data available on the EJM website.

**10.3. Recommendations to Eurojust/the EJN**

1. Eurojust should organise annual meetings of the National Correspondents in view of exchanging best practices and knowledge.
2. Eurojust should collect and, where appropriate, translate and disseminate to all National Correspondents to Eurojust the guidelines issued at national level on the implementation of Article 13, as well as support and encourage the adoption of such guidelines by national authorities of all Member States (best practices). Based on this, Eurojust should provide common guidelines to all Member States.
3. Eurojust (aided by the EJN) should collect and, where appropriate, translate and disseminate guidelines issued at national level on the referral of cases either to Eurojust or to the EJN, as well as support and encourage the adoption of such guidelines at national level. Based on this, Eurojust and the EJN should provide common guidelines to all Member States.
4. Eurojust should put in place a permanent system for monitoring and follow-up of coordination meetings, which is the core business of Eurojust. This should be done by dedicated staff of Eurojust and cannot only be carried out by National Members who should be concentrated on case work.
5. Eurojust should continue with and further promote the funding of JITs. The funding should be as flexible as possible with a view to facilitating operational work.
6. Eurojust should consider the posting of Eurojust liaison magistrates to third states according to the needs expressed by Member States. In this context, Eurojust is recommended to study the possibilities of establishing such a liaison magistrate in Russia.
7. The Presidency (through the EJN Secretariat) should monitor the respect of requirements by the Member States when designating contact points, and monitor the regular and proper update of the list of contact points.

8. The Presidency (through the EJM Secretariat) should clarify roles and responsibilities of the Member States in the updating of the data available through the EJM tools and closely monitor the update by Member States.
9. The EJM website should be launched in all national languages. The EJM should begin to consider this and ways and means to implement it.

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**ANNEX A: PROGRAMME OF THE VISIT**

**Monday, 21 May**

Arrival of delegation

**Tuesday, 22 May**

**9.45 val.** Departure from the hotel Embassy Hotel Balatonas to the Prosecutor General's Office

**10.00 – 11.30** Introductory meeting with representatives of all relevant institutions at the Prosecutor General's Office.

**11.30 – 11.45** Coffee break.

**11.45 – 13.30** Meeting with prosecutors of the Prosecutor General's Office

**13.30 – 14.30** Lunch break.

**14.30 - 15.30** Meeting with prosecutors of the Prosecutor General's Office.

**15.35 - 16.35** Meeting at the Vilnius Regional Prosecutor's Office

**16.35** Transfer to the hotel.

**18.30** Dinner at the restaurant "Tores"

**Wednesday, 23 May**

**9.30 val.** Departure from the hotel to the Police Department

**9.45 - 11.30** Meeting at the Police Department

**11.45 – 12.45** Meeting at the Financial Crime Investigation Service

**13.00 – 14.15** Lunch break

**14.30 – 15.45** Meeting at the Ministry of Justice

**16.00 – 17.00** Meeting the Customs Criminal Service

**17.00** Transfer to the hotel

**Thursday, 24 May**

**9.00** Departure from the hotel to Kaunas

**10.30 – 13.30** Meeting with representatives of Kaunas Prosecutor's Offices and Kaunas branches of the institutions of pre-trial investigation.

**13.30 – 15.00 val.** Lunch break.

**15.15** Departure to Vilnius.

**Friday, 25 May**

**8.45** Departure from the hotel Embassy Hotel Balatonas to the Prosecutor General's Office

**9.00 – 12.00** Final meeting with representatives of all relevant institutions at the Prosecutor General's Office.

**ANNEX B: LIST OF PERSONS INTERVIEWED/MET**

Mr. Darius Valys, Prosecutor General;

Mr. Tomas Krušna, Deputy Chief Prosecutor of the Department for Criminal Prosecution of the Prosecutor General's Office;

Ms. Skaistė Kiulkytė-Barkauskienė, Assistant of Chief Prosecutor of the Department for Criminal Prosecution of the Prosecutor General's Office;

Ms. Rūta Kavaliauskienė, Assistant of Chief Prosecutor of the Department for Criminal Prosecution of the Prosecutor General's Office;

Ms. Andrada Bavėjan, Head of the Legal Cooperation Division of the International Law Department of the Ministry of Justice;

Ms. Indrė Kairelytė, Chief Specialist of the Legal Cooperation Division of the International Law Department of the Ministry of Justice;

Mr. Laimonas Vasiliauskas, Advisor, acting Head of the Criminal Police Board of the Police Department under the Ministry of Interior;

Mr. Darius Žvironas, Head of the Organisation of Activities Division, Criminal Police Board of the Police Department under the Ministry of Interior;

Mr. Adas Eidukevičius, Deputy Head of the Legal and Activity Organisation Division of the Customs Criminal Service;

Mr. Vitalijus Sarapinas, Head of Vilnius Regional Division of the Customs Criminal Service;

Mr. Raimondas Kajėnas Head of the Division for Immunity and Control of the Financial Crime Investigation Service under the Ministry of Interior;

Mr. Žydrūnas Bartkus, Head of Vilnius Department of the Special Investigations Service;

Mr. Viktoras Cilindz, Head of the Division for Pre-trial Investigation, State Border Guard Service under the Ministry of the Interior.

