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EVALUATIONS**

**Ninth Round of Mutual Evaluations on mutual recognition legal
instruments in the field of deprivation or restriction of liberty**

REPORT ON LITHUANIA

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1. EXECUTIVE SUMMARY

The visit was well prepared by the Lithuanian authorities, and included meetings with the relevant prison actors with responsibilities in the field of European judicial cooperation and in the implementation and operation of European policies. The team also had the opportunity to visit a prison and to talk with detainees who experienced the practical application of Framework Decision 2008/909/JHA (FD). A meeting with a representative of the Bar Association was also valuable, and showed how limited is the interest of lawyers in EU issues and instruments.

Representatives of the Lithuanian authorities were extremely cooperative, open and sincere in their responses to the experts, showing a genuine will to do their best to correctly apply the EU legal framework covered by the ninth round of mutual evaluations.

The experts' overall impression is that the four framework decisions (FDs) covered by the evaluation have been implemented well in Lithuanian legislation. It is also the experts' impression that another reason the application of the FDs works well is the proactive attitude of the Lithuanian authorities, which act to solve any problems, even going beyond the requirements of the EU legal framework.

In the Lithuanian legal order, while comprehensive legislation on cooperation in criminal matters has been incorporated into a single law, the implementation of the EU legal framework covered by the evaluation has also been carried out via the addition of some provisions to the Criminal Code and the Code of Criminal Procedure.

Despite some translation problems, the law seems to be comprehensive and clear.

The experts' main observations on the various FDs are as follows:

Framework Decision 2002/584/JHA

Lithuania has adopted the Framework Decision on the EAW without any reservations or modifications. This fact impressed the evaluation team very positively. Thus, the Lithuanian authorities do not face the problems other Member States face as a consequence of bad legislation. Lithuania, both as an executing State and as an issuing State, dealt with the FDs examined in the best possible way. There are no delays when the Lithuanian judicial authorities act as executing State. Some problems with the translation of documents exist in all Member States. Sometimes cooperation with some Member States is difficult, but this is not the fault of the Lithuanian authorities. The judgments of the Lithuanian courts, in respect of the execution or otherwise of an EAW, are based on good reasoning, and in general they comply with the FDs. At national police level, the international cooperation bureau is efficiently organised, with all competent units under the same umbrella, thus avoiding overlaps.

The ECJ judgments relating to in absentia cases (and in other matters) cause delays or unjustified barriers in the execution of EAW. Some judgments are very controversial, and do not take account of the axioms and principles of Member States that concerns fundamental rights. Justice in the European Union was a presupposition for the foundation of EAW. It seems that in some cases the CJEU has no connection with daily criminal practice. Nevertheless, the Lithuanian courts do their best to cooperate with Member States which have issued EAWs to acquire the information they want before they issue their verdict on the execution or non-execution of an EAW.

Framework Decision 2008/909/JHA

FD 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union was implemented by Lithuania via legislative act No XII-1322 of 2014 ('Law on Mutual Recognition').

District courts are competent authorities in both issuing the certificate and recognising judgments imposing custodial sentences issued in another Member State. The Prison Department, as from 1 July 2021, has a consultative role and provides assistance and coordination. The Public Security Service and the Lithuanian Criminal Police Bureau carry out the actual transfer of sentenced persons.

Certificates and judgments are accepted only in the Lithuanian language.

The opinion of the sentenced person is always obtained and usually taken into account in deciding whether or not to issue a certificate.

The leading principle indicated by the legislation in issuing the certificate is the facilitation of the social rehabilitation of the sentenced person. If additional information is needed, it is obtained via the Prison Department, from 1 July 2021.

Lithuania as issuing State has not encountered any cases where it would be difficult to adapt the sentence due to its duration or nature being incompatible with Lithuanian law.

Refusal to recognise a judgment is extremely rare and usually based on there being less than six months left to be served or on the absence of double criminality. Note that Lithuania has made the declaration under Article 7(4) stating that it will not apply Article 7(1) of FD 2008/909/JHA.

Apart from the ground for refusal based on the respecting of fundamental rights and/or freedoms (Article 8(1) of Act No XII-1322), the other grounds for refusal provided in the Lithuanian Law on Mutual Recognition perfectly reflect the FD 2008/909/JHA as amended by FD 2009/299/JHA.

Lithuanian legislation provides the possibility to lodge an appeal against the decision to issue a certificate or to recognise a judgment imposing custodial sentences.

The time limit under Article 12(2) is usually complied with.

Link between FD 2002/584/JHA and FD 2008/909/JHA

The Lithuanian authorities did not report any problems regarding this link. If there are more possibilities, the matter is usually resolved by mutual communication.

The Lithuanian authorities show their usual cooperative attitude: when an EAW has been issued by another Member State in a case in which Lithuania might issue a certificate, the current trend is for competent authorities to exchange information, after which the EAW is usually withdrawn and the prisoner surrendered via a certificate.

Framework decision 2008/947/JHA on probation and alternative sanctions

The competent authorities for recognising non-custodial sentences and probation decisions issued in another EU Member State are the district courts of the convicted person's place of residence. If the convicted person has no place of residence in the Republic of Lithuania, the competent authority for recognising non-custodial sentences and probation decisions is Vilnius City District Court. Lithuania only accepts certificates in Lithuanian.

The Probation Service is a key body in the implementation of FD 2009/947/JHA as it is competent to enforce recognised decisions of other Member States and provides feedback on the possibilities of recognition before the decision is made. Lithuanian authorities are in direct contact with the authorities of the other Member State involved.

The Lithuanian legal framework concerning FD 2008/947 seems to be well developed, although it is not often applied. But this is the same as in most Member States. Lithuanian authorities are also very proactive in this field of judicial cooperation and always try to find solutions.

The expert team did not find any shortcomings in the implementation of FD 2008/947. The general assessment of Lithuania in the context of the implementation and application of FD 2008/947 is therefore positive. However, the expert team recommends to all Member States that they consider amending Directive 2012/13/EU to include in the list of information to be given to suspected/accused persons information on the right to serve an alternative sanction or a probation measure in another Member State and that they fund the training of lawyers on this instrument. This could increase the number of cases in which FD 2008/947 is applied.

Framework Decision 2009/829/JHA on the European Supervision order (ESO)

FD 2009/829/JHA was implemented by Lithuania via legislative act No XII-1322 of 2014 ('Law on Mutual Recognition'). Judicial authorities are familiar with the contents of this legal instrument, but they rarely use it in practice.

The Lithuanian practitioners think that there is a need for awareness and knowledge of these legal instruments to be raised by training (including training for defence lawyers). However, they perceive it as a problem that not all Member States have transposed all the supervision measures covered in FD 2009/829, so the authorities always have to check the legal situation in the other Member State.

The expert team did not find any shortcomings in the implementation of FD 2009/829/JHA. The general assessment of Lithuania in the context of implementation and application of FD 2009/829/JHA is therefore positive.

Training

Training is organised separately for prosecutors and judicial staff. Both the Prosecution Office and the courts have a specialised department which organises and provides training for them. The topics covered in this training are selected on the basis of the requirements of the prosecutors and judges, who have the opportunity to propose topics once per year.

The training activities are separate for judges and prosecutors, and the lecturers are mainly judges, prosecutors or academics. Lawyers are usually not invited to be lecturers.

There is no systematic training on any of the FDs in question. However, courses are organised on an ad hoc basis, based on the needs and requests of judges and prosecutors. Lithuanian practitioners themselves consider that they have good and sufficient training opportunities for the FDs in question.

A very positive point is that judges and prosecutors often participate in training activities organised by the EJTJN or other institutions, which also gives them the opportunity to practise their language skills. On the other hand, no language courses are provided to them in Lithuania. That is something that Lithuania could take into consideration, because direct communication between the competent authorities of the Member States is the key to successful cooperation.

2. INTRODUCTION

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

In line with Article 2 of Joint Action 97/827/JHA of 5 December 1997, the Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS) decided at its meeting on 21 November 2018 that the ninth round of mutual evaluations would be devoted to the principle of mutual recognition.

Due to the broad range of legal instruments in the field of mutual recognition and their wide scope, it was agreed at the CATS meeting on 12 February 2019 that the evaluation would focus on the following mutual recognition instruments:

- Framework Decision 2002/584/JHA on the European Arrest Warrant and the surrender procedures between Member States ('EAW');
- Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ('custodial sentences');
- Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions ('probation and alternative measures');
- Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention ('ESO').

At the above CATS meeting it was also agreed that the evaluation would focus only on those specific aspects of such instruments which Member States felt warranted particular attention, as set out in detail in 6333/19, and on the link between the legal and operational links between FD 2002/584/JHA on EAW and FD 2008/909/JHA on custodial sentences.

As to FD 2008/947 on probation and alternative measures and FD 2009/829 on the ESO, it was decided that the evaluation would be of a rather general nature and would endeavour to establish the reasons that have led to those two FDs being applied only infrequently.

The aim of the ninth mutual evaluation round is to provide real added value by offering the opportunity, via on-the-spot visits, to consider not only the legal issues but also - and in particular - relevant practical and operational aspects linked to the implementation of those instruments by practitioners in the context of criminal proceedings. This would allow both shortcomings and areas for improvement to be identified, together with best practices to be shared among Member States, thus contributing towards ensuring a more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the EU.

More generally, promoting the consistent and effective implementation of this package of legal instruments at its full potential could make a significant contribution towards enhancing mutual trust among the Member States' judicial authorities and improving the functioning of cross-border judicial cooperation in criminal matters within the area of freedom, security and justice.

Furthermore, the current process of evaluation could provide useful input to Member States which have not implemented all aspects of the various instruments.

The Republic of Lithuania was the seventeenth Member State to be evaluated during this round of evaluations, as provided for in the order of visits to the Member States adopted by CATS on 13 May 2019 and subsequently amended at the proposal of certain Member States and in the absence of any objections (ST 9278/19 REV 2).

In accordance with Article 3 of the Joint Action, the Presidency drew up a list of experts for the evaluations to be carried out. Member States nominated experts with substantial practical knowledge in the field, in response to a written request sent on Friday 17 May 2019 to delegations by the Secretariat of the Council of the European Union.

The evaluation team consists of three national experts, supported by one or more members of staff from the General Secretariat of the Council and observers. For the ninth round of mutual evaluations, it was agreed that the European Commission, Eurojust and EJNI should be invited as observers.

The experts entrusted with the task of evaluating the Republic of Lithuania were Ms Claudia Gualtieri (Italy), Ms Barbora Jekielek Henzl (Czech Republic), and Mr George Voulgaris (Greece). An observer was also present: Ms Dagmara Skudra (Eurojust), together with Ms Maria Bacova from the General Secretariat of the Council.

This report was prepared by the evaluation team with the assistance of the General Secretariat of the Council, based on findings arising from the preparatory video-teleworking conference meeting (VTC) that took place on 15 February 2021, the evaluation visit that took place in the Republic of Lithuania between 18 and 21 October 2021, and the Republic of Lithuania's detailed replies to the evaluation questionnaire, together with its detailed answers to follow-up questions.

3. FRAMEWORK DECISION 2002/584/JHA ON THE EUROPEAN ARREST WARRANT (EAW)

The Republic of Lithuania (henceforth ‘Lithuania’) transposed FD 2002/584/JHA of 13 June 2002 on the EAW and the surrender procedures between Member States (henceforth ‘FD 584’) into the Lithuanian Criminal Code (CC) and the Code of Criminal Procedure (CCP).

In this connection, the Minister of Justice and the Prosecutor-General have issued binding rules on issuing the EAW and taking over a person surrendered under EAW (the Joint Order). These binding rules have been applicable since 26 August 2004, with further amendments in 2009, 2014 and 2017.

As Lithuanian practitioners noted, the EAW was transposed into the CC and the CCP, since the EAW involves the deprivation of liberty/detention and all the rights, guarantees and procedural rules applied to the detained person, whether a Lithuanian national or not, are distributed throughout the CCP and the CC.

The Lithuanian Ministry of Justice added that it initiated the amendments of the CC and CCP regarding provisions on the EAW, which were submitted to the Lithuanian Government, and believe the Parliament would discuss these draft laws in the spring of 2022 and adopt them by the end of 2022.

Amendments concern:

- Article 4(1) of Framework Decision (henceforth ‘FD’) (missing provision in Lithuanian law on the exception to double criminality related to taxes/customs);
- Article 18(1a) and 19 of FD (provision on the hearing of the person pending the decision);
- Article 25(1) of FD (condition on transit requests will also be applied to residents, not only to nationals);
- Article 4(5) of FD (relisting the optional and mandatory grounds for refusal to adjust the CJEU Decision in case C-665/20);
- Article 4(7b) of FD (reformulating the ground for refusal of double jurisdiction to adjust the CJEU Decision in case C-488/19).

3.1. Authorities competent for the European Arrest Warrant (EAW)

The competent executing authority is the Vilnius Regional Court; however, European arrest warrants (EAWs) are received at the Prosecutor-General's Office.

The competent issuing authorities are: for criminal prosecution purposes, the Prosecutor-General's Office of Lithuania (PGO); and for the purposes of execution of a custodial sentence, the regional courts.

Lithuania has not designated a central authority under Article 7 of the Framework Decision.

Another authority involved in the EAW procedure is the Lithuanian Criminal Police Bureau (CPB). Its main functions are: to ensure information exchange via all available channels among specialised and territorial police agencies and other law enforcement institutions of Lithuania and foreign countries; to perform international searches (Interpol/SIS) and coordinate; and to execute surrenders and extraditions. The International Liaison Office is a channel of international police cooperation in the process of organising and carrying out the transfer of sentenced persons.

All competent authorities involved in the EAW procedure have direct contact with other States' competent judicial authorities for the purposes of addressing possible issues and difficulties with specific cases, especially when additional information is needed for the execution of the EAW. This cooperation is conducted through electronic enquiries and, if there is an urgent need, by telephone, by telephone conference or through coordination meetings.

The PGO and district courts also use the European Judicial Network (henceforth 'EJN') to help address issues that may arise, such as finding the competent authority to receive the EAW, obtaining additional information, or finding out whether a specific act gives rise to criminal or other liability under the law of the executing State. In urgent cases they use Interpol and **SIRENE** channels.

3.1.1. Procedure when Lithuania acts as the executing State

The role of the PGO is to prepare an application of the EAW received from the other Member State for Vilnius Regional Court. Preparation of the application involves examining the EAW forms, which means that the PGO checks whether all requirements are fulfilled: e.g. double criminality; mandatory and optional grounds for refusal (also in absentia cases); whether guarantees were given to a person by the issuing Member State in particular cases, in accordance with Article 5 of FD584, etc.

The Lithuanian authorities accept the EAW and the documentation in Lithuanian or in English.

If the EAW is issued for a person with international immunity from criminal jurisdiction, or if there is no competent authority authorisation to prosecute a person when such authorisation is required by law, the PGO must apply to the competent authority of Lithuania to grant such permission or waive immunity.

The prosecutor always informs relatives, or, if the arrested person is a foreigner, the Ministry of Foreign Affairs (MoFA), or, if a requested person wishes, a diplomatic representation or consulate. The prosecutor also informs the person in question about his or her right to request that a lawyer be assigned to him or her in the issuing State before surrender, which must be communicated immediately after the arrest in a language the requested person understands. The PGO immediately informs the competent authority of the issuing State and, upon receipt, promptly notifies the person making the request and the person's lawyer. An application by a person to appoint a lawyer in the issuing State does not suspend the execution of the transfer of the person from Lithuania or the execution of the transfer of the person in respect of whom the EAW has become effective.

If a person who is the subject of an EAW does not understand the language in which the EAW is drawn up or translated by the issuing State, the EAW is translated into the person's mother language. The person is always provided with a translated copy of the EAW, and if needed an interpreter will attend the surrender at the hearing.

The hearing before the prosecutor is always carried out in the presence of a defence lawyer. If it is not carried out in presence, audio and video should be recorded and the recording must be attached to the case file. The prosecutor explains the surrender, the content of the EAW, the meaning of the speciality rule and its legal consequences. The person's consent or disagreement is expressed in writing and approved by his/her signature.

If a person consents to be surrendered, the prosecutor must refer to Vilnius Regional Court with the application for surrender within three days. A judge of Vilnius Regional Court must hold a hearing within seven days. At the hearing, the person concerned must repeat his/her consent before the competent judge, who checks whether the person to be surrendered voluntarily agreed to surrender and is aware of the legal consequences of consent concerning the speciality rule. The person can change his or her mind in court. In such cases, the Lithuanian court will decide on the execution of an EAW, taking into account whether the person sought has consented to the execution of the EAW or not.

The requested person can ask for a copy of the judgment that convicted him or her. The Lithuanian executing authorities also examine whether the requested person was summonsed according to the requirements of the law, or the defendant received official notification of the scheduled date and place of the hearing and the consequences of being absent from the hearing, the right to lodge an appeal or to ask for a retrial of the hearing that led to conviction, the right to appoint a lawyer and the right to ask the State to appoint a lawyer. The same conditions and procedures apply in respect of Lithuanian judgments which were issued in absentia. Where Lithuania is an executing State, the Lithuanian authorities respect and follow the deadlines for the issuance of their final decision on the execution or non-execution of an EAW.

The participation of the prosecutor and the defence counsel during such a hearing is obligatory. If the information received is insufficient to make the decision, the judge instructs the PGO to apply immediately to the requesting institution for the additional information needed. If the information received is still not sufficient to decide, a judge may apply directly to the requesting institution.

If the person has consented to be surrendered to the issuing State, the decision on surrender must be taken within a maximum of 10 days from the date of the written consent. In other cases, the decision on the person's surrender must be taken no later than 60 days from the date of arrest.

The person against whom the order was issued, his/her lawyer and the prosecutor have the right to appeal to the Lithuanian Court of Appeal within seven days from the date of the order. The order of the Lithuanian Court of Appeal judge is final and not subject to appeal in cassation.

Consequently, a prosecutor informs the issuing authorities about the Lithuanian court's decision on the execution of the EAW by providing information about the date of the decision; the offences for which the person is surrendered; the date on which the decision becomes final; the appeal procedure, if applicable; the requested person's position as regards the application of the speciality rule; compulsory measures applied to the requested person to execute the EAW; and their duration.

