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EVALUATION REPORT ON THE
FOURTH ROUND OF MUTUAL EVALUATIONS
"THE PRACTICAL APPLICATION OF THE EUROPEAN ARREST WARRANT AND
CORRESPONDING SURRENDER PROCEDURES BETWEEN MEMBER STATES"

REPORT ON LITHUANIA

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1. INTRODUCTION

- 1.1. Following the adoption of the Joint Action of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established.
- 1.2. The MDG of 11 July 2005 adopted the topic of the fourth round of mutual evaluations¹, namely "The practical application of the European Arrest Warrant and corresponding surrender procedures between Member States"².
- 1.3. With a view to conducting the evaluations, experts with substantial practical knowledge of the European Arrest Warrant (EAW) were nominated by Member States pursuant to a written request to delegations made by the Chairman of the MDG on 9 September 2005³.
- 1.4. At its meeting on 28 October 2005 the MDG approved the evaluation questionnaire for the fourth round of mutual evaluations. The objectives of the evaluation exercise and the questionnaire itself are set out in 14272/05.
- 1.5. Also at its meeting on 28 October 2005 the MDG discussed and approved 13824/05, the revised sequence for the mutual evaluation visits. Lithuania is the tenth Member State to be evaluated during the fourth round of evaluation.
- 1.6. The experts charged with undertaking this evaluation were: Ms Inga MELNACE (Legal adviser, Latvia), Mr Branislav BOHACIK (Head of Division for Judicial Cooperation in Criminal Matters, Slovak Republic) and Mr Cezary MICHALCZUK (Prosecutor, Poland). Two observers were also present: Ms Claudia GUALTIERI (European Commission) and Ms Katerina LOIZOU (Eurojust), together with the General Secretariat of the Council.

¹ 9602/05 - Orientation debate on a proposed Mutual Evaluation exercise.

² Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1; "FD").

³ 6206/1/06/ REV1 - Timetable for 2006 and designation of experts.

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- 1.7. This report was prepared by the expert team with the assistance of the Council Secretariat, based upon their findings arising from the evaluation visit of 20-22 February 2007, and upon Lithuania's detailed and helpful responses to the evaluation questionnaire and a written request for further information.
- 1.8. The report makes reference to differing processes in respect of arrest and prosecution cases only insofar as there is a divergence in practice between the two procedures.
- 1.9. The expert team's overarching purpose was to evaluate the distinct practical processes operated and encountered by Lithuania both in its role as issuing and executing Member State, to assess relevant training provisions and the views of the defence, before moving on to conclude and to make such recommendations as they felt were appropriate to enhance the means by which the EAW and its corresponding surrender provisions may be further streamlined and improved.

2. THE AUTHORITIES AND THE LEGAL BASIS

2.1 THE AUTHORITIES

- The Ministry of Justice is headed by the Minister of Justice, assisted by the Vice Minister of Justice. The International Law Department of the Ministry of Justice (MOJ) has four lawyers who deal on a regular basis with matters regarding the EAW. The MOJ, which has a wide variety of further competencies in matters of international law, is responsible for issuing EAWs in conviction cases at the request of a court or of the Prison Department¹. The MOJ has its own translation service.

The MOJ is responsible for keeping a record of its own statistics, and it coordinates to some extent with other relevant services and institutions, such as the Office of the Prosecutor General, for establishing statistical information in EAW matters. However, the MOJ does not have overview statistics regarding all work carried out in the field of the EAW in Lithuania.

¹ Code of Criminal Procedure, Article 69(2).

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- The Lithuanian Prosecution Office has a hierarchical structure and has the following composition:
 - The Office of the Prosecutor General ("OPG", 98 prosecutors);
 - The Offices of Regional Prosecutors (5 offices, in total 181 prosecutors);
 - The Offices of District Prosecutors (51 offices, in total 572 prosecutors).

As regards issuing EAWs the role of prosecutors in prosecution cases can be described as follows. When during a criminal investigation a prosecutor¹, taking account of the grounds specified in Article 122 of the Code of Criminal Procedure, considers that a suspect should be arrested, he can ask the competent court to issue a domestic arrest warrant. If the prosecutor has information² that the suspect is not anymore in Lithuania but is in one of the other EU Member States and that consequently a EAW should be issued, the prosecutor sends a package of information to the OPG, together with a copy of the domestic arrest warrant and a draft EAW. The OPG then verifies the draft EAW, issues the EAW, makes translations as appropriate - the OPG has its own translation service - , and sends the EAW for execution³. There is no further role for the prosecutor until the point at which the wanted person is apprehended and surrendered to Lithuania.

As regards executing EAWs, the OPG is the only institution competent to receive EAWs from other Member States. If the wanted person is apprehended, the OPG shall apply to Vilnius Regional Court for a decision on the surrender of the person concerned⁴.

¹ All prosecutors directing or organizing an investigation have such a right (district prosecutors, regional prosecutors and prosecutors working with the OPG).

² Usually consisting of well founded data received from a Persons' Search Unit within an appropriate territorial police commissariat.

³ Code of Criminal Procedure, Article 69(1).

⁴ Code of Criminal Procedure, Article 73(1). See however also section 4.2 and further below.

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- The Lithuanian Court System comprises, apart from the Constitutional Court and Special Administrative Courts, four layers of Courts of General Jurisdiction:
 - 1 Supreme Court (Vilnius);
 - 1 Court of Appeal (Vilnius);
 - 5 Regional Courts;
 - 54 District Courts.

In daily EAW matters, only these Courts of General Jurisdiction play a role. Since in EAW matters there is only one level of appeal with the Court of Appeal and there is no possibility of cassation¹, the Supreme Court does not come into play.

In prosecution cases, the competent court decides on issuing a domestic arrest warrant, further to which the OPG can issue an EAW. In conviction cases and upon request of a court, the MOJ can issue an EAW.

Vilnius Regional Court, comprising 22 judges, decides on the execution of a EAW issued by the authorities of other Member States. Of these decisions by Vilnius Regional Court there is one possibility of appeal to the Court of Appeal (also in Vilnius)².

- The International Liaison Office of the Lithuanian Criminal Police Bureau ("ILO") comprises three units: the Interpol Lithuanian National Unit, the Europol Lithuanian National Unit, and the SIRENE Lithuanian National Unit. In general, the tasks of ILO are threefold:
 - 1) to ensure, 24h/24h all year round, the enforcement of international law in cooperation with foreign partners with a view to preventing and investigating criminal offences;
 - 2) to coordinate these and other international activities;
 - 3) to fulfil international obligations in the area of crime prevention and investigation.

¹ Code of Criminal Procedure, Article 74(3).

² During 2006, five appeals were lodged with the Court of Appeals against a decision of Vilnius Regional Court to surrender a person. All these appeals failed.

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In issuing EAW matters, ILO ensures the transmission through Interpol¹ of EAWs issued by the competent authorities of Lithuania to the relevant Member State(s).

In executing EAW matters, ILO is responsible for locating requested persons prior to sending the relevant information to local police with a view to undertaking arrests.

In both issuing and executing EAW matters, ILO usually acts as intermediary between the Lithuanian competent authorities and the authorities of other Member States when requests for additional information are made.

2.2 THE LEGAL BASIS

Lithuania has implemented the Framework Decision on the European arrest warrant by making modifications in 2004 to its Criminal Code and its Code of Criminal Procedure:

- Criminal Code (Zin., 2000, No. 89-2741; 2004, No. 72-2492). This Code provides in Article 9¹ the conditions under which citizens of Lithuania and foreigners are surrendered to other Member States on the basis of the European arrest warrant. Article 9¹(3) contains the mandatory grounds for refusal (including under subparagraph 1 cases where "*the surrender of the person would be in breach of fundamental human rights and/or liberties*"²), Article 9¹(4) contains the optional grounds for refusal.
- Code of Criminal Procedure (Zin., 2000, No 37-1341; 2004, No 72-2493). This Code sets out the rules of procedure which apply inter alia in respect of the role of Lithuania as an issuing Member State (articles 69¹ and 70) and in respect of the role of Lithuania as an executing Member State (articles 71¹ - 76).

