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"FINANCIAL CRIME AND FINANCIAL INVESTIGATIONS"
REPORT ON LITHUANIA**

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EVALUATION REPORT ON THE
FIFTH ROUND OF MUTUAL EVALUATIONS
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REPORT ON LITHUANIA

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DECLASSIFIED

1. INTRODUCTION

At the Multidisciplinary Group on Organised Crime (MDG) meeting of 17 June 2008, the Group decided that the subject of the fifth round of mutual evaluations was to be "financial crime and financial investigations". The scope of the evaluation covers numerous legal acts relevant in the field of countering financial crimes. However, it was also agreed that the evaluation should go beyond examining how relevant EU legislation had been incorporated into national law and take a wider look at the subject matter¹, seeking to establish an overall picture of a given national system. On 1 December 2008 a detailed questionnaire was adopted by the MDG.²

The importance of the evaluation was emphasised by the Czech Presidency while discussing the judicial reaction to the financial crisis³. The significance of the exercise was once again underlined by the Council while establishing the EU's priorities for the fight against organised crime based on the OCTA 2009 and the ROCTA.⁴

Topics related to the evaluation, in particular the improvement of the operational framework for confiscating and seizing the proceeds of crime, were mentioned by the Commission in its Communication on an area of freedom, security and justice serving the citizen.

Experts with substantial practical knowledge in the field of financial crime and financial investigations were nominated by Member States pursuant to a written request to delegations made by the Chairman of the MDG.

At its meeting on 17 March 2009 the MDG discussed and approved the revised sequence for the mutual evaluation visits.⁵ Lithuania is the nineteenth (19) Member State to be evaluated during this round.

According to the procedure, the experts nominated by Member States should be accompanied each time by experts from the Commission (OLAF), Europol, Eurojust and the Council Secretariat.

¹ 10540/08 CRIMORG 89.

² 16710/08 CRIMORG 210.

³ 9767/09 JAI 293 ECOFIN 360.

⁴ 8301/2/09 REV 3 CRIMORG 54.

⁵ 5046/1/09 REV 1 CRIMORG 1.

The experts charged with undertaking this evaluation were Mr Antonio Folgado from Portugal, Mr Per Justesen from Denmark and Mr Marc Vervaeen from Belgium. Three observers were also present: Mr Christian de Beaufort (OLAF, European Commission), Ms Ritva Sahavirta (Eurojust, National Member for Finland) and Mr Carlo van Heuckelom (Europol), together with Ms Mari Hämäläinen and Mr Peter Bröms of the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the Council Secretariat, on the basis of their findings during the evaluation visit, which took place between 27 June and 01 July 2011, and Lithuania's detailed replies to the evaluation questionnaire.

2. NATIONAL SYSTEM AND CRIMINAL POLICY

2.1. Specialised units

2.1.1. Investigative authorities

In Lithuania the investigative authorities are: of the Police Department, the Financial Crime Investigation Service (FCIS), the State Border Guard Service, the Special Investigation Service (SIS), and the customs (Customs Criminal Service).

The competent authorities¹ have special powers provided in the Law on Operational Activities. In line with the relevant laws, the entities of operational activities have the right to apply methods of operational activities, e.g. to use technical means; to establish relations with the persons who have become the targets of operational activities; to resort to assistance by persons; to use the services of experts; to carry out control verifications and control purchases; to covertly obtain a person's fingerprints, voice, odour and other samples in order to establish the identity of the person; to prepare stakeouts and perform secret operations; to perform a polygraph test in accordance with the procedure laid down by law; and to require the person subject to an operational investigation and/or certain third parties to prove the lawfulness of the acquisition of property and income.

¹ More specifically the operational units of the Lithuanian Criminal Police Bureau and of the local police branches, operational branches of the State Boarder Guard Service and of the institutions subordinate to the State Boarder Guard Service; operational branches of the FCIS, and operational branches of the SIS; Internal Investigations Service of the Customs Department, and operational branches of the Customs Criminal Service.

The entities of operational activities, upon the receipt of the authorisation, are also empowered to use the criminal act simulation model to perform a controlled delivery.

The officers of the Lithuanian Criminal Police Bureau, the FCIS, the Customs Criminal Service, State Border Guard Service, and the SIS have general powers and rights of the officer. These powers and rights are similar in principle, however they depend upon the performed functions and competence of the institution, therefore they are consolidated in the special laws regulating the activity of each institution.

According to the information provided to the team of experts during the evaluation mission, a Cooperation Agreement¹, also referred to as the “Inter-Agency Agreement”, between some of the investigative authorities defines the specific responsibilities and competences of these authorities, and obliges them to hand over case information when it becomes apparent that a specific case is in the competence of another authority. It also serves as guidelines for the prosecuting authorities in the allocation of investigative responsibilities.

The parties to the Cooperation Agreement agree to join their forces and means in the fight against crime in the following areas:

- illegal circulation of drugs, arms and explosives;
- trafficking in human beings;
- vehicle theft;
- illegal migration;
- terrorism;
- smuggling and illegal possession of excise goods;
- border offences;
- VAT fraud;

¹ Cooperation agreement of 16 August 2010 between the customs, the police, the State Border Guard Service, and the FCIS.

- money laundering;
- other crimes.

Whilst coordinating these activities, the parties:

- exchange information on fighting and preventing crime;
- coordinate their actions in maintaining law and order as well as in carrying out other tasks assigned to them according to their competencies;
- cooperate in carrying out operational activities, exchange operational information according to the competencies of each of them, conduct joint operations or other ventures with the aim of detecting law infringements;
- jointly use operational information in practice in detecting and arresting proceeds from crime (illegally transported across the state borders, derived from criminal acts or used to commit a criminal act on the territory of Lithuania, derived from criminal acts on the territory of other states and transported into Lithuania) or restricting the right of ownership thereto, if such information is available to the officials of the parties,
- exchange experience and cooperate in the field of professional training, to organise joint training,
- make joint use of special, technical and other means, when necessary and as defined by law;
- develop methods for collecting information necessary for carrying out the tasks and to increase joint use of registers and information systems;
- organise cooperation in other areas as defined by the decision of the heads of the parties, to set up joint working groups, to sign agreements and to employ other organisational measures for the coordination of actions;
- set directions and objectives as regards prevention, carry out integrated monitoring of developments in the crime situation in the country and improve the use of the parties' databases, as well as to establish a joint Criminal Information Analysis Centre (CIAC).

2.1.1.1. Police

The institutions under the auspices of the Police Department have specialised subdivisions which have as their objective to suppress, disclose and investigate crimes against intellectual and industrial property, crimes against economy, business order and financial system.

According to Article 11 of the Law on Police Activities, the police system consists of the following bodies:

- the Police Department
- territorial police bodies
- police professional training institutions
- specialised police bodies¹

The mission of the police bodies is to combat, disclose and investigate crimes against intellectual and industrial property, economy, business procedure and financial system relating to the manufacturing, possession or use of counterfeit money or securities, or disposal of fake or illegal payment instruments. Financial investigations in these units are one of the functions and are conducted within the limits of the cases being investigated with an aim to identify the criminally acquired financial funds or property.

Specialised police subdivisions mostly working in the field of financial crime investigations are the Boards of Crime Investigation of the Lithuanian Criminal Police Bureau within their remit, and the territorial police bodies (police headquarters in ten counties) that have economic crime investigation subdivisions.

¹ Police subdivisions established on a non-territorial principle, which carry out certain (special) police functions assigned to them by legal acts.

Lithuanian Criminal Police Bureau

The Lithuanian Criminal Police Bureau is a specialised police institution under the Police Department. The latter does not take up any practical or operational police activities but the investigation function is assigned upon the National Criminal Bureau at national level, and the ten territorial police bodies. These police headquarters in the counties mainly deal with crime committed in their region or area. The Lithuanian Criminal Police Bureau implements interregional and international investigations and communications between these levels. It has two main sub-divisions: firstly the *Organised Crime (OC) investigation boards* responsible for pre-trial investigations in relation to OC and terrorism as well as any other investigation that has OC characteristics, and secondly the *crime investigation boards* on serious and grave crimes, both international and interregional, as well as professional crimes, such as currency counterfeiting, cybercrime, trafficking in human beings, and thefts of motor vehicles. Both sub-divisions have financial crime investigation functions.

According to the Lithuanian Criminal Police Bureau, in Lithuania financial crimes are investigated along with other crimes. For example, when an OC group is involved in trafficking in human beings, along with investigating the trafficking offence, the Bureau investigates the related financial activities.

2.1.1.2. Financial Crime Investigation Service (FCIS)

The mission of the FCIS is to detect and investigate crimes, other violations of law and other violations against the financial system and associated crimes. Recommendations on the distribution of investigations into criminal acts among pre-trial institutions were approved in April 2003¹. Accordingly, the FCIS was assigned to investigate criminal acts provided for in Chapter XXXII of the Criminal Code (CC), namely crimes and criminal offences against the financial system, but also other criminal acts relating to taxes, state (municipal) levies, state social insurance and other contributions.

¹ Order No.I-47, 11 April 11 2003.

Criminal acts provided for in Art 213-215 of the CC¹ are assigned for investigation by the FCIS *only* when these acts have been committed in combination with criminal acts provided for in Art 216-218 and 220-224 of the CC². As a general principle the investigation of the criminal acts provided for in Art 213-215 of the CC should be assigned to the police.

The FCIS is also responsible for the investigation into criminal acts associated with the receipt and use of financial assistance funds from the EU and foreign countries³, as well as criminal acts provided for in Art 189(1) of the CC (illicit enrichment).