If an issuing State, after a person has already been surrendered from Lithuania, submits a request for the prosecution of that person or the execution of a sentence for a criminal offence for which he or she has not been surrendered under an EAW, or for the transfer of that person - in such a case, the request is examined, and the PGO gives consent.

The PGO must give consent or disagreement regarding the request for expansion of the scope of criminal prosecution within 20 days of the date of receipt of the request. The consent of the PGO must be approved within ten days by a ruling of a judge of the Vilnius Regional Court.

In some cases, the Lithuanian authorities, like those of other Member States, face problems with the interpretation of the documents that have been issued by other Member States, but they do their best to overcome these difficulties.

3.1.2. Procedure when Lithuania acts as the issuing State

When the Lithuanian judicial authorities issue an EAW, it is forwarded to the SIRENE Bureau to enter an alert in Schengen Information System or a red notice/diffusion in Interpol for the arrest of the person sought. In addition, when information via SIRENE or the Interpol channel is received that the person sought has been arrested in another Member State, the SIRENE Bureau informs a judicial authority which has issued an EAW and the police authority responsible for the national search.

The initiative always comes from a prosecutor or a judge, from any prosecutor's office or court, who fills in the application for the EAW, including the relevant case details, and submits the application of the EAW to the authority entitled to issue the EAW. In the case of EAWs for criminal prosecution purposes, prosecutors and judges submit these applications or drafts to the PGO, where there are several prosecutors who specialise in international cooperation.

In the case of EAWs for the enforcement of a custodial sentence, the courts send their EAW applications to the regional courts, which are the authorities competent to issue the EAW. In this case, the regional court may also decide not to issue the EAW.

Such a practice ensures that the EAWs are filled out correctly and uniformly. Furthermore, the issuance of the EAW is not automatic: the PGO and regional courts review the EAW applications/drafts and may decide not to issue the EAW (most commonly if the principle of proportionality, discussed below, is not complied with). The PGO and regional courts must issue EAWs within five days of receipt of the application.

The competent authorities assess the requests, their justification, and proportionality checks, and add photos and fingerprints if available. They also check the criminal records of the person, so as to issue only one EAW if there are several criminal prosecutions against the same person and thus avoid a later request for expansion of the scope of criminal prosecution. If additional information is needed, the PGO asks a relevant prosecutor or judge to provide it within the prescribed time limit; otherwise, the issuance of the EAW is rejected.

The PGO and the regional courts maintain direct contact with the authorities of the other Member States, usually via electronic means, but also sometimes by telephone or through coordination meetings when needed. They also use the EJM to help address issues that may arise, such as finding the authority competent to receive the EAW, obtaining additional information, or finding out whether a specific act gives rise to criminal or other liability under the law of the executing State. In urgent cases they use Interpol and SIRENE channels.

A prosecutor or judge has to issue an EAW within five days of the request being received. The EAW on behalf of the PGO is signed by the Prosecutor-General or a prosecutor authorised by him/her, who in practice is the Deputy Prosecutor-General, the Head of the PGO's Criminal Prosecution Department or the latter's deputies.

On 17 August 2017, Lithuania launched the electronic module 'Integrated Information System for Criminal Proceedings (IBPS)' in the field of international legal assistance. It is a unified information system connected with 30 registers of information systems. It also contains electronic forms used in international mutual cooperation, such as the EAW form, transfers of criminal proceedings, etc. The system is used by prosecutors and courts in pre-trial investigation stages. It is an efficient tool that speeds up pre-trial investigations and allows access to all pre-trial files for authorities involved throughout Lithuania.

Thus, an IBPS system warning will appear if several investigations are being carried out. It will allow all authorities involved in the pre-trial investigations to issue one EAW for all criminal proceedings being conducted instead of multiple EAWs, which is much more effective, especially for criminal proceedings for less severe offences involving minor damage and lighter penalties.

Benefits of the IBPS include: all documents and forms are electronically generated within the system; information from different registries for forms such as the EAW etc. are entered automatically; all decisions are made within the system; all documents are signed with the electronic signature and stored in Adobe format; pre-trial investigation files can be accessed, etc.

Within the PGO, the translation division provides translations into English, German or Russian language. If other languages are needed, translations are produced outside the PGO.

In cases where a person for whom an EAW has been issued wishes to have a lawyer during the EAW execution procedure, the authority that issued the EAW immediately provides the requested person with information on the procedure for exercising the right to a lawyer, including the right to state-guaranteed legal aid, in Lithuania.

The CPB is responsible for the actual transfer of the person after the decision on surrender is final, at the instruction of the PGO or the regional court, depending on who issued the EAW. Transit permission is requested by the PGO for its EAWs and by the Ministry of Justice for EAWs issued by courts.

3.2. The principle of proportionality

On the application of the principle of proportionality, point 7.2.1.5. of the evaluation report of the fourth round of mutual evaluations (12399/2/07/ REV 2, CRIMORG 134 COPEN 121 EJN 25 EUROJUST 45) pointed out that the number of EAWs issued by Lithuania was ‘most probably the highest rate of any Member State’ since they had not carried out the proportionality tests in each case. And while stating that this rate was not necessarily a problem, it invited the European Union to address the issue. In the meantime, the Handbook on the EAW has been adopted and Lithuania has incorporated the principle of proportionality in its legislation.

Notably, Article 69-1 CCP¹ Paragraph 3 gives the PGO or the regional court the task of assessing whether the EAW to be issued is in line with ‘*the principles of proportionality and procedural economy taking into account the nature and extent of the danger associated with the offence committed and the character of the person suspected, accused or sentenced.*’

¹ Article 69-1 of the CCP:

1. In order to take over from a Member State of the European Union a citizen of the Republic of Lithuania or another person whose criminal prosecution has been initiated in the Republic of Lithuania, the Prosecutor General's Office of the Republic of Lithuania, upon receipt of a court order to arrest the person, shall issue a European Arrest Warrant and shall directly or through the Prosecutor of the Prosecutor General's Office of the Republic of Lithuania - the Lithuanian National Member of Eurojust (the deputy of the Lithuanian National Member of Eurojust), apply to the competent institution of a Member State of the European Union for surrender of the person specified in the European Arrest Warrant.
2. For a citizen of the Republic of Lithuania or another person who has been sentenced to imprisonment in the Republic of Lithuania by a final conviction, but who has absconded from serving the sentence in a Member State of the European Union, a European arrest warrant shall be issued by a regional court and directly addressed to the competent authority of that State in accordance with the verdict or decision to lift the suspension of the execution of the sentence, or the decision to send a person released on parole from a correctional institution to a correctional institution to serve the remainder of the sentence of imprisonment in the jurisdiction of the court which issued the decision. If necessary, the Regional Court may transmit the European arrest warrant to the competent authority of a Member State of the European Union through the Ministry of Justice of the Republic of Lithuania or through the Lithuanian National Member for Eurojust (Deputy National Member for Eurojust).
3. The Prosecutor-General's Office of the Republic of Lithuania or a Regional Court of the Republic of Lithuania, acting on a European arrest warrant, shall assess whether the surrender of a person under a European arrest warrant would be in accordance with the principles of proportionality and procedural economy, taking into account the nature and extent of the danger associated with the offence committed and the character of the person suspected, accused or sentenced.
4. The procedure for issuing a European arrest warrant and for surrendering a person pursuant to a European arrest warrant shall be established by the Prosecutor-General of the Republic of Lithuania and the Minister for Justice of the Republic of Lithuania.

So, when deciding on the issuance of the EAW, the PGO or regional court assesses whether surrender of the persons under the EAW would meet the principles of proportionality and cost-effectiveness considering the character and extent of danger associated with the crime committed as well as the character of the suspected, accused or convicted person. They also check the criminal records and the history of criminal proceedings against the person, to include all prosecutions in one EAW and avoid subsequent requests to extend the scope of the prosecution.

According to the information gathered by the team of experts during the on-the-spot visit, the PGO takes this role very seriously. The impact of the proportionality check is reflected in the figures provided by Lithuania in its questionnaire reply, which states that in 2018, of the 284 requests to issue an EAW, it complied with only 224 requests, either in pre-trial investigations or at the trial stage. The figures given to the expert team during the on-the-spot visit were slightly different but consistent: in 2018, 174 EAWs issued, out of 234 requests; in 2019, 244 EAWs issued, out of 198 requests; and in 2020, 138 EAWs issued, out of 116 requests. The most frequent reason for rejection was incompatibility with the principle of proportionality.

Where the PGO refuses to issue an EAW concerning pre-trial proceedings, the requesting judicial authorities are informed of the reason, and in particular whether the ground was a lack of proportionality, and the PGO also suggests alternative ways the goal could be achieved.

Judicial authorities present during the meeting stated that they did not perceive the PGO's assessment of the proportionality rule as interference with independence of the judiciary.

Practitioners noted that they had always taken account of the proportionality principles, but this provision was incorporated into the Lithuanian CCP (Code of Criminal Procedure) only in 2013 (Article 691(3) CCP).

The experts conclude that Lithuanian legislation and its practical application comply fully with the principle of proportionality as reflected in point 2.4 of the EAW Handbook.

3.3. Exchange of information

3.3.1. When Lithuania acted as the executing State

The PGO informs the issuing authorities ex officio about the Lithuanian court's decision on the execution of the EAW, providing information about: the date of adoption of the decision; the criminal offences for which the person is to be surrendered; the date on which the decision becomes final; the appeals procedure, if applicable; the requested person's position as regards the application of the speciality rule; supervision measures applied to the requested person for execution of the EAW, and their duration; and the officials or body tasked with organising the person's actual transfer. A copy of the decision is also forwarded.

The PGO contacts the competent authority of the issuing State to obtain additional information about which remand prison the person would be placed in and what the detention conditions are (how many people will share one cell; how many m² of personal space he/she would have; the sanitary conditions; if there is an outside area for walking, etc.). After receiving the requested information, the PGO prepares an application for surrender under EAW and forwards it to the Vilnius Regional Court. Finally, the judge in charge and the PGO prosecutor check grounds for non-recognition together.

Lithuanian authorities also use direct communication to obtain supplementary information about prison conditions, to finalise execution proceedings on time.

Lithuanian practitioners noted that they had faced problems in cases of incomplete information provided by the issuing State, particularly in part (e) of the EAW forms. Missing information included details of the description of the circumstances in which the offence(s) were committed, including the time, place and degree of participation in the offence(s) by the requested person.

Thus, it is challenging for the Lithuanian judicial authorities to discern whether there is an optional or mandatory ground for non-execution of a EAW. In such cases, the Lithuanian judicial authorities and the SIRENE Bureau of the International Police Cooperation Division of Lithuania are responsible for contacting the issuing authorities and requesting the missing information. The Lithuanian courts explain what must be clarified by the Member State that issued the EAW.

Lithuanian judicial authorities usually comply with the time limits in cases where requests for additional information are sent.

The law of Lithuania is in full conformity with Article 15 of the EAW Framework Decision and lays down strict deadlines for the execution of a EAW. Deadlines are always set for receipt of the additional requested information.

3.3.2. When Lithuania acted as the issuing State

When some other EU Member States are executing an EAW issued by the Lithuanian PGO, information is received only in response to a separate request from the PGO, e.g. on the date of adoption of the decision; the date on which the decision becomes final; the appeals procedure, if applicable; the requested person's position as regards the application of the speciality rule; supervision measures applied to the requested person for execution of the EAW, and their duration, etc.

On the other hand, information on EAWs issued by courts is generally received without a particular request.

The PGO had received various inquiries from EU Member States in cases where persons had been arrested and were to be surrendered to Lithuania under an EAW, on matters such as: adjusting the period of detention, detention conditions in Lithuania, the compatibility of some of the separate sentences imposed (e.g. in some Member States' legal systems the cumulative sentences provided for in Lithuanian legislation could be tantamount to double jeopardy), adjusting the length of the ultimate custodial sentence, etc.

All additional information requested by the executing State was provided in line with Article 15(2) of the EAW FD. Usually, a specific deadline was not indicated for providing additional information or clarifications to the executing authority; however, it was stressed that the information should be provided as quickly as possible. In cases where a deadline was specified for providing additional information, the authority issuing the EAW met that deadline. In practice, the PGO has rarely experienced cases where it has considered information requested by the executing authorities to be unnecessary. Possible examples would be requests to describe the photograph sent with the EAW, or requests to explain how active attempts have been made to find the person abroad.

Lithuanian authorities, like those of other Member States, in some cases face problems with the interpretation of the documents issued by other Member States, but they do their best to overcome these difficulties.

The courts endeavour to react promptly to all the executing authorities' requests and inquiries, provide all the information requested, and respond in detail to questions asked by the authorities executing EAWs. There have been situations in which other EU Member States' executing authorities have received replies to their questions; however, they asked for more details (usually, very exhaustive information about a person's future detention conditions if they were to be surrendered to Lithuania under the EAW). When faced with such situations, the courts themselves provide the information to the executing foreign authorities if they have it, or otherwise refer the matter to the specific institution/body able to provide that information, i.e. the Prisons Department.

The courts have encountered cases where the executing State authorities requested information that was not necessary. For example, information regarding guarantees of healthcare provision at the place of detention, or information already provided in the EAW – about the person's participation in hearings when the judgment was handed down, or being informed of the judgment, etc.

3.4. Grounds for refusal

Lithuania has adopted the Framework Decision on the EAW without any reservations. The Lithuanian legislation has embodied all mandatory and optional grounds for the refusal of execution of a EAW. Nevertheless, the refusal of an EAW for humanitarian reasons or for a possible breach of the fundamental human rights of the sought person must be the verdict of the court in exceptional cases. The EAW process was enacted because all the Member States are democratic states and the principle of trust is one of the basic factors for the existence of the EAW.

The Lithuanian authorities examine the double criminality principle, except for EAWs that have been issued for one of the crimes mentioned in the FD and are excluded from this principle. The Lithuanian courts may decide not to execute an EAW because they may be concerned that in certain cases the fundamental rights of the requested person may be violated. Such decisions should be issued after a thorough investigation of the case.

3.4.1. Refusal in the event of a potential risk of violation of fundamental rights in relation to detention

The Lithuanians' executing authorities understand that the EAW mechanism is based on a very high level of mutual trust between the Member States, and they respect and trust the other states' competent authorities and decisions.

Lithuanian law on the execution of EAWs issued by the other Member States has adopted and embodied the provisions of the FD 2002/584/JHA without any alterations, modifications or reservations. Lithuania is one of the few Member States that have enacted legislation in respect of the execution of EAWs in full conformity with the FD in question. Both Lithuanian law and the FD include the same mandatory and optional grounds for the refusal of a EAW that has been issued by another Member State.

However, Article 9(3) of the Lithuanian Criminal Code provides as a mandatory ground for refusal of the execution of an EAW the case in which the surrender “would violate fundamental human rights and/or freedoms.”

According to information given to the expert team during the on-the-spot visit, this ground for refusal receives concrete application. The assessment of respect for fundamental rights is a standard check in the execution of an EAW and assessment of detention conditions in the issuing State. Both the threat, indicated by the requested person, of detention conditions failing to comply with the requirements of the ECHR and the position of the authority executing the EAW on the matter are of equal importance. Where the requested person has indicated real threats associated with detention conditions, even if that person subsequently consents in writing to being surrendered, but the final court decision has not yet been taken, the simplified surrender procedure can be halted in order to contact the competent authority of the issuing State.

The PGO as issuing authority has had some cases where the executing State requested information about detention conditions. In a limited number of cases, a guarantee was requested, or surrender to Lithuania was subject to the condition that the size of cell in correctional facilities complies with Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms – guaranteeing no less than 3 m² of personal space.

However, once the PGO has provided the executing State with additional information on detention conditions, all EAWs have been executed, except for two cases where the executing State refused to execute an EAW for its citizens issued by a Lithuanian prosecutor, as it considered that the Lithuanian detention conditions would be in breach of Article 4 of the Charter of Fundamental Rights of the European Union. In all cases, the requested information on detention conditions was provided within the time limits set by the executing State.

Hence, in practice, even where the execution of an EAW issued by the PGO failed to meet the time limits set out in Article 17 of the EAW FD, this was not linked to any inadequacy or incompleteness in Lithuania’s response, or failure to comply with the deadlines set for replying.

The PGO, as the executing authority for assessing the potential risk of violation of fundamental rights concerning detention conditions, uses the standards for prisons laid down by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and also the CPT's reports following visits to specific countries, as a source from which to retrieve and assess current information on detention conditions in general and in the requesting State. It also analyses the European Court of Human Rights' judgments against the State that issued the EAW it is executing, and particularly any infringements of Article 3 of the ECHR in this context. Other sources are judgments of national courts, and reports, statements, communications and other documents produced by the Council of Europe or UN bodies relating to detention conditions.

When an executing State asks for information on prison conditions, the Directorate of Organisation and Operation of Lithuanian Prisons provides information on detention conditions in Lithuanian prisons. On the basis of the statistics of Lithuanian authorities and the impression after the visit to the prison of Vilnius, Lithuania does not seem to face problems with detention conditions and overcrowded prisons.

As executing authorities, Lithuanian authorities have dealt with a limited number of EAW proceedings in which arguments were raised in relation to detention conditions.

The report on the fourth round of mutual evaluations (see point 7.3.1.4. on grounds for refusal not addressed in the FD) highlighted that the FD sets out a closed list of mandatory and optional refusal grounds which does not authorise Member States to add any further grounds. Since then, the CJEU has delivered a number of judgments on the issue of checking compliance with fundamental rights while executing an EAW.

Taking into account the case-law of the CJEU (the Aranyosi-Căldăraru case (C 404/15 and C 659/15 PPU); the Dumitru-Tudor Dorobantu case (Case C 128/18²)), experts are of the opinion that the refusal to execute an EAW on the ground of a possible breach of fundamental rights or freedoms is compliant with the FD only in very limited and exceptional cases, where there is evidence of a real risk of inhuman or degrading treatment with regard to that specific case, and insofar as by executing the EAW the executing authorities would infringe compliance with fundamental rights.