¹ To be noted that Lithuania is currently preparing to join SIS II. Since this system may only become operational at the end of 2008, Lithuania is also simultaneously preparing to join "SISone4ALL", which should become operational on 31 August 2007.

² Apparently inspired by FD, recital 12.

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The Code of Criminal Procedure provides in its Article 2 an obligation for the prosecution to prosecute all acts that are likely to constitute criminal offences and to take all steps and action according to the law so as to disclose such criminal offences. One of two principles derived from this obligation, which was referred to by the Lithuanian authorities as the "principle of legality" (or the "principle of obligatory criminal prosecution"), has an impact on the issuing of EAWs.

The following acts are also of relevance:

- The Constitution of the Republic of Lithuania. Chapter 9 of the Constitution, entitled "The Court" and comprising Articles 109-118, contains provisions on the court system of Lithuania. Article 118 lays down the place of the prosecutor in the Lithuanian legal system. Because of its place in the Constitution, the Lithuanian authorities consider the OPG and the territorial prosecutor's offices to be a "judicial authority" within the meaning of Article 6 of the Framework Decision on the EAW.
- Rules of 26 August 2004 (No. IR-95/I-114) for issuing the European Arrest Warrant and surrender of persons pursuant to the European Arrest Warrant. These "Rules for issuing EAW's", which have been enacted by the Minister of Justice and the Prosecutor General on the basis of Article 69¹(3) of the Code of Criminal Procedure, provide detailed rules on how the provisions set out in the Code of Criminal Procedure should be applied in practice.
- Law on the Prosecutor's Office of 13 October 1994 (No. I-599), as amended on 22 April 2003 (No. IX-1518). This Law, promulgated by the President of the Republic after approval by the Seimas (Parliament) of Lithuania, comprises *inter alia* rules on the structure, functions and activities of the OPG.
- Competence Regulations of the Prosecutor's Office and Prosecutors of 7 October 2003 (Order No I-108). The Regulations, which were approved by the Prosecutor General, set forth the powers and limits of activity of the OPG, of the territorial (regional and district) Prosecutor's Offices and of individual prosecutors whilst performing their functions.

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- Order of the Minister of Interior on the Adoption of the Instruction for Searches of Persons of 16 July 2003 (No 4 RN). This Order regulates the organisation and execution by the Lithuanian Police of searches and arrests in respect of persons that are wanted on the basis of a EAW.
- Member States may also refer for assistance to Lithuania's "Fiche Française", which sets out those practices which issuing Member States are to adopt when seeking the surrender of requested persons from Lithuania¹.

3. ORGANISATION AND PRACTICES - ISSUING MEMBER STATE ROLE

The expert team was advised that, during 2006, the judicial authorities of Lithuania had issued 538 EAWs (388 by the OPG in prosecution cases, and 150 by the MOJ in conviction matters), and that in the same year 68 persons had been apprehended and 57 persons had been surrendered to Lithuania on the basis of EAWs that were issued by Lithuania in 2006². Lithuania reported that 5 surrenders had been refused.

3.1. THE DECISION TO ISSUE

The prerequisite for issuing an EAW is the existence of a domestic arrest warrant (in prosecution cases) or a final sentence or detention order (in conviction cases).

In prosecution cases the person competent to apply for an EAW is the investigating prosecutor who organizes and conducts the pre-trial investigation in respect of a requested person. Before forwarding the file to the OPG (Lithuania's issuing authority in prosecution cases), the prosecutor must obtain a domestic arrest warrant. A court can also apply to the OPG to issue an EAW when the accused has absconded in a case which is pending before that court³.

¹ 11097/04.

² These are the figures that have been provided by the MOJ. From other sources, the expert team received differing information, e.g. the expert was informed by ILO that in 2006 a total of 207 persons had been surrendered to Lithuania on the basis of EAWs issued by Lithuania in 2006 or in previous years.

³ Rules for issuing the EAW, point 6.

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In conviction matters¹ the court responsible for the execution of the sentence, or the Prison Department in cases where the person concerned has absconded after the custodial sentence has been handed down or while serving his sentence, can apply for an EAW to be issued by the MOJ². The MOJ will then proceed to issue an EAW after examination of all relevant documents and ascertainment that valid grounds for the issuance of an EAW exist.

In both cases, rather than providing for the application of a measure of proportionality, the Code of Criminal Procedure prescribes that all steps and actions according to the law must be taken to ensure the investigation and prosecution of criminal matters, as the decision to issue is subject to strict statutory requirements.

3.2. VERIFYING THE POSSIBLE EXISTENCE OF MULTIPLE REQUESTS

The expert team was advised that in prosecution cases the package of information gathered by the investigating police officer will contain the results of a mandatory police database search pertaining to the requested person. If outstanding domestic proceedings or earlier EAWs are discovered the prosecution service will revoke the earlier EAW and issue a single unified EAW to minimise the potential for problematic specialty issues to develop.

In conviction cases the sentencing court or the Prison Department will forward a written copy of the judgment to the MOJ together with the written request that the EAW be issued. If two or more judgments are handed down in respect of the same person, these judgments will have been converted into a single joint judgment containing all convictions. In case an EAW request refers to such a joint judgment, the earlier judgements are also submitted to the MOJ and the information relating thereto is included in the draft EAW.

¹ Including where a court judgment has been imposed in absentia or where the court decides to revoke an order of parole.

² Rules for issuing the EAW, point 8.

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The expert team was advised that in all cases in which a pre-existing international request for extradition had been issued, the appropriate issuing authority has reviewed its files and, where it has been determined that the requested person is, or may reasonably be believed to be, in the European Union, that authority has re-issued an EAW in substitution¹.

3.3. THE COMPLETION OF THE FORMS

It is the practice of the Lithuanian authorities to issue unified prosecution EAWs and unified conviction EAWs. By virtue of the separate competence of the OPG and the MOJ it is not possible to issue mixed prosecution/conviction EAWs.

In prosecution matters the initial EAW drafting will be undertaken by the competent prosecutors charged with the domestic prosecution and the competent courts. These prosecutors and judges refer to the law and also to the Rules for issuing EAWs, which set out the sequential practical steps that are to be taken in these matters.

The draft EAW will subsequently be forwarded to the OPG, which will review the documentation and prepare the final text of the EAW. If the information obtained is insufficient, the OPG may ask the requesting prosecutor or court to provide the deficient information. When the OPG has ascertained that reasonable grounds exist to issue the EAW, it will make such changes² to the draft EAW as are felt necessary before passing the file to the Prosecutor General or the Deputy Prosecutor General for signature/issue.

In conviction matters the court or the Prison Department will prepare a draft EAW and submit it to the MOJ with a request for it to be issued. One of the four lawyers of the MOJ will review the request and the accompanying documentation, and verify whether the formal grounds for issuing the EAW are complied with, in particular whether the request has been made on the basis of a custodial sentence of sufficient gravity. If the information obtained is insufficient, the MOJ may ask the requesting court or Prison Department to provide the deficient information.

¹ The Lithuanian authorities indicated that this practice had been put in place partly because Member States such as France and the UK would no longer act on the basis of such an international alert.

² The experts team was advised that the OPG often made substantial changes, or even redrafted the EAW from scratch.

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Once the form of the EAW has been satisfactorily completed the draft EAW is transmitted to the Minister of Justice (or his/her deputy if the Minister is unavailable) for signature/issue.

3.4. TRANSLATION OF THE EAW

The issuing authorities (OPG, MOJ) transmit a copy of issued EAWs together with an English language version (prepared by in-house translators) to ILO so that the documentation may be checked, input and circulated through Interpol channels.¹

If the requested person is known to be located in a Member State which does not accept English as an appropriate language for the receipt of EAWs, the relevant issuing authority will undertake an internal translation if possible or will outsource the translation of the EAW in order to comply with the requirements of the relevant executing Member State².

3.5. TRANSMISSION OF THE EAW

Lithuanian EAWs are circulated as Interpol diffusions although in addition the issuing authority usually undertakes direct transmission to the judicial or central authorities of an executing Member State in cases where the location of the requested person is known³.

The Lithuanian authorities advised the expert team that Interpol France will not search for a requested person unless it receives a transmission of the EAW itself in French. Given that this is not practically possible in respect of all Lithuanian EAW based diffusions, the Lithuanian authorities considered that France was not actively searching for persons sought by means of non-targeted Lithuanian EAWs⁴.