The structural subdivisions of the FCIS participating in financial investigations and/or financial crime investigations are the following:

- Analysis and Prevention Board consisting of Activity Analysis and Planning Unit, Money Laundering Prevention Unit, Illegal Use of Support Analysis and Prevention Unit, and Information Systems Unit
- Special Task Board consisting of Operational Activity Unit, Operation Unit, and Criminal Investigation Unit

The five regional boards (Vilnius, Kaunas, Klaipėda, Šiauliai and Panevėžys) consist of Criminal Investigation Unit and Economical-Financial Activity Inspection Unit (Financial Audit).

The tasks of the Financial Crime Investigation Service are:

- to protect the state financial system against criminal impact;
- to ensure the detection and investigation of criminal acts and other violations of law associated with the receipt and use of financial assistance funds from the European Union and foreign states;

¹ These are: manufacturing, possession or use of counterfeit money or securities; manufacturing of counterfeit electronic payment instrument; forgery of a true electronic payment instrument or illegal disposition of electronic payment instrument or data thereof; and illegal use of electronic payment instruments or data thereof

² These are: legalisation of the proceeds or property of crime; trade in securities by using information not available to the public; manipulation of the securities prices; non-payment of taxes; provision of false information on proceeds, profit or property; failure to file a declaration, statement or other document; fraudulent accounting; negligent accounting; and manufacturing, possession or use of counterfeit or fake postage stamps, travel or other tickets, parcels, wrappers or other official marking signs.

³ For details, see also 5.1.

- to disclose and investigate crimes, other violations of law against the financial system, as well as associated crimes and other violations of law;
- to carry out prevention of crimes and other violations of law against the financial system as well as associated violations of law;
- to implement other tasks assigned to the Service in other laws;
- to act as the Financial Intelligence Unit (FIU).

In the sphere of financial crimes the powers of the FCIS are distinguished, as far as it implements anti-money laundering and/or terrorism financing prevention measures¹. According to the Law on the Prevention of Money Laundering and Terrorist Financing, the FCIS shall have the right, within its competence and when relevant, to obtain from institutions, other state institutions, financial institutions, other entities, except advocates and advocates' assistants, data and documents about monetary transactions and any other transactions necessary for the performance of its functions. It is empowered to co-ordinate and instruct the activities of institutions (except for the State Security Department) related to the implementation of measures for the prevention of money laundering and/or terrorist financing, and to receive information as regards the implementation.

The institutions, financial undertakings, and other entities must study the instructions of the FCIS and not later than within seven working days following the receipt of the instruction report to the FCIS about the measures taken. The FCIS can also instruct the financial institutions and other entities² to suspend suspicious monetary transactions for up to five working days.

2.1.1.3. State Border Guard Service

Security of the state border of the Republic of Lithuania and control of persons and vehicles crossing the state border are conducted by the State Border Guard Service.

¹ Art 7 of the Law on Prevention of Money Laundering and Terrorist Financing

² With the exception of notaries or persons authorised to perform notarial actions, advocates or advocate's assistants and bailiffs or persons authorised to perform to the bailiffs' activities.

The purpose of the State Border Guard Service is to ensure the inviolability of the State border, and, within the scope of its competence, to prevent, detect and investigate criminal acts and other violations of law, protect human rights and freedoms, and ensure public peace and security.

Furthermore, the expert team was informed during the evaluation mission that the competence of the State Border Guard Service includes trafficking in human beings and other topics concerning the crossing of borders. Additionally, it also investigates cases related to the illegal disposition of goods subject to excise duty. However, these are not the main functions of the Service, and it investigates such cases only when they are related to its border security function.

2.1.1.4. Special Investigation Service (SIS)

The main areas of activity of SIS are criminal prosecution, prevention and education and awareness-raising as regards corruption-related criminal acts in the society. It discloses and investigates the following corruption-related offences provided for in the CC: bribery (Art 225); mediator's bribery (Art 226), subornation (Art 227), abuse of official position (Art 228), nonfeasance, and other criminal acts listed in paragraph 2 of the Law on the Special Investigation Service, when such acts are committed against public services with the aim of getting or demanding a bribe, corruption, concealment or veiling of bribe, or subornation.

According to the information received, at the end of 2010 the staff of the SIS consisted of 230 officers. In the same year the SIS instituted 88 pre-investigation cases, identical to 2009. An increasing number, i.e. 67 per cent, of these cases was initiated based on the identification of a criminal act by the staff of the SIS, whilst the rest was based on a complaint or notice of a criminal act received by the SIS. The number of persons suspected of corruption-related criminal acts has increased from 221 in 2009 to 312 in 2010. Roughly half of the suspects were civil servants.

2.1.1.5. Customs

The customs has a staff of 2200 and is organised under four central services: training centre, laboratory, information systems centre and criminal service (the Customs Criminal Service). The Customs Criminal Service is a special customs agency with a staff of 170. Its mission is to disclose crimes and other violations of law related to customs activities and to investigate them. It carries out international and inter-departmental cooperation in investigating smuggling cases, and organises and performs the prevention of violations of legal acts which the customs is responsible for enforcing.

The main priorities of the Service are drugs, excise goods and crimes that cause damage to the Lithuanian and EU economies (for example importing/exporting goods with lowered values or with customs duties avoided).

2.1.2. *Prosecuting authorities*

The prosecutor organises and is in charge of the pre-trial investigation. Article 170 of the Code of Criminal Procedure (CCP) provides for the right of the prosecutor to carry out the whole pre-trial investigation or separate actions thereof on his own. When the pre-trial investigation or the separate actions are carried out by the pre-trial investigation officers, the prosecutor controls the pre-trial investigation. The prosecutor gives the pre-trial investigation officers obligatory directions, and can revoke illegal or unjustified actions. It is the sole responsibility of the prosecutor to take the decision to join or separate the investigations, discontinue, terminate, re-open, and complete the pre-trial investigation and draw up the indictment, and, if necessary, approach the pre-trial investigation judge regarding the performance of activities which are under the competences of the particular judge.

In some specific cases provided for in the CCP, the pre-trial investigation judge is empowered to approve the regulations of the prosecutor on the discontinuation or reopening of the discontinued pre-trial investigation.

The prosecutor and the pre-trial investigation officer can interrogate the suspect and witnesses, apply procedural coercive measures, and perform other actions provided for in the CCP¹.

There are specialised prosecutors in the Criminal Prosecution Department and the Organised Crimes and Corruption Investigation Department of the Prosecutor General's Office and in the territorial prosecutor's offices (regional and district prosecutor's offices).

The Criminal Prosecution Department and the Organised Crimes and Corruption Investigation Department of the Prosecutor General's Office are managed by the Chief Prosecutor and his deputy in line with the remit defined and fields of activity. The departments are structural elements of the Prosecutor General's Office and they include prosecutors, civil servants and other employees.

2.1.3. Judges involved in the pre-trial phase

Pursuant to Article 173 of the CCP, the pre-trial investigation judge performs particular pre-trial investigation actions. Upon the receipt of the request of the prosecutor, the pre-trial investigation judge can impose and sanction the application of procedural coercive measures; swear in and interrogate witnesses and the aggrieved; interrogate suspects; and in some cases approve the resolutions of the prosecutor on the discontinuation of the pre-trial investigation, or the resolutions of the prosecutor on the reopening of the discontinued pre-trial investigation. Furthermore, the pre-trial investigation judge investigates the possible complaints against the actions of the pre-trial investigation officers and prosecutor during the pre-trial investigation, and also performs other actions provided for in the law. The pre-trial investigation judge shall not perform any actions on his own initiative.

On a general note, the pre-trial judge adopts a decision on the application of procedural coercive measures upon prosecutor's request only. However, when the decision of the pre-trial judge is necessary, in urgent cases the procedural coercive measures can be taken by the resolution of the pre-trial investigator or prosecutor. Consent or confirmation of the legality of the activities must be obtained from the pre-trial judge within three days of the implementation of the measures.

¹ Article 178 of the CCP

There are no specialised units/persons/authorities that deal exclusively with financial crime among the pre-trial investigation judges provided in the CCP. The pre-trial investigation judge is a judge of a district court appointed by the chairman of the court in order to perform certain pre-trial investigation actions and to take certain decisions.

In order to improve the quality of the hearing of cases of certain categories in court, Description of Order on Determination of Judges' Specialisation for the Hearing of Cases of Certain Categories was approved in 2008. The chairman of the court can, by taking into consideration the qualifications and knowledge of the judge, make a decision concerning the allocation of a case to a specific judge. In practice, the specialisation of judges in courts of general jurisdiction is usually determined by taking into account the categories of cases and special functions of pre-trial judges defined by the law.

2.1.4. Other relevant authorities

2.1.4.1. State Tax Inspectorate

The State Tax Inspectorate conducts calculations and levies taxes and other fees to the state. It prepares and drafts legislation, and provides suggestions regarding improvement of tax and other legal acts to the Ministry of Finance.

As part of their duties officers of the State Tax Inspectorate have the right to:

- receive data and copies of documents and electronic storage media on property and income of legal or natural persons necessary for tax administration from companies, agencies, organisations and other persons including banks and other credit and financial institutions;
- check material resources of a person to establish the implementation of tax duties of that person;
- recover taxes and delay charges, fines and other amounts pertaining to the budget as defined by the law and not paid in due time from legal and natural persons;
- write protocols of administrative violations of law in the cases ascribed to the remit of the State Tax Inspectorate according to the law.

2.1.5. *Asset Recovery Office (ARO)*

By implementing the Council Decision 2007/845/JHA, Resolution No. 178 (March 2009) defines two institutions as the national Asset Recovery Office (ARO), that is the Lithuanian Criminal Police Bureau and the Prosecutor General's Office.

The **Prosecutor General's Office** performs the functions relating to cooperation with foreign competent authorities and international organisations as regards the temporary restriction, seizure and conviction of ownership rights to property acquired in a criminal way. Three prosecutors, who are directly subordinate to the chief prosecutor of the department, are responsible for international cooperation in this department. In addition to this, two assistants of the chief prosecutor and four chief specialists are assigned to them.