²Article 1(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, read in conjunction with Article 4 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that when the executing judicial authority has objective, reliable, specific and properly updated information showing there to be systemic or generalised deficiencies in the conditions of detention in the prisons of the issuing Member State, it must, for the purpose of assessing whether there are substantial grounds for believing that, following the surrender to the issuing Member State of the person subject to a European arrest warrant, that person will run a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter, take account of all the relevant physical aspects of the conditions of detention in the prison in which it is actually intended that that person will be detained, such as the personal space available to each detainee in a cell in that prison, sanitary conditions and the extent of the detainee's freedom of movement within the prison. That assessment is not limited to the review of obvious inadequacies. For the purposes of that assessment, the executing judicial authority must request from the issuing judicial authority the information that it deems necessary and must rely, in principle, on the assurances given by the issuing judicial authority, in the absence of any specific indications that the conditions of detention infringe Article 4 of the Charter of Fundamental Rights.

As regards, in particular, the personal space available to each detainee, the executing judicial authority must, in the absence, currently, of minimum standards in that respect under EU law, take account of the minimum requirements under Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, as interpreted by the European Court of Human Rights. Although, in calculating that available space, the area occupied by sanitary facilities should not be taken into account, the calculation should include space occupied by furniture. Detainees must, however, still have the possibility of moving around normally within the cell.

The executing judicial authority cannot rule out the existence of a real risk of inhuman or degrading treatment merely because the person concerned has, in the issuing Member State, a legal remedy enabling that person to challenge the conditions of his detention or because there are, in the issuing Member State, legislative or structural measures that are intended to reinforce the monitoring of detention conditions.

A finding, by the executing judicial authority, that there are substantial grounds for believing that, following the surrender of the person concerned to the issuing Member State, that person will run such a risk, because of the conditions of detention prevailing in the prison in which it is actually intended that he will be detained, cannot be weighed, for the purposes of deciding on that surrender, against considerations relating to the efficacy of judicial cooperation in criminal matters and to the principles of mutual trust and recognition.

In light of that interpretation, Article 9-1(3) of the Lithuanian Criminal Code seems too broad to comply with the FD.³ This impression is reflected by the figures offered by the PGO highlighting that the ground for refusal on the basis of respect for fundamental rights is one of the reasons used (one out of three refusals in 2017; two out of three in 2018; two out of four in 2019).

On the other hand, the experts consider that concrete EU action on detention condition standards within the EU would be the best way forward: it would grant fundamental rights to be respected and it would overcome the need felt by some Member States to have such grounds for refusal.

3.4.2. Refusal in the event of a judgment in absentia

After the adoption of FD 2009/299/JHA, Lithuania amended the law governing the EAW (Article 9-1(5) of the CC of Lithuania and Article 71-1(9) of the CCP of Lithuania) incorporating in domestic law the new EU rules on in absentia judgments. In the questionnaire it is highlighted that the number of requests for information has increased, especially in cases where the EAW is based on more than one judicial decision. Practitioners told experts the same, suggesting that an amendment of the Annex requiring more information in cases of judgment in absentia would help.

The Lithuanian practitioners as executing authorities consider that the issuing authority should provide more extensive information whenever Article 4a of the EAW FD applies (for example about the sentenced person's participation in court proceedings at first instance and/or on appeal, in cases where a cumulative sentence was imposed).

³ Article 9-1(3) point (1) of the CC of Lithuania:

3. A citizen of the Republic of Lithuania or an alien shall not be surrendered to the issuing Member State where:

(1) surrender of the person under the European arrest warrant would violate fundamental human rights and/or freedoms;

Lithuanian practitioners as executing authorities have faced difficulties as a result of a lack of information in part (d) of the EAW form. The issuing authorities sometimes do not tick appropriate boxes provided in section (d) and do not indicate whether relevant conditions were met when a decision was rendered in absentia. The Lithuanian practitioners added that issuing authorities should give comprehensive, transparent and factual information (about the way a person was summonsed, whether he/she was present at the hearing, whether the defence lawyer represented him/her or not, and so on).

Insufficient information in part (d) of the EAW form makes it challenging to establish grounds for mandatory and optional non-execution of EAW received.

As the executing State, Lithuania encountered a case where the EAW was issued in absentia (Poland). The person in question was a Lithuanian citizen who had a temporary address in Poland; however, when the summons was sent, the address was no longer valid. The person in question had already returned to Lithuania. It seems the Polish issuing authorities did not verify whether the person was still living at the address provided. Furthermore, the relevant EAW was issued for criminal prosecution. So if the issuing authority had checked whether the temporary address was still valid (which it was not), they could have used a different instrument rather than the EAW.

3.4.3. Other grounds for refusal

Some other issues came out from the questionnaire and from talking with practitioners:

- occasional difficulties encountered by the Prosecutor-General's Office with ne bis in idem (where the EAW was issued in respect of criminal acts that were subject to pre-trial investigation in Lithuania and the person was released from criminal liability under Article 39-1 of the Criminal Code – *'Release from criminal liability when a person actively assisted in detecting criminal acts committed by members of an organised group or a criminal association'*);

- assessment of ‘final judgment’ elements (where the EAW was issued for a judgment issued in absentia and it is not clear whether the accused has the right to a retrial);
- assessment of double criminality (where there is a lack of data about the degree of participation, the role played by the requested person, the elements constituting the criminal offence, or the value or quantity of the objects that the offence concerned).

The PGO practitioners stated that when the PGO acts as issuing authority, it always provides as much information as possible, to allow the executing State to assess grounds for refusal (such as the description of the offence, the circumstances, the time and place and the role played by the requested person, degree of participation, and any other details relevant to enable the executing authority to decide whether the act would give rise to criminal liability if committed on the territory of its State).

Furthermore, when acting as executing authority and assessing double criminality, the PGO checks whether the factual circumstances described by the issuing State’s competent authority in part (e) of the EAW would be subject to a criminal penalty on Lithuanian territory if it occurred there. Attention is paid to the factual circumstances of the case, rather than the name given to the offence under the criminal laws of the requesting State or the terminology used.

3.5. Statistics

Lithuanian authorities do not keep regular statistics; however, they provided the evaluation team with statistical data on the issuing and execution of EAWs during 2019 and 2020.

Table 1 shows data on the number of EAWs received, refused, postponed and withdrawn where Lithuania acted as the executing State.

Table 1 - Lithuania as executing State

	2019	2020
Received	108	75
Refused	4	-
Postponed	8	7
Withdrawn	1	2

According to the data provided, for EAWs received in 2019, out of the total number of EAWs received, detention was applied in 82 instances, and in the remaining 26 cases either milder constraint measures were used or the person had already been arrested in a domestic criminal case. In 2020, detention was applied in 61 instances, and in the other 14 cases either milder constraint measures were used or the person had already been arrested in a domestic criminal case.

Regarding the rejected EAWs: in 2019, four EAWs were refused. In one case, the ground concerned Article 4(1) of FD 584, in another case it concerned Article 4(6), and the other two cases concerned Article 1(3). Another eight EAW executions were postponed because the requested person was serving a sentence imposed under national criminal proceedings. Finally, an EAW was withdrawn and converted into criminal proceedings in one case, because the person agreed to appear in court without being surrendered.

In 2020, no EAWs were rejected. However, in seven cases, execution was postponed because a requested person was serving a sentence on the basis of national criminal procedure. In two instances, an EAW was withdrawn (because a person was ill).

Table 2 shows data on the number of EAWs issued when Lithuania acted as the issuing State, divided by stages (execution of the custodial sentence or prosecution).

Table 2 - Lithuania as issuing State

	2019		2020	
	For execution purposes	For prosecution purposes	For execution purposes	For prosecution purposes
Issued	100	198	81	116
Total issued	298		197	

From the table above, it is evident that more EAWs were issued in 2019 than in 2020. However, in both years, more EAWs were issued for prosecution than for execution purposes.

As for the outcomes, of the total of 298 EAWs issued in 2019, 60 EAWs resulted in effective surrender, of which 46 related to prosecution and 14 to execution of the custodial sentence.

In 2020, of the total of 197 issued EAWs, 48 EAWs resulted in effective surrender based on EAWs issued in 2020, and 147 surrenders based on EAWs issued regardless of the year. In addition, 132 surrenders related to prosecution purposes, and 63 to execution of custodial sentences.

3.6. Further challenges

Most practical difficulties with the execution of EAWs are solved by additional requests for information to the competent authorities and are therefore not problematic.

But some challenges can arise when organising the transit of the surrendered person. The authority competent to submit a transit request is the PGO for its EAWs and by the Ministry of Justice for EAWs issued by courts, while the Lithuanian CPB organises the practical aspects of the transfer. According to CPB, problems they have encountered in connection with the transit of surrendered persons include the following:

- air traffic has been disrupted, and a new date has to be arranged very quickly;
- some Member States do not process applications within transit deadlines;

- sometimes information about the final decision is received late or through the **SIRENE** channel, so the Lithuanian authorities have only seven days for logistics instead of ten days;
- a person to be transferred based on an EAW refuses to take the COVID test (airline companies will not carry a person without a COVID test);
- sometimes a person being surrendered, to whom a detention order has not applied, does not appear at the pick-up place, so the convoy has to be organised repeatedly.

One Lithuanian authority had encountered a case in which, according to the statement of the person to be surrendered, the detention conditions in the institution where he was to be placed did not meet EU standards. The Lithuanian authority immediately contacted the competent issuing authority and asked which remand prison he would be in. As a result, the issuing authority guaranteed that the person would be placed in a modern, newly built facility with double cells, proper lighting and acceptable temperature. However, the person in question was eventually placed in another prison, with a small cell and without a sanitary unit.

Lithuanian practitioners as executing authorities pointed out that in practice they regularly receive incomplete EAWs from other Member States. Most such cases relate to section (e) of the EAW form, especially concerning the accurate description of circumstances in which the offences were committed, including the time, place and degree of participation, the value or quantity of the objects of a criminal offence; sometimes the number of criminal offences is omitted or does not correspond to the actual description of circumstances of an incriminating criminal offence (e.g. France, Belgium).

They also added that in their view, issuing authorities of some Member States have insufficient familiarity with the Handbook on how to issue and execute EAW.

As mentioned in part 3.4.2, Lithuanian practitioners as executing authorities have faced difficulties due to a lack of information in part (d) of the EAW form. The issuing authorities sometimes do not tick the appropriate boxes provided in section (d) and do not provide information on whether relevant conditions were met when a decision has been rendered in absentia.

Lithuanian practitioners pointed out that another problem is difficulties in identifying the criminal offence of which the requested person is accused and for how many years, because some issuing States provide only title and reference to the CC and then sentence, which combines everything (France, Portugal, Ireland). However, since many Member States publish their CC on the internet, Lithuanian practitioners do online searches to understand the meaning of references and what kinds of criminal offence they refer to.

The Lithuanian authorities had experienced a case where the EAW issuing authority did not adequately establish the identity of the person sought under the EAW in the scope of its criminal proceedings (Luxembourg). Since the Lithuanian authorities had some doubts about the person's identity, they contacted the issuing authority, which ultimately withdrew the EAW. They also encountered another case concerning incorrect identification of the person for whom the EAW had been issued. The identity number did not correspond to the photo and fingerprints presented.

There have been problems reaching authorities of the other Member States in urgent cases outside of normal working hours. Therefore it is sometimes difficult to comply with the deadline for the surrender of the requested person.

In this context, the Lithuanian authorities consider that to strengthen mutual cooperation and make the EAW even more successful, it might be helpful to have a clearer definition of the 'unforeseen circumstances' that can make it impracticable to surrender the person by the deadline set.

3.7. Conclusions

The FD seems to be very well implemented and applied. The evaluation team want to highlight that Lithuania has taken action on recommendations from the fourth round of evaluation: the Ministry of Justice is no longer entitled to issue EAWs; coordination among competent authorities seems to work well, due in part to the small size of the country; no problems linked to equipment were observed; and the proportionality rule has been incorporated in the legal system.

Due to the relatively small size of the country, Lithuania is able to have a solid number of judges and prosecutors who specialise in the issuing of EAWs, especially at the PGO. This helps prevent mistakes in the EAW forms and also helps with cooperation among competent Lithuanian authorities. The attitude of the Lithuanian authorities is very proactive and they are in regular, direct contact with their partners in other Member States.

Practitioners met by the expert team did not highlight any specific difficulties; on the contrary, the attitude they showed in dealing with the EAW appeared extremely positive and proactive, always looking for the best way to find solutions that might speed up the process and solve practical problems raised with or by other Member States.

Another very practical point is that issued EAWs are immediately translated into English. However, if Lithuanian authorities find out from search information that the person requested is of Polish, French or Spanish nationality, the EAW is translated into the corresponding language as well as English, since it is to be presumed that the person might be arrested in his/her home country: it helps speed up proceedings. The PGO even has its own translators, providing translations into the languages needed most often and available to work even at weekends. This is definitely good practice.

Sometimes EAWs or other documents were not appropriately translated into Lithuanian and not understandable (mostly those from Spain). Since it is difficult to obtain reliable translations for some less common languages, such as Lithuanian, it might be advisable for Member States in such cases to forward EAWs translated into English.

It seems that statistics provided by Lithuanian authorities are not always consistent, because figures in the replies to the questionnaire appear to be different from those given to experts during the on-the-spot visit.

In addition, the IBPS computer system for international cooperation (as described above in 3.1.2. (article 7) used by the Prosecutor-General's Office, is very helpful. However, it would be helpful if the IBPS system were operational for trial-stage cases.

4. FRAMEWORK DECISION 2008/909/JHA ON THE APPLICATION OF THE PRINCIPLE OF MUTUAL RECOGNITION TO JUDGMENTS IN CRIMINAL MATTERS IMPOSING CUSTODIAL SENTENCES OR MEASURES INVOLVING DEPRIVATION OF LIBERTY FOR THE PURPOSE OF THEIR ENFORCEMENT IN THE EUROPEAN UNION

FD 2008/909/JHA (henceforth ‘FD 909’) has been implemented in Lithuanian legislation by a separate law, Act No XII-1322 of Lithuania on the recognition and enforcement of judgments in criminal matters adopted by European Union Member States (henceforth ‘Act No XII-1322’), adopted on 13 November 2014, which came into force on 1 April 2015.

However, Act No XII-1322 was amended by Act No XIII-3349 of 5 November 2020, which entered into force in July 2021. The subject of the amendments was the transfer of competences from the Ministry of Justice to the Prison Department under the Ministry of Justice (henceforth ‘Prison Department’).

4.1. Authorities competent for the recognition of the judgment and execution of the sentence

When Lithuania acted as the executing State, until 1 July 2021 the authority competent to receive the certificates for the recognition and enforcement of judgment was the Ministry of Justice. However, from 1 July 2021, competence to receive certificates has been transferred to the Prison Department. It acts as an intermediary authority that forwards received documentation to a district court having jurisdiction over the matter, carries out consultations with the issuing authorities, coordinates the activities of prison facilities, provides methodological assistance to prison facilities and, at the request of other Member States, provides information on detention conditions in Lithuanian prisons.

District courts are competent to recognise judgments imposing custodial sentences issued in another Member State. It also ensures consistency among sentences or other measures imposed in other Member States and the sentences under the Lithuanian CC and informs the competent authorities of the other Member States about decisions taken.

The Public Security Service and the Lithuanian CPB carry out the actual transfer of sentenced persons.

When Lithuania acts as issuing State, the district courts are the authorities competent for forwarding judgments imposing custodial sentences to the other EU Member States.

Lithuania has not appointed a central authority under FD 909. When Lithuania is the issuing State, the Prison Department performs the function of consultations rather than the function of central authority. As of 1 July 2021, the Ministry of Justice has only one function under FD 909: to submit transit requests when Lithuania is the issuing State. Nevertheless, the Ministry of Justice has a horizontal task of providing methodological assistance to Lithuanian courts to ease their daily work; this includes consultations by various means, circulars, etc.

The competent authorities have direct contact with other Member States' competent authorities using the usual means of communication, usually electronic communication.

4.1.1. When Lithuania acts as the executing authority

An application from the competent authority of another Member State on the recognition and enforcement of a custodial sentence in Lithuania is received by the relevant court through the Prison Department (through the Ministry of Justice until 1 July 2021).

The court competent to recognise the judgment involving the custodial sentence is the district court of the convict's place of residence; however, if the sentenced person is serving the sentence in a Lithuanian correctional institution, the district court of the place where the sentence is served is competent to recognise the judgment. If, on the basis of the available data, it is not possible to determine a specific competent court, competence falls to the Vilnius City District Court.

If the competent authority of another Member State requests consultation to determine whether execution of the custodial sentence in Lithuania would facilitate the convicted person's social rehabilitation, the Ministry of Justice is the authority competent to conduct such consultation and provide the requested information (from 1 July 2021 it is the Prison Department). It verifies if the convicted person is a Lithuanian citizen, whether the person resides in Lithuania, and any social, family, or other ties that would create more favourable conditions for the social rehabilitation of the convict.

The Prison Department may also, at the request of the convict or a family member, apply to the authority of the other Member State and suggest transferring the decision on the custodial sentence for enforcement to Lithuania if that would create more favourable conditions for the social rehabilitation of the convict.

Upon receipt of a decision from the other Member State on the custodial sentence and the certificate, the Prison Department must forward all the documents received within five working days of their receipt to the appropriate court, as well as information about the consultations carried out and attached copies of the related documents.

Certificates and judgments are accepted only in Lithuanian (in contrast to EAWs).

After receiving the documents, the Chairman of the Court or his deputy or the President of the Court's Criminal Division appoints a judge to hear the case.

The convicted person, his or her lawyer and the prosecutor are notified of the time of the hearing and are invited to comment on it on the instructions of the appointed judge.

Having completed the written procedure, the court decides to recognise or refuse the decision on imprisonment if there are grounds for the refusal and sends a copy of the decision to the convicted person, the person's lawyer and the prosecutor, no later than the next working day.

The prosecutor, the convicted person or the lawyer may appeal against the court's decision within seven days of receiving the court decision. An appeal against a district court ruling related to the enforcement of a sentence must be heard by a regional court. The regional court ruling is final and enforceable and cannot be appealed.

The general time limit for the whole proceedings is 30 days from the date of receipt of the documents at the court. In cases where the proceedings involve requesting additional information from the other Member State's competent authority or in case of an appeal, the time limit is extended to 90 days. Once the decision is final, the court informs the competent authorities of the other Member State, within five working days at the latest.

The Public Security Service arranges the transfer of a sentenced person from another Member State to Lithuania in cooperation with the CPB, usually within 30 days of the day the final decision entered into force.