Ms. Rozita Požarskienė, Prosecutor of the Department for Criminal Prosecution, Contact point of the European Judicial Network;

Ms. Ina Linevaitė, Prosecutor of the Department for Criminal Prosecution, Contact point of the Network for Joint Investigation Teams;



Ms. Jurga Zieniūtė, Prosecutor of the Department for Criminal Prosecution, Contact point of the Network of Genocide, Crimes against Humanity and War Crimes;

Mr. Darius Karčinskas, Prosecutor of the Department for Criminal Prosecution, Contact point of the Network of Cooperation between Assets Recovery Offices;

Mr. Mindaugas Dūda, Prosecutor of the Department for Organized Crimes and Corruption Investigation, National Correspondent of Eurojust for Terrorism Matters;

Mr. Saulius Verseckas, Prosecutor of the Department for Organized Crimes and Corruption Investigation, Contact point of Network of Fight Against Corruption;

Mr. Anatolijus Koržovas, Deputy Chief of Vilnius Regional Prosecutor's Office;

Mr. Martynas Jovaiša, Chief Prosecutor of the Division for Investigation of Organized Crime and Corruption;

Mr. Aleksandras Bukelis, Prosecutor of the 3<sup>rd</sup> Division for Criminal Prosecution;

Mr. Eugenijus Papučka, Deputy Chief Prosecutor of Vilnius District Prosecutor's Office;

Mr. Aivaras Alimas, Prosecutor of the Division for Investigation of Organized Crime and Corruption;

Mr. Mindaugas Barkauskas, Prosecutor of the Division for Investigation of Organized Crime and Corruption;

Ms. Rūta Petrauskienė, Prosecutor of the Division of Management Control and Analysis of the Vilnius Regional Prosecutor's Office, Contact point for the European Judicial Network;

Mr. Robertas Levinas, Assistant of Chief Prosecutor of Vilnius Regional Prosecutors Office.

Mr. Mindaugas Stravinskas, Head of the 1th Division, 3th Crime Investigation Board of the Lithuanian Criminal Police Bureau;

Ms. Kristina Juršėnienė, Chief Specialist of the National SIRENE Division of the International Liaison Office of the Lithuanian Criminal Police Bureau;

Ms. Julita Jagla, Chief Inspector of the International Relations Division of the Administrative Board;

Mr. Darius Kuliešius, Head of the Operation Division of the Special Tasks Board;

Mr. Raimondas Kajėnas, Head of the Immunity and Control Division.

Mr. Tomas Vaitkevičius, Vice Minister of Justice;

Mr. Darius Žilys, Director of the International Law Department of the Ministry of Justice;  
Mr. Darius Mickevičius, Adviser, the Administrative and Criminal Justice Department of the Ministry of Justice.  
Mr. Kęstutis Betingis, Chief Prosecutor of Kaunas Regional Prosecutor's Office;  
Mr. Viktoras Biriukovas, Deputy Chief Prosecutor of Kaunas Regional Prosecutor's Office;  
Mr. Darius Valkavičius, Chief Prosecutor of the District Prosecutor's Office of Kaunas City, Kaunas Regional Prosecutor's Office;  
Mr. Tomas Staniulis, Chief Prosecutor of the Organized Crimes and Corruption Investigation Division, Kaunas Regional Prosecutor's Office;  
Mr. Ramutis Jancevičius, Chief Prosecutor of Vilnius Regional Prosecutor's Office;  
Mr. Donatas Puzinas, Chief Prosecutor of the 2<sup>nd</sup> Criminal Prosecution Division, Kaunas Regional Prosecutor's Office;  
Mr. Romualda Pocienė, Prosecutor of the 2<sup>nd</sup> Criminal Prosecution Division, Kaunas Regional Prosecutor's Office;  
Mr. Egidijus Palaima, Prosecutor of the Organized Crimes and Corruption Investigation Division, Kaunas Regional Prosecutor's Office;  
Mr. Alvydas Packevičius, Head of the Kaunas Board of the Financial Crimes Investigation Service under the Ministry of Interior;  
Mr. Darius Žukauskas, Deputy Head of the Kaunas Regional Chief Police Commissariat;  
Mr. Edgaras Mažeika, Head of the Organized Crimes Investigation Board, Kaunas Regional Chief Police Commissariat;  
Mr. Aurelijus Banys, Head of the Economic Crimes Investigation Division, Crimes Investigation Board, Kaunas Regional Chief Police Commissariat.  
Mr. Simonas Slašinskas, Chief Prosecutor of the Department for Criminal Prosecution of the Prosecutor General's Office;

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## ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ORIGINAL LANGUAGE	ENGLISH TRANSLATION/EXPLANATION
AWFs	-/-	Analysis Work File
CMS		Eurojust Case Management System
COPEN	-/-	Working Party on Cooperation in Criminal Matters
EAW	-/-	European Arrest Warrant
EJN	-/-	European Judicial Network
ENCS	-/-	Eurojust National Coordination System
E-POC	-/-	European Pool against Organised Crime
EU	-/--/-	European Union
GENVAL	-/-	Working Party on General Matters, including Evaluation
IISPP	-/-	Integrated Information System of the Penal Process
IPS	-/-	Information System of the prosecutor's Office
JITs	-/-	Joint Investigation Teams
LITEKO	-/-	Information System of the Courts
MLA	-/-	Mutual Legal Assistance
OCC	-/-	On-call coordination
OCTA	-/-	Organised Crime Threat Assessment
OLAF	-/-	European Anti-Fraud Office
SITs	-/-	Special Investigative Techniques
THB	-/-	Trafficking Human Beings