¹ As stated above, the experts team was advised that Lithuania is currently preparing to join SISone4ALL, which will result in consequential changes to the circulation of EAW's.

² The in-house translators of OPG and MOJ handle translations from and into English, French, German and Polish (and Russian); translations from and into other languages are outsourced.

³ Lithuania has elected not to create a central authority to facilitate EAW transmission or to assist its issuing judicial authorities.

⁴ In one instance a requested person was reported to have been known to the French authorities and not arrested for want of a French language EAW.

3.6. ISSUES RAISED BY EXECUTING MEMBER STATES AND COMMUNICATION CHANNELS RELIED UPON

The Lithuanian authorities reported that they had historically experienced logistical issues with Italy and the Czech Republic¹ in respect of their restriction of the applicability of the EAW regime pursuant to Article 32 of the FD. In such cases (following an arrest) the appropriate issuing authority was required to reissue the documentation in accordance with the pre-existing extradition system. This places additional preparation, drafting and translation burdens on the Lithuanian authorities.

3.7. REQUESTS FOR FURTHER INFORMATION MADE BY EXECUTING MEMBER STATES

The expert team was advised that in approximately 40% of its EAW requests Lithuania's issuing authorities receive requests for additional information to which they reply accordingly. Those requests were broadly categorised as follows:

- Numerous requests to clarify the detail of "in absentia" convictions,
- Submission of substantive provisions of criminal law of Lithuania²,
- A declaration that the requested person was "unlawfully at large" in conviction cases³.

These requests are generally received and actioned via ILO and, in most cases, are conducted in English. If direct requests are received via e-mail then the issuing authorities may respond in kind if they feel that to be the most efficient course.

¹ Since 1 July 2006 when the Czech Republic amended its implementing legislation the transitional provisions of Article 32 of the FD only apply in the cases of Czech nationals (for acts which pre-date 1 November 2004 extradition, rather than EAW requests must be transmitted).

² Ireland.

³ The UK, although amendments were made to the UK's implementing legislation in January 2007 as a consequence of which it is hoped that this requirement may be viewed in a historical context.

The expert team was advised that some of these requests were considered by Lithuania to relate to non-essential detail (a position supported by the fact that the non-submission of responses¹ did not preclude the surrender sought) which originated, not from the executing judicial authorities themselves, but rather from central or other administrative bodies.

The expert team was also advised that the UK and Ireland were two Member States that, in Lithuania's experience, generally refused to permit further information to be provided by way of letter or amending detail; rather they required that the initial EAWs be withdrawn and that amended EAWs be re-issued in accordance with their requirements.

3.8. LEGAL REGIME GOVERNING THE RETURN OF OWN NATIONALS FOR THE ENFORCEMENT OF A SENTENCE

In order to facilitate the return of own nationals for the service of a sentence, Lithuania relies upon the 1983 Council of Europe Convention on the Transfer of Sentenced Persons or upon the 1970 Council of Europe Convention on the International Validity of Criminal Judgments. However, both these Conventions apply the dual criminality principle. At the time of the evaluation visit no such returns had been requested of Lithuania and as such there was no practical experience in this area.

3.9. SURRENDERS OF MINORS AND CORRESPONDING GUARANTEES

Persons under the age of 16 are generally considered not liable for criminal conduct in Lithuania. The domestic criminal code however stipulates that, in respect of a series of serious criminal actions², the age of criminal responsibility may be reduced to 14. No requests for the surrender of minors had been issued at the time of the evaluation visit.

¹ By virtue of Lithuania's inability to comply with a short time limit imposed by the executing Member State.

² Including offences relating murder, serious impairment to health and sexual exploitation. extortion.

3.10. GENERAL COMMUNICATIONS WITH THE EXECUTING MEMBER STATE

General communications with executing Member States was said to be adequate. However, one case where insufficient communications had directly resulted in the release of a requested person was relayed to the expert team. The chronology in that case was as follows:

- 13 December 2005 - requested person apprehended by French law enforcement authorities;
- 27 December 2005 - the fact of that arrest was communicated to the OPG of Lithuania, and a deadline was given for the submission of an EAW in the French language (12:00 on 28 December):
- 28 December 2005 (12:00AM) - requested person released:
- 29 December 2005 - the EAW, translated into the French language, was transmitted to the competent French authorities;
- 30 December 2005 - the release of the requested person was communicated to the Lithuanian authorities.

Clearly in this case the two-week notification delay (13-27 December) had resulted in the release of the person sought.

3.11. THE MECHANICS OF THE SURRENDER (INCLUDING TEMPORARY SURRENDER) OF REQUESTED PERSONS/PROPERTY

On receiving notification from the executing State that the executing State has decided to execute the surrender of the requested person, the OPG / MOJ entrusts the ILO with organising the physical surrender process.

In prosecution cases the OPG notifies the authority initiating the issue of the EAW (the prosecutor conducting the proceedings) of the surrender of the person. In conviction cases, the MOJ notifies this information to the court or the Prison Department.

The surrender may be effected without the instruction of the OPG / MOJ if there is direct communication and agreement on the surrender of the person between national agencies of Interpol. In such instances, the OPG / MOJ is notified of the effected surrender when the person is brought back to Lithuania. In cases where it is necessary to effect the transit of the person being surrendered through the territory of another State, the ILO notifies the OPG / MOJ of the date of surrender and the route to be taken in advance.

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The expert team was advised that if the EAW was accompanied with a request to seize property or evidence (by means of a separate coercive order issued by a judge) that material could be surrendered with the requested person or via a separate MLA request. At the time of the evaluation visit, Lithuania had not issued such a request for assistance.

3.12. CONFLICT OF EAWs/EXTRADITION REQUESTS/ONWARD SURRENDER

At the time of the evaluation visit Lithuania had received no notification that its EAWs were in conflict with requests from other Member States and as such it was unable to comment on the means adopted by executing authorities to resolve such conflicts.

3.13. EXPENSES

The Lithuanian authorities reported that their dealings in respect of the expenses relating to surrender to date had been in accordance with the practices set out in Article 30 of the FD.

4. ORGANISATION AND PRACTICES - EXECUTING MEMBER STATE ROLE

The expert team was advised that during 2006 a total of 28 EAWs had been received, 19 as general Interpol diffusions and 9 as EAWs directly addressed to Lithuania. On the basis of all EAWs received in 2006 and in previous years, Lithuania in 2006 has undertaken 28 arrests, with 26 persons having been surrendered, and 2 surrenders having been refused. Of the 26 surrendered persons, 14 were surrendered by using the simplified procedure with consent.

4.1 RECEIPT PROCEDURES

At the time of the evaluation visit Lithuania had no access to the SIS and Interpol was therefore the standard transmission channel for the receipt of EAW surrender requests. The expert team was advised that in the majority of cases¹ there would be no requirement for the original EAW to be transmitted and that faxed receipt would suffice for the purposes of the proceedings.

Lithuanian law enforcement officers will also carry out provisional arrests based upon an Interpol diffusion or Red Notice and an initiating EAW therefore only has to be faxed, together with a translation into either Lithuanian or English, for the purposes of the subsequent court hearings.

¹ Unless a case specific issue arose that required the examination of the original EAW.

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Translated documents must be signed by the translator and sealed by the issuing authority to assure Lithuanian authorities of their accuracy.

Where an EAW is transmitted directly by an issuing judicial or central authority to the OPG, the document will be relayed to ILO so that the required series of criminal register checks may be conducted.

4.2 THE FORM OF THE WARRANT, REVIEW PROCEDURES AND REQUESTS FOR FURTHER INFORMATION

On receipt of an EAW alert¹, and irrespective of whether there are indicators that the requested person is located in Lithuania, ILO (National Interpol Unit) undertakes a series of electronic registry checks to seek to verify the presence of the requested person on Lithuanian territory. Where there is a link with Lithuania, positive hits generate more detailed second-tier electronic enquiries to ascertain and confirm the precise location of the person sought.

Where no EAW has been received, ILO will request that an EAW be sent, as a basis for the announcement of the search in the territory of Lithuania and for executing the database searches.