4.1.2. When Lithuania acts as the issuing authority

According to the amendment of Act No XIII-3349, Article 18 (2), a judgment of a court of the Republic of Lithuania on a custodial sentence may be transmitted to a competent authority of a Member State of the European Union, regardless of its consent or refusal, if all of the following conditions are met:

- 1) the court reasonably believes that transferring the enforcement of the sentence to the State of the sentenced person's nationality will facilitate his or her social rehabilitation;
- 2) the person has his / her place of residence in his / her state of nationality or the Migration Department under the Ministry of the Interior of the Republic of Lithuania or the State Border Guard Service under the Ministry of the Interior has taken a decision.

A judgment of a court of the Republic of Lithuania on a custodial sentence may also be transmitted to a competent authority of a Member State of the European Union or to any person having a domicile there, on the following conditions:

- 1) the court reasonably believes that transferring the enforcement of the sentence to another Member State of the European Union will facilitate the social rehabilitation of the sentenced person;
- 2) the sentenced person consents to another European Union Member State taking over the enforcement of the custodial sentence;
- 3) the competent authority of another Member State of the European Union agrees to take over the execution of the custodial sentence.

If circumstances become apparent during the execution of a sentence that allow the judgment imposing a custodial sentence to be forwarded to another Member State for execution, the sentence executing authority applies to the relevant court with the proposal to transfer the custodial sentence. This process may be initiated by the Prison Department or at the request of an inmate, a family member or the defence lawyer, or at the request of another Member State's competent authority for referral of the judgment imposing the custodial sentence to the other Member State for execution.

The sentence executing authority applies to the court with the proposal to transfer the sentence. However, to identify more favourable conditions for social rehabilitation of the sentenced person, before applying the transfer to the relevant court, the Prison Department may engage in consultation with the appropriate Member State competent authority.

A court hearing must be held within 14 days of the date of receipt of the proposal. In court, the proposal is deliberated on under the oral procedure; all persons involved are summoned to the hearing. This includes the prisoner, the defence lawyer, the prosecutor and also a representative of the prison where the sentence is being executed.

The court's decision may be appealed within seven days of the date of receipt of the decision by the convicted person, the defence lawyer, the prosecutor, the authority enforcing the sentence or the Prison Department. After the decision has become final, the court sends the certificate along with the decision to the other Member State's competent authority. The submission of the sentence to the other Member State for execution must also indicate whether the sentenced person consents to the transfer of the custodial decision to another Member State.

4.2. Documents required for recognising the judgment and executing the sentence

4.2.1. As executing State

Under the Lithuanian CCP, judgments must be made in writing. As Lithuanian practitioners stated, in practice there have been no cases where the legislation of the issuing State would not require this.

As stipulated in Article 8(6) of Lithuania's Act No XII-1322 on the mutual recognition and execution of judgments in criminal matters by the Member States, the courts must refuse to recognise a decision by another Member State imposing a custodial sentence where the certificate received is not translated into Lithuanian, or where no translation of the decision imposing a custodial sentence, or of its key elements, into Lithuanian has been provided, if the content of those documents is not sufficient for a decision to be taken and the court has requested a translation.

Furthermore, pursuant to Article 23(1) of the Framework Decision, Lithuania has communicated that it will only recognise judgments imposing a custodial sentence issued by the other Member States if the certificate has been translated into Lithuanian. Furthermore, according to Article 23(2) of the FD, Lithuania has communicated that when it is the executing State, after receiving a judgment and certificate, it will request that the judgment or its essential elements be translated into Lithuanian, where it considers the content of the certificate to be insufficient for a decision on taking over execution.

Usually, the essential elements of the judgment are provided and are sufficient for a decision to be taken.

However, documents (certificates) translated into Lithuanian forwarded by some Member States are not always of good quality, with inappropriate legal terminology being a particular issue. Thus, to speed up the process, courts often send the documents received to be re-translated by local translators instead of requesting a new translation from the issuing authority.

Lithuania as executing State has not encountered any cases where it would be difficult to adapt the sentence due to its duration or nature being incompatible with Lithuanian law.

4.2.2. As issuing State

When Lithuania is the issuing State, the judgment with the certificate is forwarded by the Lithuanian district courts, to the competent authority of the State of enforcement to recognise the sentence, if the sentenced person is serving a sentence in Lithuania or he/she is in that other Member State. Consent, when needed (Article 18(2)), must be given before the court that issued the judgment. In Lithuanian prisons all the required and necessary documents are collected and provided to the competent authorities by members of the staff who work in the security department of the prison. When Lithuania is an issuing authority, detailed information is forwarded to the executing State. The document with the expressed consent of the convicted person is forwarded to the executing State. In addition, whether Lithuania is the issuing or the executing State, Lithuanian authorities exchange the information necessary to help both States to apply FD 909 appropriately.

Lithuanian practitioners noted that they were not aware of any cases where additional documents would be requested regularly by an executing State.

In practice, the Lithuanian practitioners always send a judgment with the certificate translated into the language of an executing Member State.

Lithuania as issuing State has not encountered any cases where it would be difficult to adapt the sentence due to its duration or nature being incompatible with Lithuanian law.

4.3. Criteria for assessing the facilitation of social rehabilitation

When Lithuania acts as the executing State, the Prison Department, after receiving the certificates and related documents for the recognition and enforcement of imprisonment, verifies and determine the sentenced person's nationality, place of residence, social, family, economic or other ties to Lithuania that would create favourable conditions for social rehabilitation, and whether transfer to Lithuania would serve the purpose of facilitating the social rehabilitation of the sentenced person. Information is generally requested going back ten years. Where there are no social links with Lithuania, a reasoned opinion is provided immediately. The Prison Department (until 1 July 2021, the Ministry of Justice) is competent to request the issuing authority to provide additional information when needed to make the decision.

Lithuania, when it acts as issuing State, before deciding to send the certificates and related documents for the recognition and enforcement of the custodial sentence to the other Member State, considers various criteria, e.g. the nationality of the sentenced person, the place, length and nature of residence and employment, social and economic ties in the other Member State, and opinion regarding the transfer. This evaluation is complex and has to be conducted in each case. An important criterion for the Lithuanian authorities is also the conditions for probation and conditional release.

To establish whether serving a sentence in the other Member State would facilitate the social rehabilitation and successful reintegration into society of the sentenced person, the Prison Department consults with the execution authority (until 1 July 2021, the Ministry of Justice).

4.3.1. Exchange of information between the issuing State and executing State

The relevant information is included in the certificate and, according to the Lithuanian authorities, is sufficient in most cases. If not, the competent authorities consult the issuing authorities or other relevant institutions (e.g. social security authorities).

From 1 July 2021, consultations based on of Article 4 (3) of FD 909 are conducted by the Prison Department (previously, by the Ministry of Justice) in direct contact with the competent authority. The Prison Department sends the results to the competent court.

The Lithuanian authorities have never been presented with an opinion by the executing State on the basis of Article 4(4) and (5).

Lithuania has no bilateral agreements on the application of FD 909.

4.3.1. Opinion and notification of the sentenced person

Sentenced persons are always asked whether they consent to being surrendered to another Member State. They can provide their opinion in writing or orally. If the opinion is taken orally, one of the authority's staff members will transcribe their words. All prisoners for whom it might be beneficial are provided with information about the right to ask to be transferred to their home Member State to serve their sentence there. As practitioners noted, if a sentenced person is a citizen of a Member State to which he or she would be transferred to serve a sentence, the Lithuanian authorities do not need the person's consent if the person is resident or habitually resides in that Member State or deportation order will be applied. However, in other cases, the consent of the person, the citizen of the other Member State, is required. (Article 18(3)).

If they want to be transferred, or if a request from another Member State has been received, all of the necessary documents (information) are collected and provided to the competent courts by the sentence executing authority

The sentenced person always receives the decision on the transfer. It is either a document prepared by the competent authority of the other Member State, or a document by the competent Lithuanian authority. Sentenced persons always sign a receipt for the decision and are provided with copies.

When Lithuania acts as the executing State, a prosecutor, the sentenced person or his/her defence lawyer are entitled to appeal against a court order recognising or not recognising the foreign judgment in Lithuania (appeals against district court orders on the execution of a judgment are heard by the regional court).

If the Ministry of Justice (from 1 July 2021, the Prison Department) disagrees that execution of the custodial sentence in Lithuania would facilitate the social rehabilitation of the sentenced person, it immediately informs the other Member State's competent authority and returns any documents it has received. No appeal is possible against such action.

When Lithuania acts as the issuing State, the sentenced person, their defence lawyer, the authority executing the sentence or the prosecutor may appeal, in accordance with the procedure provided for in Article 364 of the CCP of Lithuania, against a court order transferring the judgment for execution or refusing to transfer the judgment for execution (appeals against district court orders on the execution of a judgment are heard by the regional court).

Sentenced persons have the right to have a defence lawyer. They can also be assisted by consular offices.

4.4. Adaptation of the sentence

Article 9 of Act No XII-1322 provides rules to be applied in the adaptation of sentences. In particular, it provides that the court, with the same order enforcing the judgment, should 'combine' the sanction with the penalties provided for in the Criminal Code of Lithuania, roughly following the same criteria as those of Article 8 and Article 17 of the FD 909:

- The duration of the harmonised penalty or measure must be as close as possible to the sentence or measure imposed by another Member State of the European Union and may not be replaced by a fine or other penalty of a pecuniary nature (Article 9(2) of Act No XII-1322).

- The duration of the sentence or measure may be reduced only if and to the extent that it exceeds the maximum sentence which may be imposed under the criminal law of Lithuania for the offence concerned (Article 9 (3) of Act No XII-1322).
- The harmonised penalty or measure may not be more severe than that imposed by the court of another Member State of the European Union (Article 9 (4) of Act No XII-1322).
- The court must to include in the sentence or other measure all the time of the sentence or measure served in another Member State of the European Union and the total period of pre-trial detention and detention in another Member State of the European Union or Lithuania. (Article 9 (6) of the Act No. XII-1322 corresponds to Article 17 (2) of the FD 909).

Replying to questions 42 and 43 Lithuania said that it had not encountered any problem in the assessment of what is a ‘similar offence’ according to Article 8 of the FD or in the adaptation of the sentence, except when a fine is calculated per day or a custodial sentence is calculated in day.

In reply to question 43 Lithuania also stated that in no case had the certificate been withdrawn due to an excessively lenient sentence after adaptation. Still, practitioners told the expert team that it happened.

Lithuanian practitioners stated that there is still disagreement among practitioners on how to recognise a judgment from the other Member States by which a consolidated sentence was imposed. Lithuanian practitioners have different approaches depending on the judge who makes the decision

4.5. Grounds for non-recognition or non-enforcement

Before dealing with grounds for refusal, it should be pointed out that Lithuania has made the declaration under Article 7(4) stating that it will not apply Article 7(1) of FD 909 (see 12824/15 COPEN 260, EUROJUST 170, EJM 79). The execution of the FD in Lithuania is therefore subject to the principle of double incrimination.

Article 8⁴ of the Lithuanian Law on Mutual Recognition provides for grounds for refusal. Apart from the ground for refusal based on respect for fundamental rights and/or freedoms (Article 8(1)), the list perfectly reflects the FD as amended by FD 2009/299.

⁴ Article 8 of the Act No XII-1322 - Refusal to recognise a custodial decision

1. The court shall refuse to recognise a custodial sentence issued by another Member State of the European Union if:
 - 1) the execution of the custodial sentence would violate fundamental human rights and / or freedoms;
 - 2) the decision on the deprivation of liberty was made on the basis of a criminal offence which is not considered a crime or a misdemeanour under the Criminal Code of the Republic of Lithuania;
 - 3) the decision on deprivation of liberty has been made on account of a criminal offence which may be subject to the criminal laws of the Republic of Lithuania and the statute of limitations provided for in Article 96 of the Criminal Code of the Republic of Lithuania has expired;
 - 4) at the time of the commission of the criminal offence, the convicted person had not attained the age from which criminal liability for the criminal offence committed by him or her is possible under the Criminal Code of the Republic of Lithuania;
 - 5) recognising and enforcing the custodial sentence would infringe the ne bis in idem principle;
 - 6) the certificate referred to in Article 7 (1) of this Law is incomplete or manifestly does not correspond to the custodial sentence and has not been supplemented or corrected within the time limit specified by the court or this certificate has not been translated into Lithuanian; translation of its essential parts into the Lithuanian language, if the content of these documents is insufficient for making a decision and the court has requested the translation;
 - 7) the convicted person enjoys immunity from criminal jurisdiction in accordance with the rules of international law or the laws of the Republic of Lithuania;
 - 8) the part of the sentenced person who has been sentenced to imprisonment and to the certificate is less than six months;
 - 9) the sentenced person did not appear in person at the trial of the person who ordered the deprivation of liberty, unless the certificate states that:
 - (a) he was personally and in good time served with the summons or, by any other means, actually received official information about the intended trial in such a manner that he was aware of the trial and was informed that the decision may be admitted if he does not appear for the trial, or
 - (b) he, having knowledge of the prospective trial, authorised his lawyer of his choice or that of a State-appointed lawyer to defend him during the trial, and the lawyer did in fact defend the person during the trial; or
 - (c) after being served with the decision and expressly informed of the right to a retrial or to an appeal, to which that person is entitled and which enables the case, including new evidence, to be re-examined in substance, and the original decision may be reversed, the person expressly stated that he or she does not contest the decision, or did not request a retrial or appeal within the time limit set;
 - 10) another Member State of the European Union disagreed on the prosecution, conviction, execution of a prison sentence or any other restriction of his or her liberty in the Republic of Lithuania for other offences committed prior to the transfer of the sentence and certificate;
 - 11) a coercive medical measure or other measure related to imprisonment imposed by a custodial sentence which the Republic of Lithuania cannot enforce due to the particularities of its legal or health care systems and such measure cannot be coordinated with the provisions of the Criminal Code by punishment or other means.
2. In the cases referred to in paragraph 1 (5), (6), (8), (9) and (11), the court shall duly consult the competent authority of another Member State of the European Union before deciding to refuse recognition and, where appropriate, request that it provide explanations or other necessary information. If the required information is not received within the time limit, the court shall order refusal to recognise the custodial sentence. If necessary, the court or tribunal may contact the competent authority of another Member State of the European Union for further information.
3. In the cases provided for in paragraph 1, the court may, after consulting the competent authority of another Member State of the European Union, decide, instead of refusing to recognise the custodial sentence, where possible and with the consent of the competent authority of another Member State, deprivation of liberty. Such a decision shall be taken in accordance with the procedure laid down in Article 7 of this Law. The court must ensure that the partial recognition of the custodial sentence does not prolong the duration of the sentence or other measure or otherwise unduly complicate the sentenced person's legal position.

In practice, as practitioners said, enforcement of the certificate has been refused by Lithuanian authorities on the following grounds:

1. lack of double criminality;
2. worsen conditions for parole in Lithuania;
3. a lack of information from another Member State of the European Union (for instance, about the deportation procedure);
4. certificate not supplemented within the time limit set by the court;
5. determined place of residence of a sentenced person not within the Republic of Lithuania, but in another Member State of the European Union;
6. less than six months remaining to be served;
7. enforcement of the sentence statute-barred.

Article 8(2) of Act No XII-1322 provides that judicial authorities must consult the requesting Member State before refusing to enforce a judgment in the cases referred to in paragraph 1 (5), (6), (8), (9) and (11), as follows:

1(5) recognising and enforcing the custodial sentence would infringe the ne bis in idem principle;

1(6) the certificate referred to in Article 7 (1) of this Law is incomplete or manifestly does not correspond to the custodial sentence and has not been supplemented or corrected within the time limit specified by the court, or this certificate has not been translated into Lithuanian; translation of its essential parts into the Lithuanian language, if the content of these documents is insufficient for making a decision and the court has requested the translation;

1(8) the sentence imposed is less than six months;

1(9) the sentenced person did not appear in person at the trial of the person who ordered the deprivation of liberty, unless the certificate states that:

- (a) the person was served with the summons personally and in good time or, by any other means, actually received official information about the intended trial in such a manner that he or she was aware of the trial and was informed that the decision might be admitted if he or she did not appear for the trial; or

- (b) the person, having knowledge of the prospective trial, authorised the lawyer of his or her choice or a State-appointed lawyer for defence in the trial, and the lawyer did in fact defend the person during the trial; or
- (c) after being served with the decision and expressly informed of the right to a retrial or to an appeal, to which the person is entitled and which allows the case, including new evidence, to be re-examined in substance, and the original decision to be reversed, the person expressly stated that he or she did not contest the decision, or did not request a retrial or appeal within the time limit set;

1(11) A coercive medical measure or other measure related to imprisonment imposed by a custodial sentence which Lithuania cannot enforce due to the particularities of its legal or health care systems, and such measure cannot be coordinated with the provisions of the CC by punishment or other means.

If no reply is received to the request for information by the deadline, the judicial authorities must refuse enforcement.

Practitioners showed themselves to be extremely cooperative and proactive in this regard, doing their best to solve problems.

In reply to question 45, Lithuania said that it was rare for a certificate not to be enforced, and that it would most usually be due to lack of double criminality or to there being less than six months of a sentence remaining to be served. This corresponds to information given to the expert team during the on-the-spot visit.

Practitioners said that they encountered problems with regard to judgments in absentia, while in reply to question 46 Lithuania is said not to have faced any challenge in this regard. The concern of practitioners particularly focused on Article 9 (iii) as amended by FD 2009/299⁵.

⁵ Article 9 (iii) of Act No XII-1322, after being served with the decision and being expressly informed of the right to a retrial, or an appeal, in which the person concerned has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

- expressly stated that the person does not contest the decision,
- or
- did not request a retrial or appeal within the applicable time frame.

According to information gathered during the on-the-spot visit, no enforcement has been refused on a ground for refusal based on respect for fundamental rights or freedoms. Practitioners met by the evaluation team said that in deciding whether to surrender a prisoner or not, the court makes an assessment based on information submitted by the Lithuanian Prison Department, which is responsible for obtaining such information from the issuing authorities.