The Prosecutor General's Office uses an information database of the prosecution system. Legal assistance requests are registered and classified according to their type in this database, and the course of their execution is fixed in the records. Information on the institution that filed a request (whether from Lithuania or a foreign state), type of the legal assistance request, given names and surnames of suspects, defendants to whom the legal assistance request relates, and other circumstances are submitted to the database.

While performing the functions related to mutual legal assistance, the Prosecutor General's Office organises and supervises the execution of mutual legal assistance requests received from foreign competent authorities, Eurojust, and international organisations by delegating their implementation to territorial prosecution services and pre-trial investigation institutions within the scope of their competence, and by coordinating their actions.

Whilst also assigning the **Lithuanian Criminal Police Bureau** with the role of an ARO, relevant regulations were supplemented, and it was tasked to conduct communication and cooperation as regards the tracing and identification of property acquired in a criminal way. These functions are implemented in the Lithuanian Criminal Police Bureau through respective units charged with the investigation of economic, financial, and organised crime-related offences, i.e. crime investigation and organised crime investigation units.

The Lithuanian Criminal Police Bureau conducts communication and cooperation among competent institutions of the Republic of Lithuania and foreign countries, as well as organises tracing and identification of criminally acquired property according to the requests of foreign competent authorities in the manner prescribed in the national legal acts. It does not have any special rights/powers as an ARO.

Full-time officers and employees work at the International Liaison Board within the Lithuanian Criminal Police Bureau. It has an internal database, namely the SIBIS information system, where messages and enquiries received from both Lithuania and abroad are recorded, case files which may be reviewed are formed, files which are attached to a specific case-file are compiled and scanned, and terms are fixed and controlled.

Officers of the Lithuanian Criminal Police Bureau, in the latter's role as the ARO, have a direct access to all police databases, Interpol, SIS Sirene and Europol information systems. In addition to this, there are various other registers and databases from which data are received directly via electronic access.

In Lithuania, competent institutions responsible for cooperation with foreign countries in civil cases are the Ministry of Justice and the courts. Thus in practice these institutions communicate directly with foreign and other competent authorities. If necessary, the Prosecutor General's Office acting as the ARO will mediate for the Ministry of Justice and the courts in communication with foreign AROs and other competent institutions of other countries.

According to information received, a special Commission on ARO Activity was established in 2009 under the order of the Police Commissioner General. It has 12 members who represent pre-trial investigation, crime investigation, organised crime investigation, police operational activity and international cooperation. The tasks of the Commission are: training of regional police officers; participation in the legislative process; issuing recommendations and guidelines for investigations (at intelligence and pre-trial stages) related to asset tracing and recovery; and acting as the CARIN contact point (access to Europol SIENA).

2.2. Training

2.2.1. Police

In general, officers employed in the police structural units where financial investigations and/or financial crime investigations are conducted, or associated functions are performed, must have a higher university or equivalent education.

A training module on financial crime investigation was organised at the Police School of Lithuania in October 2010 as a part of specific training in financial crimes. The training was attended by 36 criminal police officers and two officers from the FCIS (38 participants in total). In 2011 22 police officers participated in the training.

Additionally, in 2011 training on criminal acts related with fraud for the criminal police was organised at the Police School of Lithuania, according to the investigation methodology programme “Methodology of investigation of fraud-related criminal acts”. 15 police officers participated in this training. In 2011, the Police School of Lithuania was delegated to organise general training for the representatives of pre-trial investigation authorities and the prosecution service in the field of tracing the proceeds and other associated property of crime, in line with the Inter-Institutional Programme for the advancement of professional skills. 24 police officers and also two officers from the FCIS were trained in 2011.

2.2.2. Financial Crime Investigation Service

Statutory civil servants, career civil servants and officials employed under employment contracts work in the units of the FCIS where financial investigations and/or financial crime investigations are conducted, or associated functions are performed. All of them are subject to special requirements defined in their job descriptions. Job descriptions, including the special requirements set out therein, are prepared with regard to the functions assumed by the employees working in a particular division. Usually, employees who conduct financial investigations or financial crime investigations are required to hold a higher university degree or equivalent education in the field of social sciences.

The FCIS does not have its separate training facility with equipped classrooms and employed lecturers, therefore training services are purchased. The FCIS organises training for its personnel in line with the strategy for the training of civil servants approved by the government of Lithuania,

strategic goals of the institution, financial possibilities, and suggestions regarding the necessity of training in a particular field (money laundering prevention, financial crime investigation, operational training, financial audit, strategic planning, etc.) put forward by the heads of units of the Service. Additionally, the FCIS participates in different international trainings (CEPOL- European Police College), conferences, etc.

2.2.3. *State Border Guard Service*

Pre-trial investigation officers of the State Border Guard Service are required to hold a higher Bachelor-level education in law.

2.2.4. *Customs*

In nearly all job descriptions of the Customs Criminal Service the requirement to hold a higher university or equivalent education is mandatory. A higher university education in law is necessary for the position of the head of the crime investigation division.

2.2.5. *Special Investigation Service*

Officers of the SIS hold an education level necessary for the position according to the requirements of the Law on the Civil Service. Only persons holding a higher university education or equivalent education may be appointed as heads of units of the Service or pre-trial officers.

2.2.6. *Prosecuting authorities*

Prosecutors and prosecution staff work in the prosecution service. An individual may be employed in the prosecution service and appointed to the position of prosecutor provided that he/she has a higher university legal education and has acquired a Bachelor's and Master's professional qualification in law.

The prosecution service organises training for prosecutors, including training on financial crimes, both independently and with other institutions or organisations of Lithuania or abroad. Besides, prosecutors are delegated to workshops and conferences held in Lithuania and abroad. For example, in May - June 2011 a general training for pre-trial investigation officers, prosecutors, and judges on the investigation of property crimes and property recovery was arranged under the Programme for the advancement of professional skills.

2.2.7. *Judges involved in the pre-trial phase*

Courses and training for judges are regularly organised by the Training Centre of the Ministry of Justice. The most recent training session for judges on the criminal conducts of the financial system, including international aspects, was organised in 2008–2010. It should be noted that in the year 2011 the judges of criminal courts did not wish to participate in this course.

Training for judges is organised in the form of seminars. These seminars are divided into two parts: a theoretical part and practical training, i.e. group work analysing and solving practical cases relating to financial crime investigations and prosecutions. During the period 2008-2010 six such training classes were organised in the Training Centre of the Ministry of Justice.

2.3. Criminal policy

2.3.1. *General*

While taking decisions, pre-trial investigation institutions, the prosecutor, the State Tax Inspectorate, as well as general competence and higher instance courts participate in the policies on the application of measures focusing on proceeds and asset recovery. By implementing the policy on the application of measures focused on the proceeds, the relevant institutions are guided by the provision of Art 31 of the United Nations Convention against Corruption of 31 October 2005 ratified by Lithuania in December 2006¹. They take necessary measures to enable confiscation of proceeds of crime derived from offences established in accordance with the Convention, or property the value of which corresponds to the value of such proceeds.

¹ Lithuania signed the Convention on 10 December 2003, and ratified it on 9 December 2006. The instrument of ratification was deposited with the Secretary-General of the United Nations on 21 December 2006. Legislation for the purpose of Convention implementation, including the Law of the Republic of Lithuania on the Ratification of the United Nations Convention against Corruption (X-943) – was adopted by the Parliament on 5 December 2006, was enacted and published in the Official Gazette on 14 December 2006. UN experts are currently in the process of conducting a review of the implementation by Lithuania of Articles 15-42 of Chapter III “Criminalization and Law enforcement” and Articles 44-50 of Chapter IV “International cooperation” of the Convention for the review cycle 2010-2015.

One of the priorities of the *Programme of the Government of Lithuania* is to establish legal and organisational premises for conducting an efficient tracing of funds and property related to crime, their identification and confiscation¹. To implement this measure, criminal laws were amended so that extended confiscation of property was validated, and criminal liability for illicit enrichment was established². This priority of the Government Programme is implemented through specific activity plans of institutions, whereas issues concerning organisational activities are solved both at inter-institutional and departmental level.

According to the *Plan for the implementation of measures in the priority fields of the Prosecution Service for 2010-2011*, the priority fields of the prosecution service in the sphere of financial crime investigation is the investigation of fraud, namely the appropriation of the EU structural funds, value added tax and state social insurance funds, including pre-trial investigation of criminal acts associated with smuggling (smuggling, illegal non-export of goods or production from Lithuania, customs fraud, and illegal disposal of excise-taxed goods) .

The policy on the application of measures focused on proceeds is described in the government priority *Financial consolidation and the euro*, wherein one of the directions suggested is the improvement of the tax administration, the reduction of the scale of the shadow economy and the encouragement of the fair payment of taxes. The implementation of this priority will be assessed according to one of the assessment indicators, namely common work of the FCIS and the State Tax Inspectorate in order to secure a civil suit, property confiscation or taxation of property and proceeds related to crime. At the time of criminal investigation, the investigation into finances and possible money laundering is conducted not only using the criminal prosecution, but also tax administration means. According to the indicator, the number of pre-trial investigation cases, where property acquired in an illegal way is identified in cooperation with tax administrators, should increase by three percent compared to the previous year.

¹ Clause 130 of the VI chapter provision of the Programme of the Government of Lithuania: legal and organisational premises for an efficient tracing, identification and confiscation of the proceeds and property of crime will be established.