Once the location of the requested person has been established the file is referred to local law enforcement officers to undertake the arrest. All officers of the pre-trial investigation (police officers, state border guards, customs and other officers), as well as the prosecutor, have power to arrest a requested person². The police are empowered to authorise the detention of a requested person apprehended on the basis of an EAW for a period of up to 48 hours³. During this time the OPG and the local prosecutor (in whose jurisdiction the arrest has occurred) are advised of the existence of the EAW and of the facts of the arrest.

¹ ILO informed the expert team that during 2006, they had received 5944 alerts on the basis of the EAW (6110 in 2005).

² Code of Criminal Procedure, Article 140.

³ Ibidem.

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As a general rule, the OPG will await issuing a request to Vilnius Regional Court for taking a decision on the EAW until such time as the original EAW and a translated copy thereof have been received and reviewed. However, the expert team was advised that in cases of urgency, neither the original EAW nor the translated copy is awaited and that the OPG will have recourse to its internal translation resources which can perform translations from English, French, German and Polish.

On receipt of the faxed EAW the OPG reviews the request. The expert team was advised that the legal basis for this non-judicial¹ review was Article 73(1) of the Code of Criminal Procedure².

The expert team was further advised that the review includes a systematic assessment of the following categories of information/issue:

- That the form of the EAW is properly constructed in that it bears the appropriate signatures and seals;
- That the facts of the offence(s) in section (e) of the form are adequately completed;
- That the offence set out is properly included in the FD list of 32 categories of crime³;
- That the sentences mentioned (in conviction EAWs) match those handed down by the court;
- That the identification evidence/information is deemed to be adequate⁴; and
- Whether grounds for mandatory or optional refusal are apparent from the facts disclosed.

¹ That is to say a review conducted by a body other than the executing judges themselves.

² This Article provides as follows: *"In cases provided for and in accordance with international agreement of the Republic of Lithuania or in the issued European Arrest Warrant, the prosecutor of the Office of the Prosecutor General of the Republic of Lithuania shall apply to the Regional Court of Vilnius with the application regarding a person's extradition from the Republic of Lithuania or his surrender to the International Criminal Court or under the European Arrest Warrant."*

³ The OPG stated that no verification of double criminality would be undertaken i.e. they would not "look behind the list".

⁴ The expert team was advised that, given that there had been frequent examples of EAWs being issued for Lithuanian nationals whose identity had been stolen by the perpetrator of the crime, this was an issue of particular sensitivity.

Additional ad hoc enquiries may be made concerning individual cases. For example, the OPG reported that it had on two occasions made enquiries of fact to the issuing Member States in cases of alleged alibi. In one case the issuing Member State¹, having reviewed the case and discovered that there was merit in the claim, withdrew the EAW. In the other case², the alibi was found by the issuing Member State to be false and the surrender proceeded.

The OPG is competent in all instances to make enquiries to issuing Member States and postpone the application to the court if it deems it to be appropriate.

The expert team was advised that in two cases during 2005 this review had resulted in EAWs being refused by the OPG without reference to the courts³. One case concerned a mentally ill person and the other concerned a person who was unable to participate in the proceedings⁴. Article 73(1) of the Code of Criminal Procedure in the English translation states that the OPG "*shall apply*" to Vilnius Regional Court. The OPG was of the opinion that this nevertheless leaves a certain margin of discretion to the OPG whether or not to apply⁵, which - in the opinion of the OPG - would enhance the efficiency of the process of deciding on EAW requests.

4.3 ARREST PROCEDURES/FIRST HEARING

When the person is arrested, the OPG and the prosecutor (either district or regional) involved in the case begin to liaise and act jointly.

¹ Sweden.

² The Netherlands.

³ Given the fact that these cases had been decided by the OPG, they were not known to the first instance or appeal court judges interviewed by the expert team.

⁴ The expert team was advised that in this case the refusal ground of Article 9(3)(1) would apply, according to which execution of an EAW shall be refused where "*the surrender of the person would be in breach of fundamental human rights and/or liberties*".

⁵ The judges at the Court of Appeal however felt that in view of the wording of Article 73(1) of the Code of Criminal Procedure there would be no such margin of discretion, and that the OPG should make an application in all cases to Vilnius Regional Court, who should then decide on the case.

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Within 48-hours after the person is arrested and detained, the district/regional prosecutor addresses the local court (within the territory in which the person was arrested) with an application for the requested person to be detained for a further period. This application will in general terms be for a period of up to 60 days¹ although the period of any detention granted will in all cases be a matter for the court.

In addition to detention criteria used in domestic cases, such as flight risk, the seriousness of the allegation, interference with the investigation or fear of the commission of further offences, the Code of Criminal Procedure contains an express detention ground, that being the existence of the EAW itself².

Once the matter of judicial detention is resolved, the requested person will be transferred to Vilnius Regional Court where the executing judicial authority is based.

The OPG will then interview the requested person in the presence of an interpreter³ and of a defence lawyer⁴. The interview will seek to establish if consent to surrender (and/or renunciation of entitlement to the specialty rule) is to be given. If consent is forthcoming it will be recorded in a signed protocol to be reiterated before the court in due course.

The choice of counsel will be a matter for the requested person, subject to counsel's availability not affecting the surrender timetable⁵, in which case alternative counsel may be selected or appointed.

¹ In view of Article 71¹(2) of the Code of Criminal Procedure.

² Code of Criminal Procedure, Article 122(5).

³ Code of Criminal Procedure, Article 44(2) – provides for an interpreter free of charge throughout the process.

⁴ Code of Criminal Procedure, Article 50 – ensures a similar right to defence counsel from the moment of apprehension throughout the proceedings and with the benefit of State guaranteed legal aid.

⁵ Code of Criminal Procedure, Articles 50 and 51.

4.4 THE SURRENDER DECISION

The process leading to the surrender decision will vary depending on whether the requested person consents to surrender or not¹. In either event the expert team was advised by the OPG that such papers as are available will be released to legal counsel for the requested person.

In cases in which no consent is forthcoming the procedure to be adopted is governed by Article 73 of the Code of Criminal Procedure. As such, on receipt of an EAW and of adequate responses to any requests for further information that have been raised, the OPG "shall apply" to Vilnius Regional Court for the surrender case to be heard.

Following such application being made, Vilnius Regional Court must list the hearing within 7 working days (with a general judicial discretion to extend this period if in the interests of justice). If the court considers that further information is required to decide on the request, it is at liberty to authorise the OPG to make those further requests on its behalf under Article 73(4) of the Code of Criminal Procedure². It appears from this provision that the judges of Vilnius Regional Court cannot directly contact the issuing authority to obtain further information, but are obliged to use the intermediary of the OPG to this end.

Should the requested person consent to his surrender an accelerated procedure will be followed pursuant to Article 75 of the Criminal Code or Procedure.

In such cases, following the lodging of the application by the OPG, Vilnius Regional Court must list the matter within a period of 3 working days. The requested person, again together with legal counsel, interpreter and the prosecutor, must attend the hearing so that the validity of the consent may be confirmed³. A written note of the hearing is made.

¹ The expert team was advised that consent is common because of the conditions in domestic Lithuanian prisons.

² Article 73(4) of the Code of Criminal Procedure reads as follows: "*In cases where the information presented is insufficient to make a decision on extradition of a person from the Republic of Lithuania or surrender to the International Criminal Court or under the European arrest warrant, the judge of the Regional Court of Vilnius shall authorize the Office of the Prosecutor General to address a request to the requesting institution immediately for additional necessary information*".

³ Consent is revocable up until the execution of the surrender. An appeal against such a surrender order is deemed to be such a revocation.

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In both consent and non-consent cases a requested person must be surrendered within 10 days of the final decision on surrender¹. In the case of intervening humanitarian grounds the court may postpone the physical surrender until such time as the grounds have passed. Thereafter the surrender must be conducted within 10 days of the cessation of the causal event². Non-compliance with these statutory surrender time-limits will result in the release of the requested person from custody³.

4.5 REFUSALS TO SURRENDER

Although statistical data was difficult to ascertain, the expert team was advised that there had been no judicial refusals of EAWs.