The guiding principle in enforcing a judgment or issuing a certificate seems to be the best interests of the prisoner, so that even when a request to serve the sentence in another Member State comes from the prisoner, before they issue the certificate Lithuanian competent authorities assess whether this would put the prisoner in a worse position. Nevertheless, in practice this kind of concern has always been overcome via exchange of information between competent authorities, sometimes resulting in the withdrawal of the certificate.

In this context, the experts are of the opinion that, in the absence of any CJEU case-law, the same criteria should apply as for the EAW: the principles of mutual trust and mutual recognition should prevail and refusal to execute on the ground of infringements of fundamental rights should be extraordinary and refer to specific cases.

As pointed out while dealing with the EAW FD, in this case too, the experts consider that concrete EU action on standards of detention conditions within the EU would be the best way forward.

4.6. Partial recognition

Article 8(3) of the Law on Mutual Recognition provides that instead of refusing to recognise a sentence, Lithuanian authorities should consult the competent authorities with a view to finding an agreement on partial recognition and enforcement. In that case, courts must ensure that partial recognition of the custodial sentence does not extend the duration of the sentence or other measure or otherwise unduly complicate the sentenced person's legal position.

The reply to question 48 states that the most common ground for partial recognition relates to lack of double criminality. Practitioners also highlighted the problem of multiple judgments and that each court calculates the final sentence differently, without any common position on the matter.

Both the reply to question 49 and information gathered from practitioners outlined problems linked to linguistic barriers.

The expert team was itself able to experience how deep this problem is, as some judges it met could not express themselves in understandable English, which made it difficult to carry out the evaluation of FD 909.

4.7. Challenges relating to compliance with the deadline for recognition and enforcement

Lithuanian authorities stated that the 90-day time limit for deciding on recognition of the judgment and enforcement of the sentence after receipt of the final judgment and certificate (Article 12(2) of FD 2008/909/JHA) is usually complied with.

The courts provide information to the issuing authority without delay, or stating the reasons for the delay and the estimated time needed for the final decision.

4.8. Law governing enforcement of the sentence

When Lithuania acts as the executing State, a sentence or remand order handed down by a court judgment recognised by the Lithuanian court is governed by Lithuanian law. Therefore, time already spent serving a sentence in the issuing State is deducted from the length of the custodial sentence to be served in Lithuania.

The Lithuanian authorities stated they did not have any information on withdrawal of certificates by issuing Member States due to applicable early or conditional release provisions.

When Lithuania is the issuing State, the execution of a custodial sentence or a measure involving deprivation of liberty, applied by a judgment recognised by the competent authority of the executing State, is governed by the law of the executing State.

Lithuania, as the issuing State has had cases in which the court order to transfer a person to serve the sentence in another Member State was withdrawn because the conditions governing conditional release were less favourable than they would be in Lithuania. In these cases, it was based on a request of the person's defence lawyer.

4.9. Further challenges

It is questionable whether it is necessary to send judgments via the Prison Department. If the competent courts received them directly, the procedure could be faster.

For the transfer of the sentenced person, the Public Security Service, which belongs under the Ministry of Interior, is competent to arrange all practical details. Information is exchanged via **SIRENE** and Interpol channels. The Lithuanian authorities did not point out any serious problems with these transfers, mainly because there are not many cases and they have good working relationships with their colleagues in the countries where the transfers usually take place. Due to the limited number of air traffic connections to Lithuania, the place of the transfer is usually Poland.

The Lithuanian authorities sometimes have problems in cooperation with other Member States, for example, when they are not informed when a transferred decision has been fully served, or when they are unable to contact the competent authority via email because it automatically blocks unknown users. It is also sometimes problematic that email addresses provided are the contact details of the institution and do not name a specific contact person.

Another point mentioned by the Lithuanian authorities is that in some cases it is not fully clear how a document describing the prison conditions should look and what it should contain.

4.10. Statistics

The Lithuanian authorities do not keep regular statistics; however, they provided the evaluation team with statistical data on certificates received and refused for recognising judgments for 2019-2020.

The table below shows data on the number of certificates received and refused for recognising judgments:

Table - Lithuania as executing State

	2019	2020
Received	74	61
Refused	19	11

As Table above shows, in 2019 the Lithuanian authorities received 74 certificates for recognition of judgments, of which 19 were rejected.

The grounds for rejection given by the Lithuanian authorities are as stated below:

- the decision made concerned an offence which is not a criminal offence under Lithuanian law;
- the conditions for parole were worsen under Lithuanian law;
- there was a lack of information from another Member State (for instance, about the deportation procedure);
- the certificate was not supplemented within the time limit set by the court;
- the determined place of residence of a sentenced person was not within Lithuania, but in another Member State;
- the remaining duration of a custodial sentence was less than six months;
- the limitation period for the execution of a sentence under Lithuanian criminal law has expired.

The table below shows data on certificates issued and refused for recognising judgments when Lithuania acted as the issuing State.

Table - Lithuania as issuing State

	2019	2020
Issued	6	4
Refused	1	1

As Table 2 shows, Lithuania has issued very few certificates to be recognised judgments by other Member States: six certificates were issued in 2019 and four in 2020.

As for refusal to recognise certificates by the other Member States, there was one case per year in both years. In both cases, the executing State was Germany. The case from 2019 concerned a Lithuanian citizen, and the ground for refusal was lack of data on the official and legal life of the person involved in Germany. In 2020, the ground for refusal was that there was no official evidence that a person concerned had been legally and permanently residing in Germany for five years (he had citizenship of a third country).

4.11. Conclusions

The evaluation team encourages Lithuania to amend the declaration whereby it will accept certificates only if drafted in Lithuanian (see 12824/15 COPEN 260, EUROJUST 170, EJM 79).

The evaluation team encourages Lithuania to offer more linguistic training.

The evaluation team encourages Lithuania to draw up guidelines on the calculation of the final sentence in the event of multiple judgments.

Overall, the FD seems to be well implemented, and very few problems arise with its application. These problems can also be mostly solved by communication with the other competent authority concerned.

5. LINK BETWEEN FD 2002/584/JHA ON EAW AND FD 2008/909/JHA ON CUSTODIAL SENTENCES

5.1. Problems relating to the link between FD 2002/584/JHA on EAW and FD 2008/909/JHA on custodial sentences

No problems were in fact highlighted in this connection during conversations with practitioners. On the contrary, the usual cooperative attitude shown by the Lithuanian authorities appeared: when an EAW has been issued by another Member State in a case in which Lithuania might issue a certificate, the usual practice is for competent authorities to exchange information; usually the EAW is withdrawn and the prisoner is surrendered via a certificate.

The Lithuanian authorities did not report any problems regarding this link. If there are more possibilities, the matter is usually solved by communication. Usually, precedence is given to FD 909.

In cases under Articles 4(6) of FD 584, Lithuania requires a separate certificate pursuant to FD 909; the sentence cannot be executed on the basis of the information in the EAW.

The Lithuanian authorities have not encountered any problems similar to the Poplawski case and also have no experience of deciding whether to issue an EAW or a certificate pursuant to FD 909 if the person is a national of the executing State.

According to Lithuanian law it is possible to execute a sentence for which surrender has been refused without a certificate under FD 909.

If a person has been surrendered to Lithuania under an EAW under the conditions referred to in Article 5(3) of FD 584, that person is returned, following a conviction resulting in a custodial sentence, to the EU Member State that surrendered him or her, by issuing the certificate referred to in Article 4 of FD 909, approved by order of the Lithuanian Minister for Justice.

It is also important to mention the provision laid down in Article 17 of the Lithuanian law on international cooperation, that if a citizen or permanent resident of Lithuania has been surrendered to an EU Member State under an EAW under the conditions referred to in FD 584, the competent Lithuanian court recognises the judgment imposing a custodial sentence without ruling on whether there are grounds for refusing to recognise the judgment imposing a custodial sentence.

5.2. Conclusions

Lithuania is highly proactive and cooperative in providing swift replies, acting themselves if they do not receive a reply from the other Member State, and in trying to find solutions if any practical problems arise. Apparently However, no specific problems have arisen concerning the link between these two FDs.

Deciding which FD to use does not seem to be a problem for the Lithuanian authorities.

6. FRAMEWORK DECISION 2008/947/JHA ON PROBATION AND ALTERNATIVE SANCTIONS

FD 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (henceforth 'FD 947') has been transposed via legislative act XII-1322 of 2014, the Law of the Republic of Lithuania on Mutual Recognition and Enforcement of Judgments in Criminal Matters of the Member States of the European Union (henceforth 'Law on Mutual Recognition'), specifically Chapter IV.

Definitions are set out in Article 2 of Law No XII-1322 as follows:

- paragraph 1: 'alternative penalty' means a non-custodial sentence or measure involving one or more obligations and/or prohibitions imposed on the sentenced person, other than a pecuniary sanction imposed by a competent authority of a Member State of the European Union or a confiscation order issued by a court of a Member State;
- paragraph 9: 'probation measure' means one or more obligations and/or prohibitions imposed on the sentenced person in lieu of a custodial sentence or other measure involving deprivation of liberty in the case of conditional release or full or partial suspension of the sentence imposed, execution of a sentence or other measure involving deprivation of liberty, or where the sentenced person is released on probation or another measure involving deprivation of liberty;
- paragraph 14: 'probation decision' means a final decision by a court or a final decision of a competent authority based on that decision which releases the sentenced person from probation and/or imposes on him or her one or more probation measures.

Although the definitions of alternative penalty (rectius: sanction) and probation measure differ slightly from those contained in Article 2 of the FD, in the opinion of the experts they adequately cover the scope of the FD.

6.1. Authorities competent for Framework Decision 2008/947/JHA

The competent authorities for recognising non-custodial sentences and probation decisions issued in another EU Member State are the district courts of the convicted person's place of residence. If the convicted person has no place of residence in Lithuania, the competent authority for recognising non-custodial sentences and probation decisions is Vilnius City District Court.

The Probation Service is a key body in the implementation of FD 947, as it is competent to enforce recognised decisions of other Member States and provides feedback on the possibilities of recognition before the decision is made. It is also competent to inform the authority of another Member State about measures applicable under Lithuanian law and about the release of a convicted person from the execution of the recognised sentence (or part of it). The Probation Service also informs the competent authority of the other Member State about changes or cancellation of the alternative measures. If a sentenced person wishes to return to his or her place of residence in a different Member State or has already returned there, the Probation Service may propose to the competent court that the applicable sentence be transferred. This also applies in cases when the sentenced person asks for such a transfer and the competent authority of the applicable Member State agrees to it.

Lithuania has not designated a central authority for the purposes of this FD.

The role of the Ministry of Justice, as regards FD 947, is to provide courts with methodological assistance about judicial cooperation in criminal matters as well as relevant information on EU legal instruments and their use. Within the Ministry of Justice, there are three EJM contact points who help courts if needed.

Lithuania's competent authorities can maintain direct contact with other Member States' competent authorities, but this does not happen very often with regard to this FD. Contacts are usually established through a central office, but electronic communication systems are used as well. In some cases, contacts are also established via the European Judicial Network or Eurojust.

6.1.1. Lithuania as the executing State

Lithuania accepts requests for recognition only in Lithuanian.

The procedure for the recognition of a non-custodial sentence or probation decision is a written procedure. Article 26(2) provides that the head of the office appoints the judge responsible for the file. Under Article 26(3), the convicted person, his or her lawyer, the Prosecution Service and the Probation Service must be informed of the name of the judge appointed and the time of the hearing and invited to send comments on the recognition of the decision. The reply from the Probation Service has to contain proposals on harmonisation of the alternative sentence or probation measure to be recognised with the Lithuanian judicial system. The reply from the Probation Service is mandatory.

The sentenced person, his or her lawyer and the prosecutor have to be informed about the decision issued by the next working day (Article 26(5)).

The types of alternative sanctions and probation measures that Lithuania recognises are set out in Article 25(3)⁶.

⁶ Article 25(3) of the Law on Mutual Recognition refers to:

- (1) an obligation to inform the relevant institution of any change of residence or place of work;
- (2) a ban on visiting certain areas, places or specified regions in the Member States of the European Union;
- (3) a ban on leaving the territory of another Member State of the European Union;
- (4) obligations relating to behaviour, residence, education and training, leisure or restrictions or conditions on the pursuit of the profession;
- (5) an obligation to register with the authority in question at a specified time;
- (6) an obligation to avoid contact with specific persons;
- (7) an obligation to avoid the use of specific items that the offender has used or is likely to use for the commission of the offence;
- (8) an obligation to compensate for the damage caused by the offence and / or an obligation to provide evidence to substantiate the fact of the indemnification;
- (9) an obligation to perform public or non-public works;
- (10) an obligation to cooperate with a probation officer or a social services representative in their capacity as prisoners;
- (11) an obligation to undergo therapeutic treatment or treatment for addiction.

Criteria for recognition and enforcement

Article 25 sets out grounds and conditions for the recognition and enforcement of a non-custodial sentence or a probation order in the Republic of Lithuania.

Lithuania will recognise and enforce such decisions when issued in respect of a Lithuanian resident who has returned or wishes to return to Lithuania (Article 25(1)).

Lithuania may recognise and enforce such decisions when issued in respect of a non-Lithuanian resident if so requested by the sentenced person and if the court takes over the execution of an alternative punishment or probation measure (Article 25(2)). The court usually agrees to take over the alternative sentence or probation measure if the convicted person is studying, working, concluding an employment contract, residing with a member of the convicted person's family or for other important reasons (Article 25(4)).

Lithuania's authorities accept only scanned certificates in PDF format. However, they must be signed or stamped in such a way that it is clear that it is not a draft but an original document.

Grounds for refusal have been incorporated into Article 27, which also provides that all grounds for refusal are mandatory.

Paragraph 1 provides a ground for refusal where 'the execution of a non-custodial sentence or probation decision would violate fundamental human rights and/or freedoms.' This ground for refusal is not included in the list of FD. It must also be stressed that paragraph 5 of the preamble to FD 947⁷ affirms that it respects fundamental rights.

⁷ Paragraph 5 of the Preamble of FD 947: 'This Framework Decision respects fundamental rights and adheres to the principles recognised in Article 6 of the Treaty on European Union, which are also expressed in the Charter of Fundamental Rights of the European Union, especially in Chapter VI thereof. No provision of this Framework Decision should be interpreted as prohibiting refusal to recognise a judgment and/or supervise a probation measure or alternative sanction if there are objective reasons to believe that the probation measure or alternative sanction was imposed to punish a person because of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation or that this person might be disadvantaged for one of these reasons.'

As for Article 27(2), which states that ‘the decision on the non-custodial sentence or the probation decision is made on the basis of a criminal offence which is not considered a crime or a misdemeanour under the Criminal Code of the Republic of Lithuania’, Lithuania has made the declaration under Article 10(4) of the FD (5798/2/15 REV 2 COPEN 22 EUROJUST 19 EJM 8), so the provision must be considered compliant with the FD.

Another ground for refusal is set out in Article 27(12): ‘the decision on a non-custodial sentence or alternative sentence or probation order imposed by the probation decision consists of a treatment or therapy measure which the Republic of Lithuania cannot implement due to the particularities of its legal or health care system.’

In the additional information received by the experts on 1 March 2021, Lithuania clarified that ‘Under the Criminal Code of the Republic of Lithuania (Chapter II, Article 3(4)), only specific measures can be recognised and enforced as regards treatment of therapy measures: for example, the obligation to treat addictive diseases. Measures that are not provided for in the Code mentioned above are not recognised in Lithuania.’

Reasons for refusal indicated by the executing Lithuanian courts are:

- the length of the alternative sanction left was less than six months;
- different preconditions for probation.

According to Article 26(3), the Probation Service is obliged to make proposals regarding the harmonization of the alternative sentence or probation measure with the CC of Lithuania. However, the final decision is for the court. If it refuses, the court has to give its reasoning (Article 26(4)) and the decision may be appealed (Article 26(6)). Lithuania’s authorities claimed they had not encountered a case where they would have to adapt the supervision measures due to their national law's incompatibility.

In cases addressed in Article 27(1), points (5), (6), (7), (10), (11), (12) and (13)⁸, competent judicial authorities may consult the requesting Member States before deciding not to recognise the non-custodial sentence or the probation decision. When necessary, competent authorities may also request further information, within the time limit. This provision gives competent authorities the opportunity to gain a better understanding of the content of the measure/sanction and to cooperate with their counterparts, and is an expression of the principle of good will in judicial cooperation.

If the required information is not received within the time limit, the court orders a refusal to recognise the non-custodial sentence or probation decision.

⁸ Article 27 of the Law on Mutual Recognition - Refusal of recognition of a non-custodial sentence or probation decision:

(5) recognising and enforcing a decision on non-custodial sentence or a probation decision would violate the ne bis in idem principle;
(6) the certificate referred to in Article 26 (2) of this Law is incomplete or manifestly does not correspond to the non-custodial sentence or probation decision and has not been supplemented or corrected within the time limit specified by the court, or has not been translated into Lithuanian; a translation into Lithuanian of the decision on the non-custodial sentence or the probation decision or its essential parts has been received, if the content of these documents is insufficient for making the decision and the court requested the translation;

(7) the sentence or non-custodial alternative sentence or probation measure imposed on the sentenced person does not comply with the measures specified in Paragraph 3 of Article 25 of this Law;

(10) the sentenced person did not appear in person at the trial of the court which ordered the non-custodial sentence or probation decision, unless the certificate states that:

(a) he or she was served personally and in good time with a summons or by other means actually received official information about the scheduled trial time and place in such a way that he was aware of the trial and was informed that the decision might be admitted if he or she did not appear for the trial, or

(b) he or she, having knowledge of the prospective trial, authorised the lawyer of his or her choice or a State-appointed lawyer to defend him or her during the trial, and the lawyer did in fact defend the person during the trial; or

(c) after being served with the decision and expressly informed of the right to a retrial or to an appeal, to which that person is entitled and which allows the case, including new evidence, to be re-examined in substance, and the original decision may be reversed, the person expressly stated that he or she does not contest the decision, or did not request a retrial or appeal within the time limit set;

(11) the convicted person does not have a place of residence in the Republic of Lithuania or has not returned to the Republic of Lithuania or does not wish to return to the Republic of Lithuania, if the application for recognition of a non-custodial sentence or probation decision is based on the content of the decision on a non-custodial sentence, or the alternative sentence or probation order imposed by the probation decision consists of a treatment or therapy measure which the Republic of Lithuania cannot implement due to the particularities of its legal or health care system; be consistent with the penalties or other measures provided for in the Criminal Code of the Republic of Lithuania;

13) there is insufficient evidence that the conditions laid down in Article 25(4) of this Law are satisfied if the application for recognition of a non-custodial sentence or probation decision is based on the criteria laid down in Article 25(2) of this Law.