² Art 72 (3) and 189 (1) of the CC

2.3.2. Policy on asset recovery

The policy of conducting the criminal prosecution while tracing the proceeds of crime is described in the *Plan for the strengthening of criminal prosecution for fraud in Lithuania and implementation measures thereof* (later on also referred to as “the Plan”), signed by the Prosecutor General, Lithuanian Police, the SIS, the FCIS, the Customs Criminal Service and the State Border Guard Service for the period 2009-2012. This plan was prepared on the basis of international and national legal acts such as the Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime; Council Framework Decision 2005/212/JHA of 24 February 2005 on confiscation of crime-related proceeds, instrumentalities and property; Law on the Prosecution Service of the Republic of Lithuania; CC of the Republic of Lithuania; CCP of the Republic of Lithuania; Law on Prevention of Money Laundering and Terrorist Financing of the Republic of Lithuania; and Law on Operational Activities of the Republic of Lithuania.

The objectives of the Plan for strengthening criminal prosecution of fraud in Lithuania (fraud is deemed to cover all criminal acts aimed at dishonest enrichment through fraud) are the following:

- to make financial investigation into medium-gravity and grave crimes and to explore the possibility of money laundering;
- to seek that in all cases where the accused person sold the property or received gain using it in any other way, the proceeds were confiscated;
- to increase the efficiency of recovery of criminally-obtained property.

The assessment of implementation of the goals set forth in this Plan is carried out according to the following criteria: value of the property traced and recovered during pre-trial investigation or of restricted ownership right to the property as well as of the voluntarily indemnified damage; number of started pre-trial investigations into money laundering and investigated crimes; and criminal impact measures (number of the property confiscations imposed and value of the confiscated property).

It is for the first time defined in this Plan that financial investigations is a process of collection of information on the property held by the suspect and physical and natural persons associated with the suspect, including transactions, and financial operations seeking to trace the proceeds and property possibly related to crime to secure a civil suit, as well as collection of other information important for the pre-trial investigation associated with property transactions and financial operations. The objective to ensure that financial and money laundering aspects are included in all investigations of crimes relating to property acquisition should be stressed.

It should be noted that seeking to form a uniform financial investigation practice, a measure to prepare recommendations on financial investigations stating what procedural and other actions should be performed during financial investigation was included in the Plan. By implementing the policy for conducting investigations or criminal prosecution, certain legal acts were amended or added. These include new provisions on property confiscation and the introduction of expanded confiscation of property, and provisions granting powers to the prosecutor to secure the confiscation of property. By implementing the latter provision, the State Tax Inspectorate may be committed to *provide an expert conclusion or information* on the sources of property acquisitions and the receipt of proceeds, as well as their substantiation, and to furnish data on the sources of property acquisitions and the receipt of proceeds and their substantiation, but not to substantiate them itself.

The Plan contains a provision which states that, in addition to proving the guilt of the suspect, the tracing of the property, the restriction of the ownership rights to this property and confiscation thereof, as well as the indemnification for damage caused by criminal activity are separate goals of criminal investigation. The Plan further stipulates the objective to organise and conduct pre-trial investigations into medium-gravity and grave crimes in a way that ensures the process of information collection on property held by the suspect and associated natural and legal person, transactions, and monetary operations. This is done to ascertain whether the property and/or proceeds related to crime were legalised, as well as to ensure possible confiscation of property and indemnification for damage caused by criminal acts.

The Plan also foresees the preparation of recommendations on financial investigations stating which procedural and other actions should be performed during the investigations. In the near future a draft order of the Prosecutor General will be prepared on which basis a working group will be committed to prepare recommendations on financial investigations by the end of 2011.

Additionally, the Plan anticipates the development of the concept of crime-related property recovery by clearly defining the links of the institutions participating in the property recovery process, including their competences, liabilities, and, if necessary, suggestions for supplementation or amendment of the necessary legal acts.

The Plan also welcomes all institutions participating in fraud investigations to organise respective training on financial investigation issues and to train officers who will conduct financial investigations.

In line with its functions to organise the activities of the county state tax inspectorates and with regard to the relevant legislation including Art 189(1) (illicit enrichment) of the CC, the State Tax Inspectorate commits the county state tax inspectorates to inform law enforcement authorities about cases where the detected property exceeds the income received and taxed, when this difference goes beyond the amount of 500 Minimum Living Standard (MLS)¹.

The composition of the *Commission for the state economic and financial control and cooperation of law enforcement institutions* was renewed by a decree in March 2010. The Commission coordinates activities of the law enforcement institutions in this field, and develops respective measures. The competent authorities implement the measures developed by the Commission, and regularly submit reports and suggestions.

The competent authorities, within the scope of their individual competences, implement the measures stipulated in the provisions of the *Activity Strategy of the Government for 2008-2012*, as well as priorities, inter-institutional programmes and plans. For example, an activity plan for the year 2011 of the Police Department was approved in March 2011.

¹ Minimum Living Standard is 130 LTL

In general, the competent authorities treat the tracing, seizure and confiscation of property acquired in a criminal way as a separate goal of operational and pre-trial investigations. The attainment of this goal should be sought in parallel. It is considered expedient to allocate additional human resources, funds and investigation time for these actions. At this moment, however, additional human resources are assigned only in the event of grave or complicated crimes, or large-scale tracing of the property acquired in a criminal way. In other cases these activities are carried out using the existing resources.

2.4. Conclusions

- The set-up of the Lithuanian law enforcement and judicial authorities entrusted with tackling financial and economic crime is straightforward and the relevant competences are clearly stated in the law. In principle cases are distributed based on mandatory guidelines on criminal acts and allocated to the services by the Prosecutor General's Office. According to the Lithuanian authorities, the Cooperation Agreement, or "Inter-Agency Agreement", defines the specific responsibilities and competences of the authorities, and supports the allocation of cases based on these guidelines.
- However, it is not clear how well the system works in practice and whether overlaps are efficiently avoided for example as regards related (preliminary) investigations by different services. The prosecution service keeps a register including data on all pre-trial investigations and prosecutions. All relevant services have access to this register. Nonetheless, it does not contain all relevant information on investigations. The police has an "events" register as regards on-going investigations but this database can only be accessed by police officers. Due to the lack of one integrated register or database containing all relevant information on every on-going investigation available to all investigative authorities, there is a chance that the Prosecutor General's Office does not always have resources to fully monitor the overall allocation of cases and identify possible links between the cases. Thus overlaps between the cases - and services - may occur.

- The team of experts was informed that the prosecutor in charge of a financial investigation case can form multidisciplinary teams with participants from all relevant investigating authorities. Combining the efforts, expertises and competences of the different authorities when investigating complex (financial) crimes seems to be a good way to efficiently fight against financial crimes and to avoid overlaps between related cases and services.
- Lithuania has specialised investigative authorities that are particularly geared towards tackling financial crime and well-suited for this purpose. In many cases these authorities have highly specialised units for the purpose of the fight against financial crime. Examples of good practice are the Economical-Financial Activity Inspection Units (Financial Audit) within the regional FCIS structures. These units assist all law enforcement authorities with financial and accounting expertise.
- The team of experts found the staff in all visited authorities very professional and extremely dedicated. It is clear that the fight against financial crime is a priority for all relevant actors. The team was particularly impressed by the Special Investigation Service (SIS) and its efficient work in a sensitive area, namely investigations into the use of corruption by civil servants.
- As regards the implementation of the Council Decision 2007/845/JHA and the establishment of AROs, no separate institution responsible for the recovery of property or assets has been established in Lithuania for this purpose. The Lithuanian Criminal Police Bureau and the Prosecutor General's Office act, jointly, as the ARO *only* in cases involving international cooperation, such as imposing a temporary restriction of ownership rights based on a request from another Member State. The ARO has thus a very limited role and a hybrid structure. Against this background, it is unclear how much added value the ARO can provide, both for the prosecuting authorities and for the police. Additionally, the ARO is not performing the daily management of the seized and confiscated goods and money, and it seems that there is no separate Asset Management Office (AMO) in place.

- According to the information provided, it seems that the prosecuting authorities regard specialisation as an important goal. For example, currently all regional prosecution offices have specialised prosecutors as regards financial crime. This development is recommendable, especially in relation to the complex nature of many financial crimes. This is, however, in contrast with the fact that there are no designated specialised judges to deal with financial crime cases. The use of experts as witnesses is not a sufficient support to non-specialised judges, and does not substitute for specialisation, since the judges themselves need a certain level of specialisation to benefit from the expertise provided by the experts. Additionally, it is important especially in financial crime cases for the judge to be able to assess the reliability of a witness. This is not possible if the judge is not sufficiently specialised. Furthermore, there are specialised courts for juvenile and genocide offences in Lithuania. Against this background, and seeing that financial crimes are defined as a priority in Lithuania, specialised courts for financial crimes would be indispensable.
- Training on financial crime and financial investigations provided for the police and other law enforcement authorities seems relatively basic and non-specialised. There are some recent initiatives for training in asset tracing/asset recovery and investigation of fraud-related crime as well as financial crime, such as the recently introduced curriculum regarding financial crime at the Police School. This development is positive, but training on financial investigations and financial crime would ideally require a more integrated approach featuring for example a formal accreditation system and permanent specific training modules.
- Specific training on financial crime targeted for the judiciary and specifically for the investigating judges seems scarce. Prosecutors appear to receive ad-hoc training and are naturally trained “on the job” due to the specialisation of prosecutors. However, an overall training module on financial crime issues including an accreditation process that would systematically develop and complement the required expertise as regards financial investigations seems to be missing. Furthermore, based on the information received, there seems to be some unawareness among some members of the judiciary as regards the need and benefits of specific training.

- As regards national criminal policy, the national strategy set by the government of Lithuania has resulted in the Programme of the Government of Lithuania, and the Plan for the strengthening of criminal prosecution for fraud. The Office of the Prime Minister formulates several plans, such as the plan against the shadow economy. They all contain concrete measures with designated agencies or institutions, including a reporting obligation on implementation. Several plans and a general criminal policy thus exist but there is no clear and nation-wide policy in place for the fight against financial crime involving all relevant actors. The current anti-financial crime legislation in Lithuania is very modern and advanced. However, in order to target its use and take full advantage of it, a clear integrated national policy that is based on well-defined and intelligence-led priorities and that includes both preventive and repressive measures is required, as well as indicators for the evaluation of all different levels and services to assess their contributions and effectiveness.