The judges of the first instance confirmed that they considered that the refusal grounds set out in Article 9(3) and (4) of the Criminal Code to be a closed list. On a pragmatic basis however they considered that in cases where (e.g.) alibi defences were raised, it would be prudent to make further enquiries to the issuing Member State. If such alibi evidence stood up to examination, the EAW was unlikely to be maintained and so the process could be (and on one occasion had been) terminated by the issuing Member State itself, thus preventing the surrender of a requested person in circumstances in which it would have been contrary to the interests of justice to pursue the request.

The expert team noted that during 2005 the OPG had refused the surrender of requested persons in two instances without reference to Vilnius Regional Court⁴.

4.6 APPEALS PROCEDURES AND THEIR IMPACT ON TIME-LIMITS

Lithuania has established a single tier appeals structure in EAW proceedings. Either party to the litigation may appeal as of right to the judges of the criminal division of the Court of Appeal within 7 days of the surrender decision^{5 6}.

¹ Code of Criminal Procedure, Article 76(2).

² Code of Criminal Procedure, Article 76(3).

³ Code of Criminal Procedure, Article 76(5).

⁴ See above section 4.2.

⁵ Code of Criminal Procedure, Article 74(1).

⁶ The lodging of such an appeal has the effect of suspending the enforcement of the surrender decision.

The expert team was informed by the judges of the Court of Appeal that the limited grounds of appeal and the general prohibition on enquiring into the facts of the case were more restrictive than in the case of domestic matters (there had been no successful appeals at the time of the evaluation visit). They applied however the law as drafted.

The judges alerted the expert team to one inconsistency in Lithuania's implementing legislation: a requested person was provided with 7 days in which to lodge an appeal against an adverse surrender decision and yet, in accordance with domestic practices, they were provided with a 20 day period to appeal the decision by which they were remanded in custody (detained).

The potential effect of these conflicting time limits is that a requested person could have been lawfully surrendered to an issuing Member State and yet have a quite proper outstanding domestic recourse to an avenue of appeal in Lithuania.

4.7 OWN NATIONAL AND YOUTH SURRENDER ISSUES

Lithuania's implementing legislation¹ provides that a citizen or permanent resident may be surrendered for criminal prosecution on the condition that, if convicted in the issuing Member State, the requested person is returned (at the request of the OPG or of the person concerned himself) to Lithuania for the service of the custodial sentence. This provision is also applicable in respect of conviction matters².

Lithuania has chosen not to enact domestic legislation to regulate such surrenders of own nationals, rather it relies upon the provisions of the 1983 Convention on the Transfer of Sentenced Persons and the 1970 Convention on the International Validity of Criminal Judgments.

No "own national" issues had arisen at the time of the evaluation visit although it was acknowledged that reliance on the 1983 Convention reintroduced a potentially problematic re-examination of the double criminality of the offence upon which surrender order was based.

¹ Criminal Code, Article 9¹(7).

² Code of Criminal Procedure, Article 71¹(1).

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The Lithuanian authorities reported that they had no experience of issuing Member States requesting the surrender of minors.

4.8 ACCESSORY OFFENCES

At the time of the evaluation visit Lithuania had received no requests concerning accessory offences and so was unable to comment on the practical effect of receipt of such requests.

The Code of Criminal Procedure however makes specific discretionary provision for such surrenders to be authorised by the court as part of a substantive request for the surrender of a requested person¹.

4.9 ONWARD SURRENDER/EXTRADITION

Lithuania has no practical experience of subsequent applications for requested persons to be the subject of onward surrender or extradition procedures.

In such instances however Lithuania's domestic legislation² requires that any such request be considered by the OPG (including with respect to optional and mandatory refusal grounds), which must authorise or refuse the request within 20 days of receipt. The decision of the OPG is in turn to be "approved by a judge of Vilnius Regional Court within 10 days".

4.10 ARTICLE 32 EXPERIENCE

Lithuania had no record of having received surrender requests from Member States that had made declarations pursuant to Article 32 of the FD.

4.11 TEMPORARY/CONDITIONAL SURRENDER

In cases where Vilnius Regional Court has issued a ruling to surrender a requested person and this surrender has been deferred, the OPG may, upon the request of an issuing Member State, temporarily surrender that person for the purpose of carrying out "procedural acts"³.

¹ Code of Criminal Procedure, Article 71¹(5).

² Code of Criminal Procedure, Article 71¹(6).

³ Code of Criminal Procedure, Article 77.

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In such circumstances no recourse to the executing judicial authority is required by Lithuania's domestic statute. The OPG advised the expert team that, in those cases in which this power had been exercised, the primary condition had been that the requested person was to be returned to Lithuania "in due time".

No compliance issues were reported in respect of the stated requirements to return the requested person.

4.12 THE MECHANICS OF SURRENDER (INCLUDING CONDITIONAL SURRENDER) OF REQUESTED PERSONS AND PROPERTY

The ILO is responsible for the surrender of the person to the issuing State following a decision to this effect by Vilnius Regional Court and, where relevant, the Court of Appeal. To that end, ILO will contact the competent authorities of the issuing State to organise the surrender.

The expert team was advised that the non-availability of travel documents occasionally delays the surrender procedure in a substantial manner¹. Whereas in respect of Lithuanian citizens such travel documents could be produced within a reasonably short period, in respect of citizens of other nationalities obtaining such documents could be rather cumbersome and take considerable time. It could even lead to the surrender not taking place².

According to the MOJ and the OPG, the absence of travel documents may be regarded as "unforeseen circumstances" in the sense of Article 76(2) of the Code of Criminal Procedure³. This Article seems however to be an extension of the powers of the Lithuanian authorities beyond Article 23(3) of the FD⁴.

¹ The expert team was informed that in Lithuania there are substantial problems with false (or absent) identity documents.

² See Criminal Code of Procedure Article 76(5), "implementing" FD Article 23(5), which provides that a person being held in custody shall be released upon expiry of the time-limits laid down by the Law.

³ This Article reads as follows: "*In case of any unforeseen circumstances, under which the surrender during the term becomes impossible, an appropriate institution of a foreign country and the OPG shall set another date for surrender*".

⁴ This Article provides that a new date for surrender may be set "*If the surrender ... is prevented by circumstances beyond the control of any of the Member States*".

ILO informed the expert team that during 2006, 26 persons had been surrendered by Lithuania on the basis of EAWs to issuing States¹.

4.13 CONFLICT OF EAWS/EXTRADITION REQUESTS

At the time of the evaluation visit Lithuania had no experience of receiving conflicting requests for the surrender of the same requested person.

The statutory position set out in Lithuania's implementing legislation does however create a clear priority system²:

- Where the conflict arises between an EAW and a request from the International Criminal Court, it is the latter which must be executed first;
- Where a conviction request and a prosecution request are in conflict, the prosecution request must be afforded priority³; and
- In all other matters the balancing provisions of Article 16 of the FD are brought to bear in the determination of priority, meaning that the court must take into account all circumstances of relevance to the surrender of the person, especially those regarding the nature and seriousness of the committed criminal act, the place of the committed criminal act and the dates of receipt of the respective requests for surrender/extradition of the person.

4.14 EXPENSES

The Lithuanian authorities reported that all expenses relating to the physical surrender of requested persons had been borne in accordance with the provisions of Article 30 of the FD.

5. TRAINING PROVISIONS

As regards training for prosecutors, the expert team was informed that in 2005 and 2006 the OPG had organised training for prosecutors on completing, issuing and executing EAWs. The training was organised at national level in Vilnius, with the participation of the national Eurojust representative.

¹ In 2005, according to ILO, 13 persons had been surrendered.

² Code of Criminal Procedure, Article 73(5).

³ Irrespective of the severity of the offences alleged and the nationality of the persons involved.

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In addition, the OPG is currently preparing Prosecutor General instructions to prosecutors on the grounds and methodology for issuing EAWs.

Representatives of the OPG have attended local seminars, as well as seminars abroad organised by the Member States. At the time of the visit of the expert team, the last seminar that was attended was the one organised by Eurojust and Europol in Bratislava (Slovakia) on 30-31 October 2006.

As regards training for the judiciary, the expert team was advised that in 2005 the MOJ organised training for assistants of judges and personnel working in the prison departments to acquaint them with the requirements for completing EAW forms, to share the experience of the MOJ as the issuing authority in conviction cases, and to provide the assistants with up-to-date information about specific EAW requirements of other Member States. This training was organised by the MOJ at national level in Vilnius.