The time limit for making a decision recognizing a non-custodial sentence or a probation decision or refusing to recognize a non-custodial sentence or a probation decision must be suspended in the case the court requests the competent authority of another Member State to provide further information. The time limit resumes from the date of receipt of the additional information. Lithuania's authorities stated that they had never had any problems complying with the time limit set in the FD as issuing authorities.

As for the adaptation of probation decisions or alternative sanctions, Lithuanian authorities stated they had had no such cases. However, decisions may be adapted if the duration of the sentence imposed in the issuing Member State exceeds the upper limit of the term for the corresponding criminal offence under Lithuanian law.

As to appeals, the prosecutor, the sentenced person and his/her lawyer may appeal against a court decision recognising a non-custodial sentence or probation decision or refusing to recognise a non-custodial sentence or probation decision under Article 364 of the CCP⁹.

An appeal against a ruling of a district court must be filed within seven days at the regional court. Once the appeal has been examined and the regional court has issued its ruling, it is final and enforceable and cannot be appealed.

6.1.2. Lithuania as the issuing State

When Lithuania is the issuing State, the competent authorities are courts.

The court can act on its own initiative or at the request of the Probation Service:

- if the sentenced person has returned or wishes to return to his or her residence (Article 33(3));
- if the sentenced person so requests and the competent authority of that Member State agrees.

⁹ Article 26(6) CCP.

The Probation Service may also ask the court to decide to transfer the non-custodial or probation decision to another Member State. In such a case, the Probation Service submits to the court a copy of the decision on the non-custodial sentence or probation and the sentenced person's request, accompanied by a completed draft certificate.

The Probation Service informs the defendant of the rights mentioned above. However, the Probation Service does not provide sentenced persons with an information sheet about their rights in written form and translated into his or her language. The sentenced person is informed only orally.

Under Lithuanian legislation, the following judgments on non-custodial sentences or probation decisions may be sent by courts to another Member State¹⁰:

- 1) sentences imposing a sentence on the convicted person for public works or deprivation of liberty;
- 2) convictions which impose one or several measures of punitive (or educational) effect on the convicted person;
- 3) sentences whereby a person is sentenced to a suspended term of imprisonment;
- 4) orders for conditional release from prison.

Decisions on non-custodial sentences or probation decisions as referred to above must not be sent to another Member State of the European Union unless the content of the sentences or sanctions imposed on the sentenced person includes:

- 1) the obligations or prohibitions referred to in Article 25(3) of this Law (see footnote 3);
- 2) other obligations or prohibitions, if another Member State of the European Union has formally announced it will exercise supervision.

¹⁰ Article 33(1) of the Law on Mutual Recognition.

The decision is issued after a hearing. The prosecutor, the convicted person, if in Lithuanian territory, his or her lawyer and the Probation Service must be informed of the hearing but are not obliged to appear unless the court deems it necessary. At the hearing, the convicted person is informed of the consequences of the decision and is given the opportunity to give an opinion orally or in writing.

If the court rejects the request, it must state its reasoning. When the outcome is positive, the certificate must be completed within three working days and sent to the competent authority in the Member State of execution, together with the decision on the non-custodial sentence or the probation decision. If necessary, the certificate has to be translated into the language requested by the executing Member State.

No later than the next working day, the sentenced person or his or her lawyer, the probation officer and the public prosecutor are informed of the outcome. The prosecutor, the sentenced person, his or her lawyer or the Probation Service may appeal against the court's decision.

When Lithuanian courts are notified by a competent authority of another Member State that a decision on the recognition and enforcement of a non-custodial sentence or a probation decision has been taken over, the court informs the Probation Service of the information received, and the Probation Service immediately terminates the non-custodial sentence or probation measures.

As an issuing State, Lithuania has transferred the following obligations:

- to inform of any change of residence/not to change residence without permission;
- to compensate for damage caused;
- not to use psychotropic substances;
- to continue working/registering at the Employment Service;
- not to hold responsibilities for the management of material goods;
- not to communicate with certain persons.

Lithuanian practitioners stated that they did not have problems with communications, and if additional information was needed, competent authorities requested them directly.

Statistical data

Lithuanian authorities do not keep regular statistics on how many supervision measures have been executed or issued. Nevertheless, they provided experts with some statistical data which they looked up in the archive.

In 2018 and 2019 the Lithuanian Probation Service took over and fully implemented ten court decisions of other Member States of the European Union.

In 2020 the Lithuanian Probation Service took over and fully implemented eight court decisions:

- 1 decision on deprivation of liberty was taken over from Poland;
- 2 decisions on suspended sentences were taken over from Poland;
- 1 decision on a suspended sentence was taken over from Germany;
- 2 decisions on conditional release were taken over from Sweden;
- 1 decision on a community work sentence was taken over from Latvia;
- 1 decision on a suspended sentence was taken over from Latvia.

In 2018 and 2019 the Lithuanian Probation Service organised 21 instances of transferring non-custodial sentences or decisions on probation to other Member States of the European Union.

In 2020 the Lithuanian Probation Service organised three instances of transferring decisions on non-custodial sentences or decisions on probation to other Member States of the European Union:

- 1 judgment on a suspended sentence to Latvia (confirmation received);
- 1 judgment on a suspended sentence to Germany (no confirmation received);
- 1 judgment on conditional release to Latvia (no confirmation received).

In 2018 and 2019, 15 cases were handled by the Probation Service in which Lithuania's courts issued a decision to hand over a court decision to another Member State of the European Union. However, no notifications about whether the competent authorities of another Member State have recognized Lithuanian authorities' decisions have been received yet. Some problems had been encountered in the interaction with counterparts in some Member States. (5 - Germany; 1 - Austria; 4 - Latvia; 5 - Spain).

6.2. Problems relating to failure to apply Framework Decision 2008/947/JHA

According to Lithuanian practitioners, their national legislation implementing FD 947 is comprehensive and clear and does not require any changes.

Lithuania has received some refusals to execute measures:

- Spain refused to recognise the suspension of a driving licence for a certain period because, in their view, this obligation is not included in the applicable list of measures in the Framework Decision.
- Italy refused to execute a measure because the person in question did not have a permanent place of residence in Italy. The person's supervision continues to be handled by Lithuania; however, the person resides in Italy.

Lithuanian authorities pointed out they faced difficulties in certain cases, such as where:

- Lithuania as issuing authority **has not yet received any response** to its request on recognising measures, be it a recognition decision or a refusal decision, in some cases even after a repeated request, or after Lithuania has provided the executing State with requested additional information (for example, requests submitted to: Spain in 2019; Germany on 18 October 2019; Spain on 23 May 2018; Spain on 20 March 2018; Spain on 8 May 2018; Germany on 18 April 2019; Germany on 2 August 2019; Germany on 14 May 2020; Latvia on 31 August 2020; etc.). As a result, the supervision period ended while the issuing authority was waiting for a decision on execution.
- **A decision** on recognition of a measure **arrived after the supervision period had finished** (request sent on 23 May 2018 to Spain).
- **Measures were not recognised.** However, it took too long until the executing authority made a decision. One case concerns Germany, and the reason for refusal was that the person in question did not reside in Germany. The request was submitted on 8 January 2018; the answer was received in 2019. A second case concerns Austria, which did not recognise a probation condition relating to the obligation not to communicate, as the individuals lived in different countries. The request was submitted to Austria on 24 August 2018; the reply was received on 10 June 2019.

6.3. Conclusions

Figures provided to experts show that only a few final judgments provide for alternative sanctions or probation measures.

As to why the FD receives so little practical application, it cannot be concealed that the same happens in most Member States: criminal proceedings usually end with a custodial sentence, and this fact limits the applicability of this FD.

On the other hand, in the Lithuanian judicial system no precise way is provided to inform the defendant of possibilities of serving alternative sanctions or probation measures in another Member State. One might say that it is up to the lawyer to inform clients about their rights, but this is definitely not the position adopted by the EU in the roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings (2009/C 295/01) and the legislative acts adopted under the roadmap. In this regard, it must be stressed that Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings provides for suspects and accused persons being informed of their rights, and imposes on the Member States the duty to inform them.

In light of the above, it would be helpful to amend Directive 2012/13/EU to include in the list of information to be given to suspects and accused persons the right to serve an alternative sanction or a probation measure in another Member State; and to fund the training of lawyers in this FD.

The observed reasons that prevent more frequent use of this FD are;

- different criteria for recognition, such as a permanent place of residence;
- a measure not being listed in the Framework Decision, or a Member State not having such a measure in its legislation;
- the length of the sanctions;

- slow proceedings on recognition (in some cases the procedure on making a decision on recognition takes too long and the decision on recognition is forwarded to the issuing Member State when the period for supervision is over);
- lack of communication among Member States, as indicated by the statistical data previously mentioned (Lithuanian authorities have not received a recognition decision to date for 15 cases relating to 2018 and 2019);
- the time limit for recognition set in the FD not being followed (six months or more);
- authorities ignoring/not responding at all to a request on the transfer of a measure;
- awareness of the FD among lawyers.

Besides the obstacles mentioned above, the expert team believes that use of the FD would be increased by more training at EU level, in the course of which specific problematic cases could be discussed.

7. FRAMEWORK DECISION 2009/829/JHA ON THE EUROPEAN SUPERVISION ORDER (ESO)

Framework Decision 2009/829/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (henceforth ‘FD 829’) was transposed into Lithuania’s legislation by act No XII-1322 of 13 November 2014, the Law on Mutual Recognition and Enforcement of Decisions in Criminal Matters of the Member States of the European Union (henceforth ‘Law on Mutual Recognition’), specifically in Chapter VI, Articles 40-44. An additional legal basis for the application of the FD is Order No. I-306 of December 1 2015 of the Prosecutor-General, titled ‘Recommendations for the Procedure for Applying Pre-trial Measures other than Detention in the Pre-trial Investigation and Control of Compliance with Conditions’ (Chapter XII).

7.1. Authorities competent for Framework Decision 2009/829/JHA

The courts and the public prosecutor’s office are the judicial authorities competent to act under FD 829. The prosecutor’s office is the competent judicial authority at the pre-trial stage and the courts at the trial stage, when Lithuania is the issuing State.

No non-judicial authorities were designated as competent authorities in relation to FD 829.

Lithuania has not designated a central authority for the purposes of FD 829. Nevertheless, that fact has not led to any malfunction in the Lithuanian authorities’ implementation of FD 829.

Each regional prosecutor’s office has two European Judicial Network contact points. The Prosecutor-General’s Office and all regional prosecutors’ offices also have at least a few prosecutors specialising in international judicial cooperation in criminal matters, who regularly advise other prosecutors on matters relating to international judicial cooperation and help identify the authority of the requested EU Member State competent for receiving mutual recognition instruments.

The specialised prosecutors are very well informed on the mutual recognition and judicial cooperation instruments. However, Lithuania's contact points do not communicate intensively within the European Judicial Network but only when needed. The lack of intensive direct cooperation between judicial authorities may be due, in particular, to the custom in international cooperation of contacting the central authority for all matters relating to legal assistance. Moreover, the list of contacts on the European Judicial Network's web page is not always up to date, which means that when a query is sent to a specific contact point from a Member State's judicial authority, the sender does not receive a reply.

Direct contact with the competent authorities of the other Member States is maintained by phone or email via the contacts provided in the forms of the mutual recognition instruments sent. However, the Lithuanian authorities do not communicate with the competent authorities in other Member States very often with regard to FD 829, because it is not often applied. Also there is a custom of contacting the central authority and asking for assistance with international cooperation.

The execution of the decision on the supervision measure is supervised by a prosecutor who has recognised the decision.

7.1.1. When Lithuania acts as executing State

Lithuania executes all supervision measures mentioned in Article 8 of FD 829. The double criminality principle applies as Lithuania has made the declaration under Article 14 (4) of FD 829, and the other mandatory presuppositions of Article 15 of FD 829 for the execution of the principle of mutual cooperation in decisions on supervision measures, have been adopted in Lithuanian domestic law.

As mentioned above, cases may occur, when Lithuania acts as an executing State, where the Lithuanian authorities will have no alternative but to refuse to execute requests from a Member State to recognise and apply the principle of mutual cooperation to decisions on supervision measures. However, Lithuania's authorities stated that they had not refused to recognise any supervision measures requested.

Under Lithuania's Law on Mutual Recognition, the criteria for recognition are as follows:

- If a person is ordinarily resident in Lithuania and consents to return to Lithuania, then the request on supervision measures is recognised by a prosecutor of the Regional Prosecutor's Office of the place of residence of the person in respect of whom the decision has been issued.
- If a person is not ordinarily resident in the Republic of Lithuania, a measure may also be recognised and executed in Lithuania at the request of the person concerned, if the prosecutor agrees to take over the execution of the decision on the supervision measure. In this case, the decision to recognise the supervision measure is issued by a prosecutor of the Prosecutor-General's Office¹¹.

Lithuania accepts requests for the recognition of supervision measures only in Lithuanian.

Apart from the measures listed in Article 8(1) of FD 829, Lithuania will also recognise and execute:

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

Before deciding not to recognise a decision based on Article 40(4), sections 1-4¹², prosecutors must communicate with the competent authority in the issuing State and, if necessary, ask it to supply all additional information required without delay.

¹¹ The Prosecutor-General's Office generally agrees to take over a decision on the execution of the supervision measures if the suspect, defendant or sentenced person is studying, working or has been granted an employment contract in Lithuania or has a family member residing in Lithuania or if there are other compelling reasons for taking over the execution of the supervision measure as set out in Article 9(2) FD.

¹² Grounds for non-recognition under Article 40(4) of the Lithuanian Law on Mutual Recognition:

1. Certificate incomplete or obviously does not correspond to the decision on supervision measures and is not completed or corrected within a reasonable period set by the competent authority in the executing State (FD 15 (1) (a));
2. Without person's request or consent (FD 15 (1) (b));
3. Measure requested is not foreseen in CCP (FD 15 (1) (b));
4. It contravenes the ne bis in idem principle (FD 15 (1)(c));

Lithuania has not as yet had any problems complying with the time limit for recognition of supervision measures or alternative sanctions as prescribed in FD 829.

Lithuanian practitioners said they had not encountered any cases where supervision measures would have to be adapted.

7.1.2. When Lithuania acts as issuing State

The competent authorities for executing a decision on supervision measures as an alternative to provisional detention are the public prosecutors in the pre-trial phase and the courts during the trial phase.

Before issuing a certificate, competent issuing authorities are obliged to check what supervision measures are accepted by the country to which the certificate is addressed and check the language in which that country accepts the certificate.

The prosecutor selects and imposes one or more of the supervision measures specified in the CCP, except for detention, intensive care, house arrest and the obligation to live apart from the victim. If it is necessary to impose intensive supervision or house arrest, or to temporarily remove a suspect from office or suspend the right to engage in certain activities, the prosecutor applies to the pre-trial judge, who confirms the prosecutor's decision to recognise the detention order and imposes intensive supervision or house arrest or suspension of the right to engage in certain activities by the same ruling.

In such proceedings, it is not mandatory to be represented by a defence lawyer. However, it is a prosecutor who informs a person about his or her rights and the right to request the transfer of the supervision measure to another Member State where the person is lawfully or ordinarily residing. However, practitioners believe that defence lawyers in each Member State could have better knowledge of this instrument, which could increase its timely application.

The Lithuanian law is in conformity with Article 12 of FD 829, and does not exclude the lodging of an appeal against decisions on the execution. In any case, the executing State must consult the competent issuing authority and request to provide further information and clarifications required before it decides against executing a related request.

The implementation of provisional measures imposed on a person by a Member State and the duration of these measures conform with Articles 17,18, 19 and 20 of FD 829.

The acts and decisions of the prosecutor may be appealed against to a higher prosecutor by participants in the proceedings or by persons subject to the proceedings. If the higher prosecutor rejects complaint, he or she may appeal against the prosecutor's ruling to the pre-trial judge. Court decisions may be appealed against to the Supreme court.

As for withdrawal of a certificate, practitioners had experienced only one such case, and it was withdrawn because the person concerned had moved to another country as a permanent resident.

7.1.3. Statistical data

For FD 829, the Lithuanian authorities do not regularly monitor how many supervision measures have been executed or issued. However, they provided experts with some statistical data which they looked up in the archive.

FD 829 is rarely used by Lithuanian practitioners, as evidenced by statistics they have provided us.

Since the transposition of FD 829 into the national legal framework, i.e. since 1 April 2015, 14 supervision measures have been taken, as follows: six (6) at the Kaunas Regional Prosecutor's Office and eight (8) at the Klaipėda Regional Prosecutor's Office.

They related to the following supervision measures:

- obligation to register periodically and a written pledge not to depart;
- deposit, seizure of documents, obligation to register periodically and a written undertaking not to leave.

As for supervision measures transferred by prosecution offices since 2015, only two (2) have been issued; one by the Kaunas Regional Prosecutor's Office and one by the Vilnius Regional Prosecutor's Office. Both cases concerned written pledges not to leave, transferred to Poland.

The courts were not able to provide exact numbers or concrete examples, as the statistics on actions pursuant to FD 829 are not collected separately.

7.2. Problems relating to failure to apply Framework Decision 2009/829/JHA

The Lithuanian authorities have adopted all the measures required under the provisions of FD 829 in respect of the recognition and execution of the principle of mutual cooperation to decisions on supervision measures as an alternative to provisional detention.

According to prosecutors specialising in international legal cooperation in criminal matters, transposition of FD 829 into national law is comprehensive and transparent and does not require any changes in the organisation of Lithuanian institutions.

However, according to the courts' opinion, it is still difficult to say whether the existing regulation is sufficiently comprehensive and transparent. The cases in question are not common, and the law came into force in 2015. No detailed studies or analyses have yet been made looking at whether sentences have been carried out successfully or whether there have been any procedural obstacles.

There have been no structural changes in the courts' organisation as a result of the implementation of FD 829. The courts always organise their work in such a way as to ensure that urgent matters (i.e. those subject to deadlines imposed by law) are dealt with promptly, including on non-working days.