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3. INVESTIGATION AND PROSECUTION

3.1. Available information and databases

3.1.1. *Databases and registers*

As a general rule, the pre-trial investigation institutions and the institutions of criminal prosecution have a direct access to or can request for information to the managers of the registries and data bases, naturally depending upon whether and what sort of information provision contract has been signed with the managers of the specific registers and data bases.

It is unnecessary to receive the court's permit seeking to use the abovementioned data bases, however the legal basis for data search and review need to be indicated.

3.1.1.1. Bank accounts

Information about bank accounts in the name of a respective person can be requested and received from the **State Tax Inspectorate**, which administrates the above-mentioned information. The legal basis provided in Article 55 of the Law on Tax Administration stipulates that credit institutions shall provide information to the tax administrator about all types of accounts opened or closed by Lithuanian and foreign legal persons and natural persons. Such information shall be communicated to the State Tax Inspectorate under the Ministry of Finance in writing not later than within three working days after the opening or closure of the account, or in any other manner and within other time limits set out in a contract between the credit institution and the central tax administrator.

There are in general two ways to obtain information on bank accounts: providing a written request to the commercial bank or an electronic request to the tax authority.

During the evaluation mission the team of experts was informed that the FCIS has, due to its own cooperation agreement with the State Tax Inspectorate, a possibility to receive bank account information in a precipitated process. According to the Lithuanian authorities, a new cooperation agreement established since the evaluation mission between the two authorities grants the FCIS direct access to the bank account database managed by the State Tax Inspectorate. The FCIS has also the right, according to the Law on the FCIS, to request any bank for any financial information required for the performance of its tasks and functions.

The prosecutor as the leader of investigations can also request bank account data, and this information will always be provided, but it has no direct access to the data.

3.1.1.2. Real estate

The operations of the real estate register are governed by the Law on the Real Estate Register. It is established to register real property, titles and other interests to which it is subject, restrictions on the right of possession, and other legal facts specified by laws, and to provide the information on the data accumulated in the register.

The real estate register enlists immovable objects, provided that they have been, in the procedure set forth in the Law on the Cadastre of Real Estate, established as a separate immovable property object and assigned a unique number.

The real estate register lists the following rights *in rem* relating to an immovable property object:

- ownership right;
- property trust law;
- management as an autonomous right *in rem*;
- servitudes;
- usufructs;
- superficies;
- etc.

The real estate register registers the following legal facts related to immovable objects, rights *in rem* related to such objects and the restrictions of such rights:

- transactions and decisions changing the legal status of the immovable object;
- agreements between the co-owners of a registered immovable object concerning the co-owned object;
- succession of a registered immovable object;
- attachments upon a registered immovable object;

- changes in the registered immovable object (its size, purpose, etc.), also changes in the names or last names of natural persons, or titles of legal persons holding rights *in rem* related to the object;
- initiations of civil actions in respect of the legal status of an immovable object being registered;
- court decisions and orders having the effect of *res judicata* affecting the legal status of the immovable object being registered;
- property administration;
- formation of a new immovable object, and the termination of any former immovable object.

The real estate register is managed by the Ministry of Justice and the State Enterprise Centre of Registers.

Data needs to be requested from the managers of the register. The FCIS and police institutions have direct access to the register.

3.1.1.3. Legal entities

The register of legal entities is governed by the Law on Registers of Legal Entities. The register of legal entities is the principal register of the state. In addition to registering legal entities, it accumulates, stores and manages data and documents related to them.

The register of legal entities is managed by the Ministry of Justice and the State Enterprise Centre of Registers.

The data of the register of legal entities, also the documents accumulated in the register, as well as any other information submitted to the register are public and are provided in the manner set forth by laws and other legal acts.

Data needs to be requested from the managers of the register. The FCIS and police institutions have direct access to the register.

3.1.1.4. Motor vehicles¹

The State Enterprise REGITRA is the institution managing the register of motor vehicles.

The register contains the following data:

- technical data of motor vehicles;
- data on the managers of motor vehicles;
- data on any restrictions (obtained from other sources).

The managers/owners of motor vehicles are obliged without delay, but in any case within not later than a month to notify the register of changes in the data, and to provide the relevant documents supporting such changes. Once per calendar year a manager/owner of a motor vehicle has a right to obtain the information on the motor vehicles registered in his name.

Upon a request of natural and legal persons, more specific data on motor vehicles, their legal status and their owners can be provided for a fee on the basis of the Law on State Registers, the Law on the Legal Protection of Personal Data and other legal acts of the Republic of Lithuania.

The data of the register are provided according to an application of the data recipient specifying the purpose of the use of the data. In case the request concerns data on motor vehicles registered in the name of a natural person, the application shall indicate the purpose of the use of such data, the legal basis for the provision and the receipt of the data, and the scope of the data requested to be provided. The data may be ordered at any division of the REGITRA.

¹ As of 1 January 2011, registered in Lithuania were 17,364 two-wheel mopeds, 21 Three-wheel mopeds, 36,081 motorcycles, 6,201 motorcycles with a side trailer, 440 three-wheel, four-wheel motorcycles, 51 four-wheel motorcycles up to 350 kg, 530 four-wheel motorcycles up to 400 kg, 1,734,047 passenger vehicles, 7,690 buses up to 5 t, 7,054 buses over 5 t, 95,930 trucks up to 3.5 t, 33,628 trucks over 3.5 t, up to 12 t, 45,651 trucks over 12 t, 106,199 trailers up to 0.75 t, 13,902 trailers and semi-trailers over 0.75 t to 3.5 t, 4,367 trailers and semi-trailers over 3.5 t to 10 t, 35,392 trailers and semi-trailers over 10 t, total – 2,144,548 motor vehicles.

Data needs to be requested from the managers of the register. The FCIS and police institutions have direct access to the register.

3.1.1.5. Vessels

The register of inland waterway vessels manages data on the procedure of the registration of the object, general data on the objects of the register, data on the owners and managers of the object of the register, data related to the documents submitted for registration, the rights *in rem* related to the object of the register and any related restrictions, and data on the previous registration of the object of the register.

According to the data of the website of the Ministry of Transport and Communications, currently the register of inland waterways vessels includes about 100 inland waterways vessels and about 30,000 small and pleasure vessels.

As above, data needs to be requested from the managers of the register. The FCIS and police institutions have direct access to the register.

3.1.1.6. Registry of the acts on property arrest

The registry of the acts on property arrest is a public state registry, in which acts on property arrest adopted by the state institutions (officials) are registered. Under the provisions of law the rights to manage property are temporarily restricted by arresting them. These acts are issued by the courts, judges, bailiffs, prosecutors, the State Tax Inspectorate and other state institutions.

The data base of the registry is managed by the Central Mortgage Institution, which is under the jurisdiction of the Ministry of Justice.

3.1.2. *Cooperation at national level*

During the pre-trial investigation information regarding bank accounts may be obtained under the procedure of **Article 155** of the CCP, where a prosecutor passes the decision for obtaining the written information and a pre-trial investigation judge gives his consent. Having passed a decision for access to information, the prosecutor must get consent for obtaining the information from a pre-trial investigation judge. Access to information is not possible without the consent of the pre-trial investigation judge.

Access to information may also be enforced, on the prosecutor's assignment, by a pre-trial investigation officer.

The discussed information may also be obtained under the procedure of **Article 147** of the CCP by carrying out a seizure of the documents required for the pre-trial investigation. The seizure shall be carried out under a reasoned order of the pre-trial investigation judge, which is passed after consideration of the prosecutor's request regarding the seizure order. The seizure is not possible without the order of the judge. However, the law provides that in urgent cases the seizure may be carried out under the decision of the pre-trial investigation officer or prosecutor, but in this case the confirmation of the seizure's legality must be obtained from a pre-trial investigation judge within three days of the seizure. The seizure may be enforced by a pre-trial investigation officer.

Furthermore, it is possible to obtain the information according to **Article 97** of the CCP, if a permission of the party in a pre-trial investigation for obtaining data on his/her financial operations has been received. The measure provided in Article 97 of the CCP may also be taken by the pre-trial investigation officer.

According to this article, it is possible to obtain information if a specified natural or legal person is a client of the bank or any other credit institution or not, i.e. if an account is opened in the name of that person, the type and number of the account, if that person has been provided with any other financial services (such as a renting of the safe-deposit box, or a credit provision) without disclosing the terms and contents of services.

The information regarding the monitoring of operations to and from a specific bank in the future may be obtained under the procedure of **Article 160** of the CCP (secret surveillance). Secret surveillance of the person or vehicle or target may be assigned by a pre-trial investigation judge on the request of the prosecutor. The order of the pre-trial investigation judge and the decision of the pre-trial investigation officer or prosecutor must specify the person or vehicle or target to be under surveillance, data justifying the need to take this measure, and a time limit for the secret surveillance. If video or sound recording is planned during the secret surveillance, it also must be specified by the order of the pre-trial investigation judge and the decision of the pre-trial investigation officer or prosecutor. The secret surveillance record and other documentation of the case shall be made according to the regulation laid down in Article 201 of the CCP.

In urgent cases surveillance operations may be carried out under the decision of the pre-trial investigation officer or prosecutor. In this case consent must be obtained from a pre-trial investigation judge within three days after such operations have been launched. If consent is not obtained, launched operations must be terminated and data obtained during the operations must be deleted immediately.