The MOJ is currently working on refresher training for assistant judges. To this end, surveys are being prepared setting out the errors and deficiencies found in draft EAWs. On this basis, suggestions will be formulated on ways to avoid these errors and deficiencies.

The expert team understood that judges themselves had not received specific EAW training. The judges that were interviewed by the expert team expressed however great interest in receiving such training.

The MOJ has drawn up a circular on legal cooperation in criminal matters in the European Union, which is addressed to Lithuanian courts and contains information and guidelines on the application of the EAW procedure.

The MOJ does not delegate its staff working in the area of EAW to training, seminars or conferences on EAW issues.

The expert team was advised that in addition to the above, English-language courses are regularly organised for prosecutors and other justice practitioners, including judges and assistants of judges.

6. DEFENCE PERSPECTIVES

The expert team had the opportunity of meeting three representatives of the bar association. They observed that there was only a small practice in EAW matters.

The lawyers made the criticism that it was difficult for them to obtain access to information in EAW proceedings. They observed that they frequently had to go to great lengths to obtain the same level of information as that which was available to the prosecution. The defence disputed the position taken by the OPG, according to which the OPG disclosed whatever documentation was in its possession. They noted that it was futile to appeal a disclosure decision because the lead time for that was longer than the time taken to surrender the requested person.

The lawyers regretted that detention was the usual measure imposed in criminal proceedings in Lithuania, including in the context of the EAW proceedings¹; alternative non-custodial measures were seldom applied².

In respect of issuing EAWs, they also noted that in EAW matters neither the prosecution nor the courts applied a proportionality test. In the view of the lawyers, this is the reason why Lithuania issues a large number of EAWs each year (around 500).

In respect of executing EAWs, the lawyers referred to the obligatory presence of the counsel for the defence when a person's surrender on the basis of a EAW was being examined³. Such counsel is invited after the arrest of the requested person. The counsel is either selected by the person concerned (or on his behalf by another person), or *ex officio* appointed by Vilnius Regional Court, which to that end holds a list of available counsel. Legal aid is available for such situations. The lawyers observed that the law guarantees the presence of a counsel, but not necessarily a counsel with knowledge of EAW matters.

¹ Code of Criminal Procedure, Article 122(5): "*A ground for detention shall also be the request to extradite a person or surrender him to the International Criminal Court or under the European Arrest Warrant ...*".

² Despite Article 122(7) of the Criminal Code of Procedure, which states that "*Detention may be imposed only in cases where the objectives provided for in Article 119 of this Code may not be achieved by milder remand measures*".

³ Code of Criminal Procedure, Articles 51(1), 73(2) and 75(3).

The lawyers noted that the counsel for the defence often appeals EAW decisions taken by Vilnius Regional Court to the Court of Appeal, but that these appeals rarely lead to a different result. The lawyers complained about the lack of qualification of the judiciary¹ and expressed the hope that judges would become more receptive to arguments put forward by the defence, especially those relating to proportionality, and that the judges would become more flexible in imposing measures other than custodial sentences.

7. CONCLUSIONS

7.1 GENERAL CONCLUSIONS

7.1.1. The expert team wishes to thank the Lithuanian authorities for the excellent organisation of the evaluation visit, which went very smoothly despite mid-winter temperatures. The team appreciated the dedication of the individuals that it met. The team was struck by the desire evident in all EAW stakeholders to see that the FD as transposed was effectively enforced.

7.1.2. Referring to the FD, the Lithuanian authorities advised the expert team that they had been "*anxiously awaiting this instrument*". Whereas under the former extradition practice an extradition could take up to four years, under the current EAW regime matters have been greatly simplified, resulting in considerably shorter deadlines and more surrenders (extraditions). The expert team was pleased to note this positive appreciation on the part of the Lithuanian authorities.

7.1.3 The expert team gained the impression that, generally speaking, the EAW in Lithuania is working in a very effective manner², despite the fact that some issues under domestic legislation may give rise to questions and that not all individuals working in the field of the EAW seemed to be fully prepared for work in this specific field.

¹ The lawyers hence pleaded for better training of judges. To be noted however that the lawyers themselves indicated that they had not followed any specific training on EAW matters.

² The Lithuanian authorities advised the expert team that the EAW system could be further improved if it were decided to adopt a core of vehicular languages, so that translation problems would disappear or at least diminish.

7.2 CONCLUSIONS IN RESPECT OF LITHUANIA'S ACTIVITIES AS AN ISSUING MEMBER STATE

7.2.1. Issues

7.2.1.1. The MOJ is not a judicial authority

Pursuant to Article 6(3) of the FD, in conjunction with Article 6(1) of the FD, Lithuania notified the Council General Secretariat that in matters relating to convictions the MOJ was the issuing authority. Under Article 6(1), however, the issuing authority must be a *judicial* authority. The Lithuanian authorities recognised that EAWs should be issued by judicial authorities, and that the MOJ could not be considered a judicial authority. In particular, in cases where the EAW is initiated by the Prison Department, and hence no judicial authority at all is involved in the process, this situation is in clear contradiction with the FD¹.

The expert team was, however, informed by the MOJ of plans to allow the courts to issue EAWs directly in the future. The team would very much welcome such an initiative.

7.2.1.2. Coordination within the prosecution service and between OPG, MOJ and ILO could be improved

On several occasions during the evaluation visit the expert team gained the impression that coordination within the prosecution service and between the OPG, MOJ and ILO was not optimal and could be improved. Coordination within the prosecution service is especially important in the early stages of issuing EAWs, so as to ensure that EAWs contain all possible offences in respect of which the person concerned can be charged, with a view also to the application of the specialty rule. Proper mutual coordination between OPG, MOJ and ILO is essential with a view *inter alia* to preventing a situation where the prosecution service is unaware of a previous EAW issued in a conviction case by the MOJ. The fact that the prosecution service does not have up-to-date communication and database equipment at its disposal (see next point) clearly plays a role in this respect.

¹ The expert team was informed that Lithuania had decided to entrust the MOJ with the power to issue EAWs in the years immediately following the entry into force of the FD in order to build up a sort of know-how and to allow the judiciary to gain confidence in the new instrument.

7.2.1.3. Equipment for prosecutors is out-of-date

The expert team was advised that prosecutors have no modern communication and database equipment at their disposal. Prosecutors still have to rely on manual registers. This complicates the handling by prosecutors of EAWs. For example, it is not possible for a prosecutor to check quickly whether the person being prosecuted by him is also the subject of other criminal proceedings conducted by other prosecutors. This could be of relevance when drafting an EAW in that criminal offences could be combined, with a view also to the application of the specialty rule. The lack of up-to-date communication and database equipment also hampers smooth communication and exchange of data between the prosecution service, the MOJ and the ILO (see previous point).

By contrast, the expert team noted that ILO has very modern communication and data-base equipment at its disposal.

7.2.1.4. No reliable statistics

There are no reliable statistics on the number of EAW cases that are handled by the various authorities in Lithuania. This point concerns Lithuania both in its role as issuing State and in its role as executing State.

During the evaluation visit, the expert team could not obtain reliable statistical information on issues such as the number of EAWs issued and executed by Lithuania, the number of cases in which arrested persons had consented to their surrender, and the number of appeals against EAW decisions. The information received was often confusing or in contradiction with information received from other sources¹.

¹ Two examples: A) In 2006, according to the ILO, 207 persons were surrendered to Lithuania on the basis of EAWs issued by Lithuania in that year (or in previous years), whereas, according to the MOJ, in the same year the number of persons surrendered to Lithuania on the basis of EAWs issued in 2006 was only 57. It is very difficult to conceive how this enormous difference (between 207 and 57 persons) can be explained by the fact that the ILO also took account of persons surrendered to Lithuania on the basis of EAWs issued in 2005 and 2004. B) According to the ILO, in 2005, 13 persons were surrendered to issuing States from Lithuania, whereas according to information supplied by Lithuania to the General Secretariat (see 9005/5/06 REV 5, page 6), Lithuania surrendered 27 (or 36?) persons in that year.