Practitioners said that the reason why FD 829 is not often used could include the following:

- Some Member States have not transposed all supervision measures covered in the FD into their legislation. Thus, Lithuanian authorities have always checked whether the measure imposed is transferable to other Member State.
- Transposition is not carried out uniformly.
- The recognition procedure is lengthy, and some Member States do not comply with the time limit for recognition prescribed under the FD.
- Translation issues lengthen the decision-making process, especially if a Member State accepts requests and related documents only in their national language and less common languages are involved.
- There is a lack of awareness of the FD among defence lawyers.

It is well understood that the recognition and execution of the principle of mutual cooperation to decisions on supervision measures as an alternative to provisional detention is a rare procedure compared to the procedures for the execution or non-execution of EAWs and judicial cooperation in criminal matters such as the European Investigation Orders. Bearing in mind this rarity, prosecutors and judges should seek assistance from colleagues who have executed or issued requests from Lithuania or another Member State for the recognition and execution of the principle of mutual cooperation regarding decisions on supervision measures. Electronic communication with the authorities of other Member States is useful. However, where possible, close personal cooperation with embassies and consular offices is highly recommended for all requests regarding enforcement of the relevant FD. Such contact can remove any obstacles or misunderstandings during the procedure.

7.3. Conclusions

The evaluation team concluded that it is still rare for practitioners to apply the FD on the ESO .

According to statistical data provided to the evaluation team, Lithuanian prosecutors' offices, when acting as issuing authorities, have transferred only two cases to other Member States since 2015. Regarding courts, the Lithuanian judicial authorities could not provide any statistical data.

However, as emerged from the discussion with Lithuanian authorities present at on-the-spot meetings, the main problem is that practitioners and defence lawyers have almost no practical experience and only weak theoretical knowledge of the use of FD 829 in practice. There is also a lack of training in that respect. Nevertheless, practitioners argued that some Member States had not transposed all supervision measures listed in the FD on the ESO, which is another obstacle to application of FD 829.

As executing State, during 2015, Lithuania received 14 requests for the recognition of supervision measures. This number is slightly higher than when Lithuania acted as issuing State. However, given that this statistic is from 2015, it is still a low number. The low number of requests from other Member States also indicates that FD 829 is not often used in practice by the other Member States, not only Lithuania. Some Member States have not used FD 829 even once to this day.

The evaluation team therefore concluded that to increase awareness and use of FD 829, it would be useful to organise several courses or seminars at European level, focusing on practical application and sharing of experience by representatives of those States that use it in practice.

8. TRAINING

8.1. *Training relating to FDs 2002/584/JHA, 2008/909/JHA*

Both the Prosecution Office and the courts have a specialised institution which organises and provides training for them. The topics of this training are selected on the basis of demand from prosecutors and judges, who have the opportunity to suggest the topics once a year. The training programmes are separate for judges and prosecutors, and the lecturers are mainly judges, prosecutors or academic staff. Lawyers are usually not invited to be lecturers.

There is no systematic training on these FDs for judges or prosecutors. This training is usually a part of a general course on judicial cooperation in criminal matters, but it could not be determined how much time and effort is dedicated to each of these FDs, because there is no data on the actual content of this training and it has no official programme.

Sometimes, special training events are organised: for example a training session on the EAW took place in 2021, attended by 125 people, some of them prosecutors or their assistants. In 2017, a specific course on FD 909 was organised for judges, 126 of whom attended. Courses for judges on international cooperation in criminal matters and questions on the issuing of EAWs were held regularly between 2015 and 2019, with dedicated financing from the national budget. Two or three courses were held per year and a total of 281 judges took part.

However, both prosecutors and judges have the opportunity to take part in international training provided by other institutions, mostly the EJTN, ERA and EJM. This is a regular practice and the practitioners value this opportunity.

Lithuanian prosecutors participate annually in expert meetings on the EAW organised by the European Commission's Directorate-General for Justice and Consumers, where there are discussions on practical issues involved in the EAW, the CJEU's current practice and the EAW handbook.

Meetings of prosecutors specialising in international legal cooperation in criminal matters are also held every year to discuss current practical issues.

The competent Lithuanian authorities are aware of the existence of the EJM and its website, and use it on a regular basis. Many of the judges and prosecutors who specialise in international cooperation are also EJM contact points and take part in its meetings. The practitioners are also aware of the handbooks and practical tools provided by the EJM and use them for their work. Cooperation via the EJM is highly valued by the practitioners.

The Prisons Department has been a member of EuroPris since 2011. In 2012, a EuroPris expert group was created the goal of which is to support Member States in their implementation of FD 909. Ministry representatives attend meetings and seminars organised by the expert group. Awareness of EuroPris among judges is not very high.

8.2. Training relating to FDs 2008/947/JHA , 2009/829/JHA

There is no regular and specific training organised for these two FDs. The number of practitioners who have been trained specifically on these FDs is therefore very limited.

Training on these two FDs is provided as a part of broader training on international judicial cooperation in criminal matters. This is organised for public prosecutors and judges separately. Non-judicial authorities (e.g. the Prison Department) do not take part in the courses.

These two FDs were on the agenda for the annual meeting of prosecutors and assistant prosecutors specialising in international cooperation in criminal matters, organised by the Prosecutor-General's Office, which was scheduled to take place on 9 December 2020, but it was postponed due to the coronavirus outbreak. Around 25 people from the Prosecutor-General's Office and all five regional prosecutor's offices were expected to attend the meeting.

112 judges and 10 assistant judges have been trained on this topic as a part of broader training on mutual recognition in criminal matters, which was organised in 2018.

There is a special training unit in the public prosecutor's office of the Republic of Lithuania, with responsibility for collating and analysing information on the professional development needs of prosecutors, civil servants and contract staff, addressing those needs and producing reports.

Training is organised in line with the Prosecutor-General's approved training programmes for the year. Experts are then sought out and a public procurement procedure is initiated; meetings of experts with practitioners and specialist prosecutors are organised; and training programmes are developed, which are then implemented on a regional basis. After a course, participants fill in an initial questionnaire about the training and some are chosen at random to provide oral feedback.

As to the methods used, courses are designed on the basis of a participatory training framework. The courses are designed to be practical (with a practical component of at least 75 %).

The experts teaching the courses are highly qualified and experienced practitioners who have actively participated in training. The courses are usually taught by judges from Lithuania's Supreme Court, professional practitioners working in relevant fields, or academics.

Courses for judges, funded from the State budget, are organised by the administration in line with the training programmes approved by the Judicial Council, but judges can also attend courses organised by other bodies.

Selection of participants for such training is based on professional needs.

Public prosecutors and judges also have access to training organised by EU bodies. The number of places allocated to Lithuania varies. Public prosecutors have not taken part in these training activities in recent years, but see a need to increase the number of training opportunities offered by the EU bodies. The judges, on the other hand, do not see any need for more training organised specifically on these two FDs, because they are rarely used.

The Lithuanian authorities are in contact with the authorities of the neighbouring Member States, but no joint training activities have been organised (apart from the EJM Regional meeting in 2015, which was held in Vilnius).

8.3. Conclusions

There is no systematic training on any of the FDs in question, but training courses are organised on ad hoc basis, based on the needs and requests of judges and prosecutors. In this regard, it is important to reiterate that not many of them regularly deal with international cooperation.

A very positive point is that judges and prosecutors often participate in training activities organised by the EJTN or other institutions, which also gives them the opportunity to practise their language skills. On the other hand, no language courses are provided to them at national level. That is something that Lithuania could take into consideration, because direct communication between the competent authorities of the Member States is the key to successful cooperation.

8.4. The Bar Association

The evaluation team also met with a representative of the Lithuanian Bar Association, with whom we had an open and fruitful discussion. During the discussion, a representative of the Bar Association pointed out several matters that the lawyers consider problematic and have faced in the application of the FDs which are the theme of this evaluation.

As one representative of the Bar Association stated, according to the Lithuanian CCP, the presence of lawyers in proceedings on the recognition and enforcement of the EAWs is mandatory. In such cases, the competent body in charge of the case asks the State Legal Service to provide legal assistance for a particular person. As the representative of the Bar Association stated, lawyers are usually appointed from the list, not divided by legal specialisation but by chance, which means there is a risk that a particular lawyer from the legal aid institution may not specialise in dealing with international legal instruments.

As a representative of the Bar Association noted, there were cases of unqualified representation of clients, which is why they are looking for improvement in the selection of lawyers. A selected lawyer may argue that he or she is not competent to deal with the case; however, this does not always happen.

A lawyer has to be mandatorily appointed in cases of serious crime when a suspect or defendant is not able to express themselves or when the defendant or suspect speaks a language other than Lithuanian or Russian, which is true in all EAW and extradition cases; in cases where the defendant or suspect is a minor/juvenile; and also in a case where there are several suspects, one of whom has a lawyer, and there are differences in position such as suspect and defendant, at any stage of proceedings (pre-trial and trial).

Another issue that lawyers of the Bar Association consider a problem is legal representation in cases where a defendant is sentenced in another Member State. A Bar Association representative provided the evaluation team with the case in which Denmark asked Lithuania to execute a sentence imposed on a Lithuanian citizen. The Lithuanian court of first instance agreed to execute the sentence and appointed a State lawyer to represent the defendant, due to his lack of financial means. However, once the decision was pronounced, the defence lawyer's role was over. The sentenced person was provided with the decision of the Lithuanian court while he was in Denmark. However, he could not appeal against this decision due to a lack of legal representation.

As for the education of lawyers, within the Lithuanian Bar Association, there is the Bar Association Academy, which organises various seminars and training. Lawyers are obliged to attend a certain number of seminars or amount of training per year and to provide the Bar Association with the details. Besides training organised by the Bar Association, lawyers may also attend training organised by universities or experts. It is up to lawyers to choose what training they participate in and at what institution.

However, from what the representative of the Bar Association said, the Bar Association Academy has not provided training on the FDs which are the theme of this evaluation for a long time.

The discussion showed that the training of lawyers in the field of the FDs covered by this evaluation is insufficient.

9. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

9.1. Suggestions by Lithuania

- Member States are encouraged to accept EAWs in English as an option to avoid challenges that may arise in practice due to requirement to provide a translation into national language within a short deadline.
- Member States should keep updated information on the EJN website on its competent authorities.
- The Commission is invited to draw up handbooks or guidelines on the application of FDs 909, 947 and 829. It is also of utmost importance to keep updating the Handbook on how to issue and execute a EAW in order to ensure the uniform application of the FD 584, in particular as regards the grounds for refusal and judgements rendered *in absentia*.
- We would also invite the Commission to organise more expert meetings regarding these FDs which we believe is a beneficial forum for practitioners to exchange its practices and to tackle problems.
- More language trainings for practitioners organised at the EU level would be highly appreciated. It would add a significant input in enhancing direct cooperation between competent authorities when applying the FDs.

9.2. Recommendations

As regards the practical implementation and operation of the Framework Decisions and the Regulation, the team of experts involved in the evaluation of Lithuania was able to satisfactorily review the system in Lithuania.

Lithuania should conduct an 18-month follow-up exercise regarding the recommendations set out below following the Working Party's adoption of this report.

The evaluation team saw fit to make several suggestions for the attention of the Lithuanian authorities. Furthermore, based on the various good practices, related recommendations are also being proposed to the EU, its institutions and agencies, and to Eurojust and the EJM in particular.

9.2.1. Recommendations to Lithuania

Recommendation 1: (all FDs) The evaluation team encourages the Lithuanian authorities to collect and keep regular statistical data centrally on all FDs to understand how requests for recognition and execution have been dealt with, either as issuing or as executing authority. This would enable them to identify, learn from and address recurring problem situations so that tools for mutual international cooperation can become more effective.

Recommendation 2: (FD 947) The evaluation team encourages the Lithuanian authorities to provide defendants with an information sheet about their rights, in a simple legal form and translated it into relevant languages.

Recommendation 3: (FD 909) The evaluation team encourages the Lithuanian authorities to accept the certificate in English (when it has been produced by a certified translator) as they do for EAWs, since translations into the Lithuanian language are often not clear, due to a lack of translators in the other Member States.

Recommendation 4: (FD 909) The evaluation team suggests ensuring judicial authorities' training to find a common approach when deciding on the recognition of judgments with cumulative sentences or providing them with clear and unified guidelines.

Recommendation 5: (FDs 947, 829) The evaluation team encourages the Lithuanian authorities to provide more training, especially for FDs 947 and 829, since practitioners lack knowledge and experience, which is an obstacle to their using these FDs more often.

9.2.2. Recommendations to other Member States

Recommendation 1: (all FDs) The evaluation team recommends that Member States provide the executing State with all required information within the deadline established, so that decisions can be made within the time limit prescribed by the FDs.

Recommendation 2: (FDs 947 and 829) The evaluation team recommends that Member States carefully monitor the correct implementation of FDs 947 and 829, complying with time limits and providing requesting Member States with all requested information within the deadline set.

Recommendation 3: (FD 584) The evaluation team recommends that each Member State ensure that certificates are completed correctly and exhaustively, especially section (e) on the description of the crime and section (d) on in absentia decisions, especially as regards the delivery of summonses in person.

Recommendation 4: (FDs 584 and 909) Concerning transit, The evaluation team recommends that each Member State implement a mechanism to ensure that a person to be surrendered who is not in custody is brought to the airport for handover, to minimise the need for repeated pick-ups.

Recommendation 5: (all FDs) The Member States are encouraged to accept certificates/annexes in English as an option, to speed up recognition procedures, as translation to some less-used languages causes many problems, because of a lack of qualified translators.

9.2.3. Recommendations to the European Union and its institutions

Recommendation to the EJM: (FDs 947 and 829) The evaluation team recommends adding to the EJM website, Fiches Belges part (measures part), the list of probation measures, alternative sanctions and supervision measures provided for by the law of each Member State that may be recognised.

Recommendation to the Commission: The Commission is encouraged to draw up a handbook on FD 947 and 829.

Recommendation to the Commission: (FD 909, 829) The Commission is encouraged to consider making a legislative proposal with a view to amending Directive 2012/13/EU to include the rights of persons concerned under the FDs covered by this evaluation.

Recommendation to the Commission: The Commission is encouraged to consider funding training for practitioners on FDs 947, 909 and 829 at EU level.

Recommendation to the EJM: The EJM is encouraged to consider offering more training on FDs 947, 909 and 829.

9.3. Best practices

The evaluation team also identified several good practices in Lithuania that could be shared with the other Member States, such as the following:

- There are specialised prosecutors dealing with international cooperation in criminal matters within the Office of the Prosecutor-General.
- Lithuanian competent authorities show a positive, proactive attitude by applying the principle of good will in the context of international cooperation.
- Each EAW issued by the Lithuanian authorities is immediately translated into English. However, if the Lithuanian authorities find out from search information that the requested person is of Polish, French or Spanish nationality, the EAW is translated into the language in question as well as English.

**Programme of the VTC preparatory meeting with representatives
of the Republic of Lithuania**

MONDAY 15 FEBRUARY 2021

[Venue: VTC (video teleconference) meeting]

[Participants: representatives of the Ministry of Justice, the District courts, the Regional court, the National Courts Administration, the Regional Prosecutor Office; the Prosecutor General's Office, the Probation Service]

- | | |
|---------------|---|
| 09.00 - 09.15 | Opening speeches, introduction of host team and evaluation team |
| 09.15 - 11.30 | Presentation by Prosecutor's Office and Court followed by Q&A and discussion |
| 11.30 – 12.00 | Snack break |
| 12.00 – 14.30 | Presentation by Prosecutor's Office and Probation Office followed by Q&A and discussion |

Programme of the on-site evaluation visit with representatives of the Republic of Lithuania

MONDAY 18 OCTOBER 2021

Arrival of evaluation team

18.00 - 19.30 Internal meeting of the evaluation team

TUESDAY 19 OCTOBER 2021

[Venue: Ministry of Justice of the Republic of Lithuania, Gedimino Av. 30]

[Participants: representatives of the Ministry of Justice, Prosecution Offices; courts; the Police Bureau and the Public Security Service under the Ministry of Interior]

09.00-09.10 Welcoming speeches, introduction of teams

09.10-11.30 Presentation by the prosecution services, followed by Q&A and discussion

11.30-12.30 Lunch break

12.30-14.35 Presentation by the courts followed by Q&A and discussion

14.35-14.45 Coffee break

14.45-16.45 Presentation by the Police Bureau and the Public Security Service followed by
Q&A and discussion

17.00-18.30 Internal meeting of the evaluation team

19.00 Official dinner

WEDNESDAY 20 OCTOBER 2021

[Venues: morning: Ministry of Justice of the Republic of Lithuania, Gedimino Av. 30; afternoon: Vilnius Correction House, Rasų str. 3, Vilnius]

[Participants: representatives of courts; Prosecution Office; the Prisons Department and the Ministry of Justice]

09.00-12.30 Presentations by courts and prosecutors, followed by Q&A and discussion

12.30-13.30 Lunch break

13.30-13.45 Departure to Vilnius Correction House

13.50-16.30 Presentations by the Ministry of Justice and the Prison Department, Q&A and discussion, followed by visit to the Prison Department

18.00-19.30 Internal meeting of the evaluation team

THURSDAY 21 OCTOBER 2021

[Venue: Ministry of Justice of the Republic of Lithuania, Gedimino Av. 30, Vilnius]

[Participants: representatives of court and prosecutors' services; Lithuanian Bar Association and Ministry of Justice]

- 09.00-10.45** Presentation by prosecutors' and court services
- 10.45-12.00** Presentation by representative of Lithuanian Bar Association,
followed by Q&A and discussion
- 12.00-13.00** Lunch break
- 13.00-14.00** Assessment, final speeches
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- 16.00-17.30** Internal meeting of the evaluation team

ANNEX B: PERSONS INTERVIEWED/MET

Monday 15 February 2021, 09.00 to 13.30: VTC preparatory meeting with representatives of the Regional Court, the District courts, County State Prosecutor Office, Probation Service and the Ministry of Justice