According to paragraph 1(12) of Article 7 of the **Law on Operational Activities**, the entities of operational activities shall have the right to obtain from enterprises, agencies and organisations information required for operational activities, except for information which can be legally obtained only under a reasoned order of the court.

According to the **Law on the FCIS**¹, the latter shall, as a specialised body of pre-trial investigation, have the right to obtain from the Bank of Lithuania, commercial banks and other credit and financial institutions, as well as legal and natural persons, necessary information required for the performance of the tasks and functions of the FCIS, explanations, copies of certifications and documents concerning property and income of a legal or natural person, as well as economic

¹ Article 11 paragraph 1(3)

financial operations. According to the Law on the Prevention of Money Laundering and Terrorist Financing¹, the FCIS shall also have the right to obtain required data and documents about monetary operations and transactions from the state institutions, financial institutions, and other entities, with the exception of advocates and advocates' assistants.

The use of the measures defined above is permitted on investigation of any offence. Laws set no maximum duration of the measure, but the time limit for execution must be laid down on the assignment of secret surveillance.

At the stage of pre-trial investigation, the persons subject to the investigation often receive information directly about the measures taken because they are involved in the execution of these measures. According to Article 161 of the CCP, the person to whom the measure 'Prosecutor's right for access to information' provided in Article 155 of the CCP is taken, must be informed about it after terminating the execution of the measure. The person must be informed as soon as possible without damage to the success of the investigation.

According to Article 20(3) of the Law on the Prevention of Money Laundering and Terrorist Financing, financial institutions and their employees, as well as other entities and their employees, shall be prohibited from notifying the customer or other persons that the information about the monetary operations performed and the transactions concluded by the customer, or the investigation related thereto, has been submitted to the FCIS. The prohibition shall not cover advocates and advocates' assistants.

As regards the prevention of money laundering, close cooperation between commercial banks and the FCIS is based on mutually-assigned contact persons². The information required may be obtained by a written request to the commercial bank, or an electronic request to the tax authority. In this case only information on the existence of the account can be obtained. Banks are obliged to provide law enforcement authorities with this data.

¹ Article 7 paragraph 1(1)

² According to the Lithuanian authorities, in practice these contact persons act as compliance officers. Their appointment must be reported in writing to the FCIS, and they liaise regularly with the service.

In case of defence lawyers, according to the CCP a defence lawyer must keep his professional secret, thus an advocate and advocate's assistant shall not reveal the information which they received in the capacity of a defence lawyer. According to Article 46(1) of the Law on the Bar, an advocate may not be summoned as a witness or to give explanations as to the circumstances which came to his knowledge in the pursuit of his professional activities. Therefore requesting and obtaining the information from an advocate is not possible.

There are nine commercial banks operating under the licence of the Bank of Lithuania in Lithuania. The number is not considerable and renders obtaining written information relatively easy. In practice, information from banks can be obtained in real time when necessary.

Investigators and prosecutors do not have direct access to individual banks' databases. Information is obtained in written form and, when necessary, by other means of communication.

Monitoring of the bank account is executed on the particular request sent by the head of the body of pre-trial investigation, or heads of departments on the investigator's initiative. The deadline for banks to provide the information on each financial operation performed is set in the request. The information is transmitted under the procedure laid down in the request (in written or electronic form).

3.1.3. Cooperation at European level

3.1.3.1. Protocol to the Convention on Mutual Legal Assistance between the Member States of the EU

Lithuania has ratified the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and the Protocol thereto by the Law No IX-2007 (5 February 2004).

3.1.3.2. The role of the ARO

The Lithuanian Criminal Police Bureau acting as the ARO submits information related to property deriving from criminal activity. Without a mutual legal assistance request it can submit information and give assistance only as far as the relevant legislation allows.

3.1.3.3. Competent authorities for handling information requests

Bodies of pre-trial investigation and prosecutor's offices that carry out pre-trial investigations can issue a request for information.

As regards issuing a request, the Ministry of Justice and Prosecutor General's Office act as central authorities whilst regional prosecutor's offices, the Court of Appeal of Lithuania, and regional and district courts act as competent judicial authorities. The same applies to receiving a request.

Bodies of pre-trial investigation (police, the FCIS, etc.), prosecutors' offices, and courts execute the request in the receiving State.

3.1.3.4. Problems encountered

Problems encountered as a requesting state can be listed as follows:

- **Deadlines:** frequently an execution of the mutual legal assistance request has been delayed in other States;
- **Completeness:** not all requests for legal process have been executed and sometimes the answer provided does not indicate the reasons why some part of the request has not been executed. Oftentimes the questioning of persons is limited only to questions prepared beforehand and more detailed questions are not posed, even if the original question has been answered incompletely or the answers have been inconsistent.
- **Lack of communication:** when the request has been referred to another authority competent to execute it, the requesting State has not been informed about the referral.
- **Problems to obtain information:** requests by the FCIS and Lithuanian Criminal Police Bureau (also acting as the ARO) for initial information on bank accounts and real estate held, or for other important information, have not been executed and a mutual legal assistance request is required. Furthermore, some States have not established a central real estate register and other centralised databases. This complicates and slows down the reception of information.

3.2. Financial investigation and use of financial intelligence

3.2.1. Legal framework

The pre-trial investigations on financial crimes are carried out following the provisions of the criminal procedure regulating the investigation of all criminal acts.

According to the CCP, the police is the universal pre-trial investigation institution. Other pre-trial investigation institutions investigate the criminal acts, disclosed in the process of the performance of the direct functions of these institutions and provided in the laws regulating their activities.

In the recommendations of the General Prosecutor on the assignment of investigation of criminal acts to the institutions of pre-trial investigation, specific financial crimes are assigned to the FCIS within its competence.

Financial investigations are performed in line with the provisions of the CCP, and prior to the initiation of the pre-trial investigation, the data is collected following the provisions of the Law on Operational Activities. Financial crime investigations are also executed in line with the Law on the Prevention of Money Laundering and Terrorist Financing.

3.2.2. The use and effectiveness of financial investigations

When investigating for example crimes of trafficking in human beings and cybercrimes, the flow of funds in the bank accounts of the suspects and the related persons (family members and other persons with whom they communicate) are analysed. Such investigations seek out to collect information about the cooperation of persons in the commitment of crimes, to determine whether any financial operations or transactions have been made to legalise the criminally acquired property, and also to find this property and restrict the proprietary rights aiming to ensure a possible civil action and confiscation of property.

According to the Lithuanian authorities, the FCIS initiated 70 financial investigations (55 stemming from pre-trial investigations and 15 from other investigations) between 11 December 2010 (when the new provisions of the CC came into force) and June 2011. The financial investigations under way seek to determine the value of property suspected of not having been acquired through lawful income. Pre-trial investigations involving a parallel financial investigation have led to the

imposition of temporary restrictions of ownership rights to property of an overall value of LTL 13.1 million.

3.2.3. *Continuation of a financial investigation after the closure of a case*

If it is determined during pre-trial investigation on any activity, that certain financial operations have been made or transactions are being implemented aiming to legalise or conceal the perpetrator's or other person's money or property, or that the suspect or any other person has any property of great value, and that this property could not have been acquired by legal income, the pre-trial investigation shall be initiated in respect of the new criminal act, provided in Art 216 (legalisation of criminal money or property) or Art 189(1) (illicit enrichment) of the CC. The investigation concerning money laundering and illicit enrichment can be continued also after transferring to the court of the pre-trial investigation material concerning the predicate offence, separating the pre-trial investigation prior to that.

In line with the information provided by the relevant authorities, the FCIS initiated 24 pre-trial investigations under Article 189(1) of the CC between 11 December 2010 and June 2011: one in 2010 and 23 during the first half of the 2011¹. In the other pre-trial investigations that are still under way, the value of property suspected as not having been acquired from lawful income is LTL 25.5 million, and temporary restrictions of ownership rights have been imposed regarding property to an overall value of LTL 6.5 million.

3.2.4. *Special legal powers*

The CCP does not foresee any powers of legal character for investigating cases of criminally acquired proceeds. Disclosing and investigating these, as well as illicit enrichment cases, is done in cooperation with the State Tax Inspectorate performing tax inspections in line with the Law on Tax Administration.

¹ Of the 24 investigations initiated, three are complete: one resulted in a conviction under Article 418 of the Lithuanian CCP, where it was found that a sum of LTL 76 397 could not have been acquired from lawful income but was acquired by illegal means, leading to the sum being seized under Article 72 of the CC; one pre-trial investigation was closed under Article 220 of the Lithuanian CCP and the case went to court, where it was established that property to the value of LTL 98 000 had been acquired by illegal means; and one pre-trial investigation was terminated under Article 3(1) of the CCP.

3.2.5. *Involvement of private experts*

In the process of investigating cases of illegal proceeds, specialists of the State Tax Inspectorate and the FCIS present their conclusions. Also the police have financial specialists. Investigations of more complicated cases requiring specific expertise are being carried out by the experts of the Court Expertise Centre under the Ministry of Justice. In those cases, where certain specialisation is not available at the state institutions or expert institutions, it is also possible to use private specialists or experts.

The General Prosecutor has approved Recommendations on the assignment of tasks for specialists and experts in which the order of the choice of private specialists and experts is also foreseen.

3.2.6. *Financial intelligence*

3.2.6.1. Financial investigations in the intelligence phase

The pre-trial investigation institutions (the police, the FCIS, the Customs Criminal Service, the State Boarder Guard Service, and so on) collect information about the financial side of the possibly executed offence (movement of funds, ownership of property and its origin, etc.) in the intelligence stage in line with the Law on the Operational Activities.

3.2.6.2. Financial Intelligence Unit (FIU)

The FCIS is the national Financial Intelligence Unit (FIU). Other law enforcement institutions can receive financial information regarding certain monetary operations spontaneously or according to a separate request¹.