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The expert team underlines that it is important for the authorities to have reliable EAW statistics at their disposal, in order to monitor the flow of EAWs and to take, where relevant, appropriate steps to remedy deficiencies. The expert team was informed that there is a proposal that the prosecution service be made responsible for recording statistical data on EAWs, but that this cannot be implemented since the prosecution service at present does not have adequate equipment in place (see point 7.2.1.3. above).

7.2.1.5. Proportionality

Under Article 2 of the Code of Criminal Procedure the OPG is obliged to prosecute all criminal acts and to take all steps and action under the law to prosecute an offender, domestically or otherwise. This provision was referred to by the Lithuanian authorities as the "principle of legality". In application of this principle no proportionality test whatsoever is applied in issuing EAWs, although Lithuanian authorities informed the expert team that in practice in certain cases - in view of the resources used compared to the gravity of the criminal offence - they may choose not to issue an EAW in the first place but to exploit other possibilities to address the issue (such as MLA requests). This may explain, together with a rather strong criminal environment, why Lithuania issues around 500 EAWs per year. In per capita terms this is most probably the highest rate of issue of any Member State.

The expert team does not necessarily see this rate as a problem and observes by the way that the FD does not require a proportionality test to be applied. It would nevertheless invite the European Union to reflect on the advisability of introducing such a test in the EAW system.

7.2.2. Good practices

7.2.2.1. EAW based on a single joint sentence

As regards the prosecution stage, in principle the EAW covers all ongoing prosecution cases. In conviction cases, when imposing a sentence on a person for a new offence, Lithuanian courts will combine such a sentence in the judgement concerned with any non-served sentence in respect of the same person under a previous judgment. One sentence will then be imposed in a single joint judgement¹. In the context of the EAW this helps to prevent specialty problems.

¹ Criminal Code, Article 64.

7.2.2.2. Rules for issuing an EAW

For internal purposes, Lithuania has established clear and concise "Rules for issuing EAWs", which are notably helpful to prosecutors who are asked to draw up draft EAWs for submission to the OPG. Annex 2 to these Rules contains a very helpful chart assigning categories of domestic criminal conduct to each of the 32 FD listed offences.

7.3 CONCLUSIONS IN RESPECT OF LITHUANIA'S ACTIVITIES AS AN EXECUTING MEMBER STATE

7.3.1. Issues

7.3.1.1 Unclear interpretation of the power of the OPG

Article 73(1) of the Code of Criminal Procedure provides that, where a person under an EAW has been apprehended in Lithuania, the OPG "*shall apply*"¹ to Vilnius Regional Court for this person's surrender.

The OPG considers that this provision gives it a firm legal basis on which to review the form and content of EAWs, to request further information and to determine the applicability of both optional and mandatory refusal grounds. The expert team felt, however, that it could be questioned whether such activity was *ultra vires* in the light of the wording of said Article 73(1). The team's view was supported by judges of the Court of Appeal, who felt that Article 73(1) was "*insufficient to permit them [= the prosecutors of the OPG] to refuse a surrender*".

The expert team noted that the OPG had exercised this "power of refusal" on two occasions, without recourse to the court. In one case the person concerned was mentally ill; in the other, the person was "unable to participate in the trial"². In both cases the OPG had contacted the issuing authority and suggested withdrawing the EAW, which it had done.

¹ The most appropriate translation of the relevant Lithuanian words was extensively discussed. It was concluded that another correct translation would be "*applies*". The text in Lithuanian certainly does not, however, equate to wording along the lines of "*may apply*".

² The expert team was informed that this case concerned a person who had terminal cancer.

7.3.1.2. Difficulty with designation of the OPG as executing judicial authority

This issue is linked to the previous issue (7.3.1.1.). Under Article 6(3) of the FD, in conjunction with Article 6(2) of the FD, Lithuania notified the Council's General Secretariat that the OPG was the "*executing authority*"¹. However, since the decision on surrender is taken by Vilnius Regional Court – except where the OPG is exercising the "power of refusal" referred to in the previous point – the expert team felt that Lithuania should have stated that Vilnius Regional Court was the executing judicial authority of Lithuania.

7.3.1.3 Restrictive possibilities of communication by judges

Article 73(4) of the Criminal Code of Procedure provides that "*In cases when the information presented is insufficient to make a decision on extradition of a person from the Republic of Lithuania or surrender ...under the European arrest warrant, the judge of Vilnius Regional Court shall authorize the Office of the Prosecutor General to address with request to the requesting institution immediately for additional necessary information.*" The expert team notes that in application of this provision - at least when applied literally - judges of Vilnius Regional Court cannot directly communicate themselves with issuing authorities, and cannot use intermediaries other than the OPG for obtaining additional information from such authorities. This situation may jeopardize the efficient handling of EAWs.

7.3.1.4. Ground for refusal not foreseen in the FD

Article 9¹(3)(1) of the Criminal Code of Lithuania provides for mandatory refusal in one instance not contained in the FD, namely a "*breach of fundamental human rights and/or liberties*". The expert team entered into discussions with the Lithuanian authorities about the need for this ground for refusal, which is drafted in very broad terms, in the light notably of the European Convention on Human Rights, to which all Member States have adhered. The Lithuanian authorities felt that such ground for refusal was allowed in the light of Article 1(3) and recital 12 of the FD on the EAW.

¹ Annex to 9652/04.

Whilst accepting that the choice of form and methods as regards implementation of the FD is left to the discretion of the Member State¹ within the limits prescribed by the European Court of Justice², the expert team is of the opinion 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.

7.3.1.5. Necessity to have valid travel documents can hamper effective surrender

This point concerns both Lithuania in its role of issuing State and in its role of executing State.

The expert team was informed that Lithuanian border guards were obliged under Lithuanian law to prevent any border crossing in cases where valid travel documents were not available. This restriction had presented a significant barrier to a number of EAW surrenders and had necessitated urgent applications to consular staff so that temporary travel papers could be provided.

The expert team was of the view that this formality was entirely unnecessary in respect of EAW cases, particularly given the fact that the identity of all requested persons would already have been established, possibly by photographic and/or forensic means, before a criminal tribunal and to the satisfaction of criminal burden of proof.

They noted also that there was no legal basis in the FD for any such travel document based requirement.

7.3.1.6 Training for judges

The expert team gathered that, whereas training on EAW matters is currently provided to assistants of judges, no training is provided to the judges themselves. Those judges who were interviewed by the expert team nonetheless expressed great interest in receiving such training, and the defence lawyers advocated promoting training for judges as well.

¹ Article 34(2)(b) of the Treaty on European Union.

² Case C-105/03, Pupino, in which the ECJ ruled that: "*The national court is required to take into consideration all the rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the Framework Decision.*"

With a view to creating and maintaining a highly qualified judiciary, the expert team considers it advisable not to rely only on training for *assistants* of judges but to provide training to *judges* as well. This will provide them with the necessary skills to deal with EAW cases, despite the low volume of (executing) cases. Incidentally, such training may also result in judges feeling freer to take their own line and not to overly rely on the findings of the OPG. Moreover, training for judges would seem appropriate in view of the initiative of the MOJ to transfer competence in issuing EAW conviction matters from the MOJ to the courts.¹

7.3.1.7 Priority of surrenders

Article 73(5) of the Code of Criminal Procedure lays down an obligatory order of priority for Vilnius Regional Court in dealing with EAW requests. One of the rules states that where a conviction request and a prosecution request are in conflict, the prosecution request must be given priority.

The expert team is of the opinion that this rule is too strict and could lead to undesirable consequences, for example where a request for surrender in a conviction matter in respect of a major offence (murder) is given lower priority than a request for surrender in a prosecution matter for a relatively minor offence (such as a prosecution relating to trafficking in stolen vehicles). Also, the nationality of the persons concerned cannot be taken into account under this rule.

This system would appear to conflict with Article 16(1) of the FD, which leaves it to the judge to decide the priority to be given to the EAW requests, giving due consideration to all circumstances surrounding the case, and especially the relative seriousness and place of the offences.

¹ In their observations to the draft report, the Lithuanian authorities observed that this comment has been taken into account and that training for judges is currently being organised.