Venue: VTC meeting

Person interviewed/met	Organisation represented
Ms Beatričė Bakanauskaitė	Vilnius City District Court, Judge
Ms Laima Šeputienė	Kaunas District Court, Judge, Deputy Chair
Mr Algirdas Giedraitis	Kaunas Regional Court Judge
Ms Monika Kontrauskienė	National Courts Administration, Head of Training and International Cooperation Division
Mr Virginijus Mizaras	Kaunas Regional Prosecutor's Office, Prosecutor
Ms Inesa Antanauskienė	Klaipėda Regional Prosecutor's Office, Prosecutor
Ms Rūta Kavaliauskienė	Prosecutor-General's Office, Assistant to the Chief Prosecutor of the Criminal Prosecution Department

Mr Donatas Zabolevičius	Lithuanian Probation Service, chief specialist of the Operational Coordination and Control Division
Ms Olga Stulgienė	Lithuanian Probation Service, Deputy Head of Vilnius Region Division
Ms Indrė Balčiūnienė	Ministry of Justice, chief specialist of the International Law Group

Tuesday 19 October 2021, 09.00 to 09.10: welcome meeting with representatives of the Ministry of Justice

Venue: Ministry of Justice (Gedimino av. 30, Vilnius)

Person interviewed/met	Organisation represented
Ms Gabija Grigaitė-Daugirdė	Ministry of Justice, Vice-Minister for Justice
Mr Darius Žilys	Ministry of Justice, Head of the International Cooperation Group
Ms Indrė Balčiūnienė	Ministry of Justice, Counsellor at the International Cooperation Group

Tuesday 19 October 2021, 09.10 to 11.30: meeting with representatives of prosecution services on FD 2002/584/JHA

Venue: Ministry of Justice (Gedimino av. 30, Vilnius)

Person interviewed/met	Organisation represented
Ms Ieva Truncienė	Prosecutor-General's Office, Prosecutor of the Criminal Prosecution Department
Ms Rūta Kavaliauskienė	Prosecutor-General's Office, Assistant to the Chief Prosecutor of the Criminal Prosecution Department
Ms Indrė Balčiūnienė	Ministry of Justice, Counsellor at the International Cooperation Group

Tuesday 19 October 2021, 12.30 to 14.45: meeting with representatives of the courts on FD 2002/584/JHA

Venue: Ministry of Justice (Gedimino av. 30, Vilnius)

Person interviewed/met	Organisation represented
Ms Rasa Paužaitė	Vilnius Regional Court, Judge
Ms Laima Šeputienė	Kaunas District Court, Judge, Deputy Chair of the Court
Ms Indrė Cvilikaitė	Kaunas District Court, Assistant of the Judge
Ms Indrė Balčiūnienė	Ministry of Justice, Counsellor at the International Cooperation Group

Tuesday 19 October 2021, 14.45 to 16.45, meeting on practical arrangements of transfers and surrenders with representatives of the Lithuanian CPB and the Public Security Service

Venue: Ministry of Justice (Gedimino av. 30, Vilnius)

Person interviewed/met	Organisation represented
Ms Kristina Juršėnienė	Lithuanian Criminal Police Bureau, Head of SIRENE National Unit
Ms Aušra Sadauskienė	Lithuanian Criminal Police Bureau, Chief Investigator of Activity Coordination and Control Board
Ms Oksana Sinica	Public Security Service under the Ministry of Interior, Senior Specialist of the Activities and Operations Organisation Unit
Ms Indrė Balčiūnienė	Ministry of Justice, Counsellor at the International Cooperation Group

Wednesday 20 September 2021, 9.00 to 12.30: meeting with representatives of the courts and prosecution services on FD 2008/909/JHA

Venue: Ministry of Justice (Gedimino av. 30, Vilnius)

Person interviewed/met	Organisation represented
Ms Laima Šeputienė	Kaunas District Court, Judge, Deputy Chair of the Court
Ms Rasa Paužaitė	Vilnius Regional Court, Judge
Ms Indrė Cvilikaitė	Kaunas District Court, Assistant to the Judge
Ms Renata Oželienė	Kaunas District Prosecutor's Office, Prosecutor
Mr Armandas Vainauskas	Vilnius District Prosecutor's Office, Prosecutor
Ms Indrė Balčiūnienė	Ministry of Justice, Counsellor at the International Cooperation Group

Wednesday 20 October 2021, 13.30 to 16.30: meeting with representatives of the Ministry of Justice, the Prison Department and the Administration of Vilnius Correction House on FD 2008/909/JHA

Venue: Vilnius Correction House (Rasų str. 3, Vilnius)

Person interviewed/met	Organisation represented
Ms Indrė Balčiūnienė	Ministry of Justice, Counsellor at the International Cooperation Group
Ms Žydrė Lebedevienė	Prison Department under the Ministry of Justice, chief specialist at the Organisation of Activities Unit
Ms Julija Bardzilauskienė	Prison Department under the Ministry of Justice, chief specialist at the Security Management Unit
Mr Viktoras Davidenko	Vilnius Correction House, Director
Ms Marta Gavrilovienė	Vilnius Correction House, Director's Adviser

Thursday 21 September 2021, 09.00 to 10.45, meeting on training of prosecutors and judges

Venue: Ministry of Justice (Gedimino av. 30, Vilnius)

Person interviewed/met	Organisation represented
Mr Erikas Juchnevičius	Prosecutor-General's Office, Head of Training Division
Ms Monika Kontrauskienė	National Courts Administration, Head of Training and International Cooperation Division
Ms Indrė Balčiūnienė	Ministry of Justice, Counsellor at the International Cooperation Group

Thursday 21 September 2021, 10.45 to 12.00: meeting with representatives of the Lithuanian Bar Association

Venue: Ministry of Justice (Gedimino av. 30, Vilnius)

Person interviewed/met	Organisation represented
Mr Rolandas Tilindis	Defence lawyer, Member of the Criminal and Criminal Procedure Law Committee of the Bar Council

Thursday 21 September 2021, 13.00 to 14.00: wrap-up meeting with representatives of Ministry of Justice, courts, prosecution services, the Lithuanian Criminal Police Bureau and the Prison Department

Venue: Ministry of Justice (Gedimino av. 30, Vilnius)

Person interviewed/met	Organisation represented
Mr Darius Žilys	Ministry of Justice, Head of the International Cooperation Group
Ms Indrė Balčiūnienė	Ministry of Justice, Counsellor at the International Cooperation Unit
Ms Rasa Paužaitė	Vilnius Regional Court, Judge
Ms Rūta Kavaliauskienė	Prosecutor-General's Office, Assistant to the Chief Prosecutor of the Criminal Prosecution Department
Ms Kristina Juršėnienė	Lithuanian Criminal Police Bureau, Head of SIRENE National Unit
Ms Julija Bardzilauskienė	Prison Department under the Ministry of Justice, chief specialist at the Security Management Unit

ANNEX C: THE IMPACT OF COVID-19 ON JUDICIAL COOPERATION IN CRIMINAL MATTERS

LITHUANIA	
<p><i>EAW</i></p> <p>- <i>issuing of EAWs (suspension; impact on already issued EAWs; prioritisation in issuing new EAWs + criteria)</i></p> <p>- <i>execution and postponement of actual surrender (legal basis, adequacy, release of surrendered persons, measures to prevent released persons from absconding)</i></p> <p>- <i>expected resumption of surrenders</i></p> <p>- <i>transit</i></p>	<p>Impact on issuing of EAWs</p> <p>No. However, in urgent cases (e.g. in cases of very serious offences or of hot pursuit of the offender) we would indicate in the cover letter to the executing State that the matter is urgent despite the COVID situation.</p> <p>Impact on execution of EAWs and postponement of actual surrender</p> <p>Bearing in mind the Resolution of the Government on declaring quarantine throughout the territory of Lithuania, the Prosecutor-General's Office will apply to the competent authority of the other EU Member State proposing to postpone the surrender of the person to Lithuania at least until 31 May. This applies to all Member States with the exceptions of Latvia, Estonia and Poland.</p> <p>Impact on execution of surrenders by land</p> <p>Since the beginning of the COVID-19 pandemic up to now, SIRENE Lithuania has had no land surrenders by land to deal with.</p> <p>Impact on execution of surrenders by air</p> <p>Yes, it has had an impact, as all execution of surrenders by air has been stopped. (...) Factual handovers and surrenders were resumed from 1 June taking into account the above-mentioned conditions and available flights.</p> <p>Legal basis for postponing actual surrender</p> <p>Legal basis: (1) Resolution of the Government on declaring quarantine throughout the territory of the Republic of Lithuania (for the moment quarantine has been declared until 27 April 2020); (2) Recommendation of the Judicial Council of the Republic of Lithuania regarding the</p>

exercise of judicial functions during the quarantine period; (3) Criminal Procedure Code of the Republic of Lithuania, Article 76(2) implementing Article 23(3) FD EAW.

Adequacy of these provisions

Yes.

Releases of requested persons following postponement of surrender

There have been no such cases. Decisions are taken on a case-by-case basis, taking into account the term already spent in custody, the seriousness of the criminal offence, the character of the requested person and the possibility of ensuring the execution of the EAW while applying less restrictive provisional measures.

Expected resumption of surrender

The quarantine regime on the territory of Lithuania has been extended until 16 June. Also, note that the state of quarantine in Lithuania was withdrawn on 17 June. However, the practical surrender of persons to Lithuania will resume as from 1 June, taking into account flight services and the accessibility of countries concerned.

In current conditions, a convoy delegation of officers of a foreign country would be able to take over persons surrendered by Lithuania only if there were a return flight on the same day.

According to the prepared summary report, at present the following have been postponed because of the quarantine regime:

- surrender of 18 persons from foreign countries to Lithuania, namely: United Kingdom – 8, Germany – 2, Portugal – 2, Ireland – 1, Sweden – 1, Austria – 1, Czech Republic – 1, Norway – 2. In many cases the competent authorities of foreign countries have postponed surrender procedures for requested persons until an unspecified date i.e. until it becomes possible to resume execution of surrenders. In some cases, a specific date until which surrender has been adjourned has been set, e.g.

	<p>until 31 May, until 6 June, until 10 June;</p> <p>- surrender of nine persons from Lithuania to foreign countries, namely: Germany – 3, Spain – 1, Belgium – 1, Finland – 2, Estonia – 1, Italy – 1, Norway – 1. In many cases Lithuania has postponed surrender procedures for requested persons until an unspecified date, i.e. until it becomes possible to resume execution of surrenders.</p> <p>Transit</p> <p>Transit requests will be considered, taking into account lockdown restrictions.</p>
<p>Precautionary measures for surrender, extradition and transfer</p> <ul style="list-style-type: none"> - <i>COVID-19 test</i> - <i>health certificate</i> - <i>quarantine</i> - <i>facial masks</i> 	<p>Precautionary measures</p> <p>At the time of preparing responses to these questions, no physical surrenders/takeovers of persons are being carried out; we are therefore unable to provide answers as to any specific precautionary measures which would be put in place. Relevant authorities in charge of the surrender of persons (police, in Lithuania’s case) would decide on any specific precautionary measures to be applied in these cases. For the moment, the competent institution is analysing possible solutions. There are no specific requirements or specific exceptions for police movement. The rules of movement are based on the general Resolution of the Government of the Republic of Lithuania whereby foreign convoys cannot enter the territory of Lithuania. An exception could be made for foreign officers’ convoys taking return flights on the same day, as mentioned above; however, due to the limited number of flights, this cannot be applied in practice. A Lithuanian convoy also has very limited opportunities to take over a person since there is only one renewed passenger flight (Vilnius-Frankfurt-Vilnius). Currently, it is being negotiated internally whether a police convoy will be sent to Germany, taking into account the 14 days’ self-isolation required following a visit to a foreign country. Likewise, there is no doubt that air carriers would also impose their own requirements regarding precautionary measures for passengers.</p> <p>Special measures for the person to be transferred</p>

	<p>There are no special medical requirements. However, the temperature of every prisoner going to or out from the prison or any other detention place is checked. In addition, during the general medical examination, prisoners have to answer COVID-19 screening questions.</p> <p>Special measures for escorting police officers</p> <p>There are no special conditions and requirements, except use of standard personal protective equipment (masks, gloves, etc.).</p> <p>The 14 days' self-isolation would be required only for police officers coming back from non-safe-list countries. The list of 'safe' countries is reviewed and approved by the Lithuanian Government every Monday. At the moment all EU countries are considered safe, with the exceptions of Portugal and Sweden, with which the United Kingdom is also grouped: foreigners from these last three countries may not enter Lithuania.</p> <p>Need (or not) for further guidance on precautionary measures</p> <p>Such guidance would be highly desirable even now.</p>
<p>Extradition</p> <ul style="list-style-type: none"> - <i>suspension</i> - <i>legal basis</i> - <i>third countries involved</i> - <i>expected duration of suspension</i> 	<p>Impact on extradition procedures</p> <p>The extradition of persons to third States is suspended. We are not currently aware of any decisions of third States suspending extradition to Lithuania. In order to reduce the spread of COVID-19, the Government of Lithuania has declared quarantine throughout the territory of Lithuania, which also affects cross-border movements. Extradition will therefore be possible only after the end of quarantine in Lithuania.</p> <p>Legal basis for postponing actual surrender</p> <p>(1) Resolution of the Government on declaring quarantine throughout the territory of the Republic of Lithuania; (2) Criminal Procedure Code of the Republic of Lithuania, Article 76 and international treaties.</p> <p>Need (or not) for further exchange of information</p> <p>Regarding further exchanging of information – bilateral relations with third States vary depending on country, region, legal basis (convention or</p>

	<p>bilateral agreement), so information on a particular third State may not be relevant to all Member States.</p>
<p>Transfer of sentenced persons <i>- prioritisation in issuing/execution</i></p>	<p>Impact on transfer of sentenced persons</p> <p>All actual transfers of prisoners under 2008/909/JHA are suspended at least until 14 April.</p>
<p>SIRENE Bureaux <i>- working of SIS bureau</i> <i>- exchange of information with other SIS Bureaux</i></p>	<p>Impact on the work of the SIRENE Bureau</p> <p>The Lithuanian SIRENE Bureau is working at full capacity.</p> <p>Impact on exchange of information with other SIRENE Bureaux</p> <p>No influence has been detected on international information exchange.</p>
<p>EIO and MLA <i>- prioritisation in issuing/execution</i> <i>- electronic transmission</i> <i>- whom to contact</i></p>	<p>Impact on the issuing of EIOs (European Investigation Orders) and MLA (mutual legal assistance) requests</p> <p>No prioritisation.</p> <p>Impact on execution of EIOs and MLA requests</p> <p>Execution of EIOs might be affected by the fact that most officials of prosecution services and courts are working remotely. EIOs will be executed; however, given that all the work of the Prosecution Office of Lithuania during the quarantine regime from 16 to 30 March is organised remotely (as is the work of the Lithuanian courts and law enforcement institutions) there could be some delays. The Prosecutor-General's Office of the Republic of Lithuania makes every possible effort to provide such assistance as is required, especially in urgent/serious cases.</p>
<p>Freezing and confiscation orders <i>- prioritisation in issuing/execution</i></p>	<p>Impact on issuing of freezing and confiscation orders</p> <p>No prioritisation.</p>
<p>JITs <i>- prioritisation and alternative telecommunication solutions</i></p>	<p>Impact on JITs</p> <p>No prioritisation.</p>
<p>Recommended</p>	<p>We consider Eurojust to be one of the main channels. We also encourage</p>

<p>channels for transmission of</p> <ul style="list-style-type: none"> - urgent requests - information exchange <p>Contact details</p>	<p>the use of EJM contact points or contacts for other networks, SIS SIRENE and other forms of informal communication for some specific questions or requests so as to coordinate as well as possible, given the current situation.</p> <p>In addition, on national focal points, to organise work better during the quarantine regime, the Lithuanian Prosecutor-General's Office has created a special email box – International@prokuraturos.lt – to which it is requested that all correspondence on international cooperation in criminal matters be sent. The relevant information was circulated via Eurojust to all EU Member States.</p>
<p>Any other relevant information</p>	<p>The Lithuanian Health Ministry has published a list of EU and European Economic Area countries from which persons may enter the territory of Lithuania with no self-isolation requirement. Currently the list includes Germany, Poland, France, Italy, Finland, Norway, Denmark, Austria, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Greece, Hungary, Iceland, Latvia, Liechtenstein, Luxembourg, the Netherlands, Romania, Slovakia, Slovenia and Switzerland. People can travel to Lithuania from Malta, Ireland and Spain, but are still required to self-isolate for two weeks. Meanwhile, travel from Sweden, the United Kingdom, Portugal and Belgium is still banned. The lists are updated every Monday taking into account the epidemiological situation.</p> <p>Since Lithuania has introduced a quarantine regime because of the potential spread of COVID-19 infection (the duration of the quarantine regime: from 00.00 on 16 March 2020 until 24.00 on 31 May 2020) it is understandable that certain requirements have been put in place that must be complied with (on the basis of Resolution No 207 issued by the Government of the Republic of Lithuania on 14 March 2020, including further amendments to take account of the present situation within the country). Currently the arrival of foreigners into the Republic of Lithuania is prohibited, with the exception of citizens of Poland, Latvia and Estonia. Persons who have arrived in Lithuania must comply with the 14-day isolation regime, with the exception of persons from the countries</p>

	<p>mentioned above if they have not been diagnosed with symptoms of coronavirus infection.</p> <p>The introduction of quarantine has not suspended the execution of requests for legal assistance. However, quarantine conditions undoubtedly affect the deadlines for execution of these requests.</p> <p>All decisions and recommendations adopted by the State Emergency Operations Centre and announced on the website of Lithuania's Ministry of Health must be complied with when carrying out procedural actions. The performance of procedural actions by means of direct contact with another person is restricted, so whenever possible persons are questioned using audio-visual remote transmission measures, except where such procedural actions must be carried out without delay. Likewise, urgent searches may also be conducted in compliance with the requirements.</p> <p>The current recommendations must be complied with until COVID-19 prevention and protection measures are mitigated at State level.</p>
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ANNEX D: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	LANGUAGE OF X- LAND OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
CC		Criminal Code
CCP		Code of Criminal Procedure
CPB		Criminal Police Bureau
EAW		European Arrest Warrant
EJN		European Judicial Network
FD		Framework Decision
Lithuania		The Republic of Lithuania
MoFA		Ministry of Foreign Affairs
PGO		Prosecutor-General's Office of the Republic of Lithuania