A special division operates at the FCIS performing the functions of the FIU. Money laundering prevention measures are being implemented at the FCIS directly by performing the functions provided by the Law on Prevention of Money Laundering and Terrorist Financing.

¹ As provided in the Resolution No 404 of 14 April of 2010 of the Government “Resolution of the Government of the Republic of Lithuania Amending Resolution No 527 of the Government of the Republic of Lithuania of 1 June 2006 On the Approval of the Rules of Providing the Law Enforcement Agencies and other State Institutions of the Republic of Lithuania with Information Regarding Customers' Monetary Operations at the Disposal of the Financial Crime Investigation Service under The Ministry of the Interior“.

The FCIS collects and registers the information defined in the law on financial operations and transactions performed by financial institutions and other subjects and about the client performing such operations and transactions, whether natural or legal persons. The information received is then systematised and analysed.

Based on the analysis, and upon the determination of indications of possible criminal acts, the FCIS carries out operational activities or pre-trial investigations concerning the legalisation of illegally acquired money or property, or other crimes. It also cooperates and exchanges information with the institutions of foreign countries and international organisations, implementing the preventive measures against money laundering and/or terrorist financing, and performs other functions provided in the abovementioned law. Additionally, after the initiation and in the process of carrying out the pre-trial investigation, the intelligence measures are implemented.

Very few statistics are available regarding the activities of the FIU. In 2010 there were over 750 000 reports about transactions above the threshold, whilst the number of STRs was 222. A great majority, 165 reports, is submitted by commercial banks, and there are a number of categories of reporting entities that are not submitting any STRs, such as insurance companies and investment firms.

When the FIU receives an STR for example from a bank, it opens an analysis file and forwards the case to local branches which can open a pre-trial investigation or an operational investigation on it. According to the information received during the evaluation mission, approximately half of the STRs will be forwarded for investigation to local branches (tax authorities or police) or other relevant authorities. The FIU has a supervising role as regards the reporting entities and can be informed of breaches of the reporting obligation. The FIU also provides guidelines to a variety of reporting entities such as leasing companies, postal service providers and accountants.

3.2.6.3. Initiation of new cases based on financial intelligence

The financial intelligence received is also used for the adoption of a decision on the initiation of a pre-trial investigation.

The divisions of the FCIS performing the functions of pre-trial investigation are provided with the systemised intelligence information and analysis. According to the situation, these divisions check the intelligence, start the implementation of the operational activity, or immediately initiate the pre-trial investigation. When possible, the information is also sent to other state institutions.

3.2.6.4. Cooperation with other authorities to collect financial intelligence

Cooperation is one of the main principles of intelligence work, and is pursued on a continuous basis.

In August 2010 as part of the implementation of the Plan of measures of the Governmental Commission for the coordination of cooperation between the state economic and financial control and the law enforcement institutions that aims to develop cooperation and coordinate the actions to counteract crimes, the FCIS, the Customs Department, the State Border Guard Service, and the Police Department signed the Cooperation Agreement¹. The parties committed themselves to exchanging information on fighting crimes, their prevention and other matters and to coordinating the actions at various levels (central, county, regional).

Implementing this agreement, the parties established the **Criminal Information Analysis Centre (CIAC)**², a permanently operating inter-institutional working group of the parties targeted at the development of cooperation specifically in the analysis of the information collected by the parties related to different offences and to the social, legal, economic and other reasons and conditions of crimes and violations. On the basis of the information analysis, the CIAC can provide recommendations on the priority trends of operational and pre-trial investigation activities of the parties or their institutions.

By the decision of the Director of the FCIS and the Head of the State Tax Inspectorate, it was decided to establish the **Risk Analysis Centre (RAC)**³. The officials of the FCIS and the State Tax Inspectorate performing within their competences the analysis of the information, tax administration, investigation of violations, carrying out operative activity and pre-trial investigation, were appointed by orders of the chief executives of the parties. The RAC can receive, via the officials appointed by the parties, from each other information needed for the implementation of the tasks and performance of the functions of the Centre. The main objectives of the RAC are:

¹ No 11B-156/8-102/5-IN-119/04/1-1582

² Order on the Approval of the Regulation of the Crime Information Analysis Centre and the Appointment of the Institution Coordinating the Centre's Activities No. 1B-135/4-142/5-V-118, 21 February 2007. This order has since been amended and replaced by a new order in 30 August 2010.

³ Order Establishing the Risk Analysis Centre, No V-161/V-392, 22 December 2010

- to analyse and exchange available information on tax violations and acts against the financial system, aiming to identify the threats to the state financial system and collection of taxes;
- to cooperate within their competences, organising and implementing the targeted measures, preventing, disclosing and investigating violations of the tax law or those crimes that are assigned to the competence of the parties.

The RAC implements its objectives by monitoring and analysing the situation in different spheres of the economic activity, aiming to determine changes, tendencies and the reasons causing them as much as it is related to the possible violations of the tax law or the crimes against the financial system. Upon the detection of cases of tax evasion, or persons in whose activity there are indications of criminal activity, the RAC informs the party to the competence of which the investigation is assigned; gives suggestions to the relevant party/parties on priority activity directions; assesses and summarises the activity results of the Centre; performs within the respective competences any further investigation according to the detected facts; and presents suggestions on the improvement of the use of the databases of the parties.

According to the information received during the evaluation mission, the FCIS starts financial investigations when it receives reports on infringements from the tax authorities. Additionally, oftentimes when investigations are carried out on drugs or trafficking in human beings, the relevant institutions may receive information indicating that the suspect has property. In these cases the criminal investigation is carried out parallel to the financial one. For example, after the Lithuanian Criminal Police Bureau has finished the investigation on drugs, the FCIS concludes the investigation on illicit enrichment.

3.3. Cooperation with Europol and Eurojust

3.3.1. Cooperation with Europol

3.3.1.1. Past experiences with Europol

Since 2010 Lithuania has participated in the activities of the Europol Analysis Work Files (AWF) Sustrans and MTIC. While investigating financial crimes committed in two or more Member States of the European Union, officers of the Lithuanian police (investigators) have used the following support of Europol:

- exchange of information with law enforcement agencies of the other Member States via the Europol Information Exchange System SIENA (restricted to the level of secrecy “RESTRICTED”);
- provision of information to Europol Analysis Work Files for the purposes of analysis and use of analysis provided by Europol;
- use of financial and organisational support provided by Europol to arrange operational meetings of investigators.

3.3.1.2. Expectations regarding Europol support for financial investigations

As regards expectations (of the investigators) of the Lithuanian police related to Europol support in respect of financial crime investigations, the provision of financial support not only in investigations related to counterfeit euros, but also in the course of investigations of other serious crimes (including financial ones), would be valuable.

3.3.2. Cooperation with Eurojust

3.3.2.1. Past experiences with Eurojust

The number of investigated criminal cases of financial nature related to one or more Member States where Eurojust is addressed for assistance is increasing every year. Mutual legal assistance in these kinds of cases takes time. Thus the assistance of Eurojust in gathering important evidence quickly is greatly appreciated. The national member of Eurojust is often addressed with a request to give advice on drafting a request for mutual legal assistance so that in case of differing national laws, it would be acceptable for implementation in the requested country.

Moreover, the assistance of Eurojust in getting in touch with the authorities of third countries by the help of its network of contact persons is of great value.

Lithuania has not established or participated in any joint investigation teams in cases of this kind.

3.3.2.2. Expectations regarding Eurojust support for financial investigations

It would be preferable that national members of Eurojust had more legal possibilities and means to arrange and coordinate the implementation of requests for mutual legal assistance in the cases regarding financial crime.

3.4. Conclusions

- In general, financial investigations in Lithuania are supported by access, direct or indirect, to necessary databases by law enforcement and other relevant authorities. Additionally, the databases and registers provide assistance for the investigative authorities in recovering criminal assets (for example bank accounts, land register, and vehicle database).
- However, there is as of yet no general direct access to all available databases relevant for financial and economic crime cases, or for real-time consultation¹. According to the evaluation team such access could also be extended to other types of public registers useful for financial investigations.
- There is no special legal framework for financial investigations, as these are mainly carried out within the framework of regular criminal investigations. However, the relevant legislation as regards financial crime and financial investigations is modern, extensive and relatively powerful. Some parts of the legal tools, such as the so-called illicit enrichment provisions, need to be still tested in practice to see how well they work and support the investigation of financial crimes or money laundering.

¹ With the exception that the new cooperation agreements between the police / the FCIS and the State Tax Inspectorate grant these authorities direct access to the bank account database managed by the State Tax Inspectorate. However, it is still unclear as to which databases the direct access is specifically not available.

- The statistics concerning the activities of the Financial Intelligence Unit (FIU) indicate a lack of reporting by some so-called non-financial entities (auditors, accountants, etc.) but also by certain financial institutions (insurance companies and investment firms). Awareness-raising programmes are conducted every year by the FCIS, and the situation as regards reporting on STRs by both non-financial entities and financial institutions is improving. However, as regards the enforcement of due diligence, inspections of the reporting entities by the FCIS could be further strengthened and made more effective.
- The pre-trial investigation services investigate financial crimes in a very traditional way. In the same line the team of experts considers that the approach against financial crime is seldom administrative/preventive but almost exclusively repressive, except as regards the role of the FIU. Additionally, the police and other pre-trial investigation authorities have thus far not developed specific pro-active projects or initiatives towards a fast and efficient detection of financial crimes, other than the mainly traditional ways to start up an investigation based on STRs coming from the FCIS/FIU and information from the tax authorities that has to be investigated. A more proactive or intelligence-led way to initiate and create cases would be recommended, such as by analysing transports of cash money, and by screening real estate investments and suspicious investments reported in the media or elsewhere.
- In general the level of awareness regarding the services and products of both Eurojust and Europol is relatively high in the relevant agencies. For example, all law enforcement and prosecution authorities seem to be aware of Eurojust and several of them had sought assistance from the Lithuanian desk at Eurojust. However, the use of the products and services on financial crime provided by Europol, and cooperation in general via Europol, is at a basic level. Some services, such as the police or the FCIS, use Europol to an extent to support and benefit their investigations, but this does not apply to all competent authorities or in all relevant cases. Even though Lithuania participates actively in some Europol AWFs, this is not the case with financial crime AWFs, such as AWF Sustrans and AWF MTIC. For example, a more proactive approach aimed at sharing financial intelligence contained in the STRs would be welcome.