7.3.2. Good practice

7.3.2.1.- Flexibility in language

The expert team felt that the Lithuanian executing authorities showed laudable flexibility in accepting, particularly in cases of urgency, EAWs beyond the two-language regime set out in their domestic law (under certain circumstances EAWs in German, French and Polish are accepted as well). The expert team would invite other Member States to reflect on the possibility of taking a similar approach.

8 RECOMMENDATIONS

8.1 RECOMMENDATIONS TO LITHUANIA

Recommendation 1 — That Lithuania, in the light notably of Article 6(1) of the FD, should reconsider its legal system by entrusting a *judicial* authority with the power to issue EAWs in conviction matters. The initiative by Lithuania to allow the courts to issue EAWs in the future should be welcomed (see 7.2.1.1.).

Recommendation 2 — To give consideration to the improvement of coordination within the prosecution service and between the OPG, MOJ and ILO with a view to enhancing the efficiency of the EAW system in Lithuania (see 7.2.1.2.).

Recommendation 3 — To provide the prosecution with up-to-date communication and database equipment (computers, adequate software) so as to enable it to carry out quick and efficient database searches and exchange information with other EAW actors (MOJ, ILO) more easily (see 7.2.1.3.).

Recommendation 4 — To ensure the availability of reliable statistical information on EAW matters at national level (see 7.2.1.4.).

Recommendation 5 — To ensure that the OPG acts in conformity with the wording of Article 73(1) of the Code of Criminal Procedure, leaving the decision on the execution of an EAW entirely in the hands of the competent judicial authority (which is currently Vilnius Regional Court), or alternatively, modify the law or provide other adequate legal solutions so as to clearly determine the powers of the OPG and Vilnius Regional Court when acting as the executing authority (see 7.3.1.1.).

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Recommendation 6 — To reconsider the notification to the Council General Secretariat under Article 6(3), in conjunction with Article 6(2), of the FD, and designate also Vilnius Regional Court as the executing judicial authority (see 7.3.1.2.).

Recommendation 7 — To reconsider Article 73(4) of the Code of Criminal Procedure, so that judges are allowed to directly enter into contact with judicial authorities in other Member States with a view to obtaining additional information, without having to go through the OPG as an intermediary (see 7.3.1.3).

Recommendation 8 — To reconsider at the appropriate level the necessity of the ground for refusal relating to on "human rights" as provided for in Article 9¹(3)(1) of the Criminal Code (see 7.3.1.4.).

Recommendation 9 — That domestic legislation be put in place to permit surrendered persons to cross Lithuanian borders without international travel documents (see 7.2.1.5.).

Recommendation 10 — To provide, or continue to provide, appropriate training to all authorities involved in EAW matters, in particular judges (see 7.3.1.5.).

Recommendation 11 — To reconsider the wording of Article 73(5) of the Code of Criminal Procedure of Lithuania in the light of Article 16(1) of the FD (see 7.3.1.6.).

8.2 RECOMMENDATIONS TO CERTAIN OTHER MEMBER STATES

Recommendation 12 — To provide their issuing authorities with practical information on issuing EAWs in order to assist them inter alia to fill in EAW forms properly (see 7.2.2.2.).

8.3 RECOMMENDATIONS TO THE EUROPEAN UNION

Recommendation 13 — That the appropriate EU Institutions reflect on the advisability of introducing into the EAW system a proportionality test for issuing EAWs (see 7.2.1.5.).

RESTREINT UE

Recommendation 14 — To consider discussing the possibility that Member States should be encouraged to adopt a more flexible attitude towards language and translation issues, in particular in cases where an EAW has been otherwise duly presented (see 7.3.2.1.).



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ANNEX A

STATISTICS (2006)

Lithuania as an issuing State:

Number of EAWs issued:	
EAW issued by OPG in prosecution cases:	388
EAW issued by MOJ in conviction matters:	150
Total number of EAWs issued:	538

Number of persons apprehended:	68
Number of persons surrendered:	57
Number of refused surrenders:	5

Lithuania as an executing State:

Number of EAWs executed:	
Number of EAWs received:	28
- As general Interpol diffusions:	19
- EAWs directly addressed to Lithuania:	9

Arrests:	28
Persons surrendered:	26
Surrenders refused:	2

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ANNEX B

PROGRAMME OF VISITS

Tuesday 20 February

- 10.00 – 11.30** Ministry of Justice
- Welcome
- General presentation
- 11.45 – 13.45** Visit to Vilnius Regional Court
- 14.00 – 15.30** Lunch (arranged by the Ministry of Justice)
- 16.00 – 17.00** Meeting with representatives of the Lithuanian Bar Association
- 17.00 – 17.15** Transport to hotel
- 18.00 – 19.30** Sightseeing in Vilnius

Wednesday 21 February

- 10.00 – 11.45** Office of Prosecutor General
- 12.00 – 13.30** Lunch (arranged by the Office of Prosecutor General)
- 14.00 – 15.15** Continuation of meeting with Office of Prosecutor General
- 15.30 – 16.30** Meeting with representatives of the Office of the District Prosecutor of Vilnius
- 17.00 – 18.00** Meeting with representatives of the International Liaison Office of the Lithuanian Criminal Police Bureau
- 19.00 – 21.00** Dinner

Thursday 22 February

- 9.00 – 10.00** Court of Appeal of Lithuania
- 10.00 – 12.00** Final meeting with representatives of the Ministry of Justice and the Office of the Prosecutor General

Departures

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ANNEX C

LIST OF PERSONS MET

Ministry of Justice (MOJ):

Eglė Raduđytė, Vice Minister of Justice
Ms. Auđra Bernotienė, Head of the International Law Department of the Ministry of Justice
Ms. Andra Bavėjan, Elder specialist of the International Law Department
Mr. Darius Mickeviėius, Senior specialist of the Criminal Justice Department
Ms. Skaiste Barkauskienė, Elder specialist of the International Law Department

Vilnius Regional Court:

Judge Ms. Laureta Ulbienė
Judge Vladas Nikitinas (Head of the Criminal Cases Division)

Lithuanian Bar Association:

Mr. Rimas Andrikis, Chairman of the Counsel of the Lithuanian Bar Association
Mr. Rytis Jokubauskas, Secretary of the Counsel of the Lithuanian Bar Association
Vytautas Sviderskis, Counsel
Ms. Andra Bavėjan, Elder specialist of the International Law Department of the Ministry of Justice

Office of the Prosecutor General (OPG):

Mr. Gintaras Jasaitis, Deputy of the Prosecutor General of the Republic of Lithuania
Ms. Laima Ėekelienė, Senior Prosecutor of the International Relations and Legal Assistance Department
Ms. Rosita Pořarskienė, Prosecutor
Ms. Asta Valeikienė, Assistant of the Senior Prosecutor of the OPG

District Prosecutor's Office (Vilnius):

Mr. Ramutis Janceviėius, Senior Prosecutor of the District Prosecutor's Office, Vilnius
Ms. Rūta Petrauskienė and Mr. Kęstutis Bieliauskas, Prosecutors of the District Prosecutor's Office, Vilnius
Mr. Armandas Vainauskas, Senior Prosecutor of the District Prosecutor Office, Vilnius

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Police Department and the SIRENE, Lithuanian National Unit of the International Liaison Office of the Lithuanian Criminal Police Bureau (ILO):

Mr. Edmundas Jankūnas, Head of the International Liaison Office of the Lithuanian Criminal Police Bureau

Mr. Artūras Dimelionis, Chief Specialist of the SIRENE Lithuanian National Unit of the International Liaison Office of the Lithuanian Criminal Police Bureau

Ms. Kristina Tamošiūnaitė, Chief Specialist of the SIRENE Lithuanian National Unit of the International Liaison Office of the Lithuanian Criminal Police Bureau

Court of Appeal of Lithuania:

Judge Laima Garnelienė, Chairperson of the Unit of the Criminal Cases of the Court of Appeal of Lithuania

Judge Tomas Dečkauskas

During its work the expert team was assisted by Ms. Rūta Pīpytė, interpreter

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ANNEX D

LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ENGLISH EXPLANATION
EAW	European Arrest Warrant
FD	Framework Decision on the EAW
ILO	International Liaison Office of the Lithuanian Criminal Police Bureau
MOJ	Ministry Of Justice (International Division)
OPG	Office of the Prosecutor General