- The State Tax Inspectorate administers information concerning bank accounts. The FCIS as well as the police have established a direct access to this information through cooperation agreements with the State Tax Inspectorate, but public prosecutors on the other hand do not have direct access to this data. Information may have to be indirectly handed over by the FCIS or the police to the relevant prosecutor. Since the prosecutor is the leader of investigations, in the worst case this approach may delay a financial crime case. At least relevant investigators and prosecutors should have a quick access to the database on similar terms as the FCIS and the police.
- Lithuanian authorities are concerned about problems relating to requests of mutual legal assistance. Lack of speed as regards replies, information that is not sufficient, no answers to follow-up questions, and information on the circumstances of crime not provided where the answers are formal, are some of the challenges mentioned. Problems occasionally occur in relation to some Member States.

DECLASSIFIED

4. FREEZING AND CONFISCATION

4.1. Freezing order

4.1.1. *At national level*

4.1.1.1. Legal basis

A decision of the prosecutor rendered in line with the procedure specified in Art 151 of the CCP serves as grounds for the temporary restriction of ownership rights. The decision shall indicate that by temporary restriction of ownership rights of a legal person, one shall secure a possible confiscation of property in cases defined by Art 72 of the CC and extended confiscation of property in cases defined by Art 72(3) of the CC. Requirements for the decision of the prosecutor to impose temporary restriction of property rights are defined in Art 152 of the CCP.

Temporary restriction of ownership rights can be imposed after initiation of a pre-trial investigation in respect of any act of a person which has the indications of a criminal act specified in the CC, provided that a civil claim in respect of such criminal act during the criminal procedure or a court ruling imposing confiscation or extended confiscation of property is possible. Duration of temporary restriction of ownership rights shall depend on the gravity of the criminal act and on whether the suspect went into hiding.

The term of temporary restriction of ownership rights imposed by a decision of a prosecutor shall not exceed six months. The aforementioned period can be extended by a ruling of a pre-trial investigation judge, however, not more than twice for the period of three months each time. In other words, temporary restriction of ownership rights shall not last more than 12 months. However, in criminal cases related to particularly grave crimes, or in cases when a suspect went into hiding, the number of extensions of the term of temporary restriction of ownership rights is not limited.

Temporary restriction of ownership rights is imposed by a decision of a prosecutor and later, when the duration of said procedural measure of constraint has reached six months, the prosecutor is entitled to address a pre-trial investigation judge of the jurisdiction of the place of crime and request for temporary restriction of ownership rights. The judge shall pass a ruling extending the term of temporary restriction of ownership rights. The prosecutor may enforce his sole decision to temporarily restrict ownership rights. He may also commission the pre-trial investigation officer with the enforcement thereof.

In the procedure specified in the CCP, the person whose ownership rights are temporarily restricted and all the owners (co-owners) of the property in respect of which ownership rights have been temporarily restricted, shall be informed of the decision immediately or not later than the next working day. Copy of the decision to impose temporary restriction of ownership rights shall be served on the owner (co-owners) of the said property. If it is impossible to announce the decision immediately, the decision is considered to be announced on the moment of registration thereof in the register of the orders on freezing of property. A copy of the decision to impose temporary restriction of ownership rights shall be immediately and not later than the next working day sent to the keeper of the register.

A person whose ownership rights were temporarily limited is entitled to appeal against the decision of the prosecutor at the office of the pre-trial investigation judge. Such a complaint shall be heard by the pre-trial investigation judge within seven days from the day of reception of the complaint. A ruling of the pre-trial investigation judge can be appealed against at a superior court. A ruling passed by such court shall be final and not subject to appeal (Art 151 part 5 of the CCP).

In the prosecutor's own discretion the property, which is subject to restriction, shall be transferred for keeping to a representative of a municipal institution or the owner of such property, or a family member, or a relative of such owner, or other person. They shall be informed of the liability for embezzlement or concealment of such property subsequent to Article 246 of the CC. For this reason, a written pledge of such persons shall be taken. If necessary, such property may be seized. If the ownership rights are restricted in respect of pecuniary deposits, all the operations with such funds shall be suspended, unless the decision to temporarily restrict ownership rights indicates otherwise.

In the event that such measure is no longer necessary, the temporary restriction of ownership rights shall be revoked by a prosecutor's decision or court ruling. Having revoked temporary restriction of ownership rights, the prosecutor or court shall immediately inform the keeper of the register and submit the decision or ruling revoking the temporary restriction of ownership rights.

No separate institution responsible for the recovery of property has been established at the national level in Lithuania. The Lithuanian Criminal Police Bureau and the Prosecutor General's Office act as institutions for recovery of property only in cases of international co-operation (as ARO). Thus, said institutions would participate only if temporary restriction of ownership rights is imposed further to a request of another State.

4.1.2. Cooperation at European level - Implementation of Framework Decision 2003/577/JHA

Lithuania implemented the Framework Decision 2003/577/JHA by Law No. X-1236 (June 2007) by adding Article 41(1) and Article 77(2) to the CCP and by establishing the Rules of Drafting the Certificate of the Order on Freezing of Property or Evidence and Sending Procedural Documents Related to Temporary Protection of Items, Documents, and other Property to the Judicial Institutions of the EU Member States.

The Framework Decision introduced an obligation for Member States to define in the national law the procedure of the recognition and enforcement of the orders freezing property or evidence of the judicial authorities of the executing Member State. The implementing law provides that the recognition and enforcement of freezing orders of foreign national competent authorities is organised by the Prosecutor's General Office. Recognised orders freezing property or evidence shall be enforced by the actions of the CCP (for example, temporarily restricted ownership, search or seizure, etc.). Before the adoption of the law, the procedure was not established and regulated in the CCP, and it was carried out in line with international treaties and agreements.

The new Article 77(2) of the CCP, which executes the Framework Decision, states that the recognition and enforcement of the order freezing property or evidence (also referred to as "the order") issued by the competent judicial authority of the European Union Member State is organised by the Prosecutor General's Office. The order freezing property or evidence is recognised based on the decision of the prosecutor of the Prosecutor General's Office.

Upon receiving the order freezing property or evidence, the Prosecutor of the Prosecutor General's Office may not recognise it, if:

- enforcement of the order freezing property or evidence would infringe the person's main rights and (or) freedoms;
- enforcement of the order freezing property or evidence, or enforcement of application for legal aid related to it, would infringe the bar on a second prosecution for the same criminal acts;
- the order freezing property or evidence is intended for items, documents or other property which have an immunity from the criminal jurisdiction according to the standards of international or national laws, or when the Law of the Republic of Lithuania prohibits the seizure of such items, documents or other property;
- the order freezing property or evidence is issued due to acts which are not considered crimes or criminal offences according to the Criminal Law of the Republic of Lithuania, except for the cases when the order freezing property or evidence is issued due to criminal acts stated in the Article 3(2) of the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, and the criminal law of the State which has issued the order provides for a penalty involving deprivation of liberty for at least three years for this criminal act.

Upon receiving the order, the prosecutor of the Prosecutor General's Office may not recognise it also in cases when the certificate stated in the Art 9 of the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence is not received, or the certificate is not exhaustive enough, or it does not evidently confirm to the order freezing property or evidence, or the documents received are not translated into Lithuanian or English. In such cases the prosecutor can determine the final term of submitting or specifying the certificate or other documents; can accept equivalent documents instead of the certificate; or exempt the institution which issued the order freezing property or evidence from this requirement, if the information provided is sufficient.

Upon recognising the order freezing property or evidence, the prosecutor of the Prosecutor General's Office may decide to delay its enforcement temporarily, if:

- enforcement of the order freezing property or evidence would infringe pre-trial investigation in process or criminal procedure;
- the order freezing property or evidence is issued for the items, documents or other property the right of property to which is already temporary restricted or they are seized according to the procedure stated in the law.

A decision to recognise the order freezing property or evidence, or a decision to refuse to recognise the order, or a decision to delay its enforcement temporarily, is usually made within 24 hours from receiving the order. The authority which has issued the order freezing property or evidence is immediately notified in writing about the decision made and the grounds for it. Upon disappearance of the reasons for delaying enforcement of the order, the Prosecutor General's Office independently undertakes actions to enforce the order, giving a written notice to the authority which has issued it.

Upon making a decision to recognise the order freezing property or evidence, the Prosecutor of the Prosecutor General's Office enforces it by temporarily restricting the right of property to the property indicated in the order when making a search, seizure or when undertaking other procedural actions. The enforcement of the actions can be assigned to territorial Prosecutor's Offices or pre-trial investigation institutions. In case of failure to enforce the order freezing property or evidence because the items, documents and other property indicated in it are lost, destroyed or they cannot be found at an indicated location, the prosecutor of the Prosecutor General's Office makes a decision to terminate the enforcement of the order and gives a written notice to the authority which has issued it.

The prosecutor's decision to recognise the order, or his actions when executing the order, can be contested to the pre-trial investigation judge according to the procedures stated in the Code. The authority which has issued the order freezing property or evidence must be notified in writing about the contested decision and results of the contested decision investigation.

Applications of the Member States concerning transfer or confiscation of the items, documents and property indicated in the order delivered together with it, or received later, are governed according to the procedure stated in the CCP and international agreements of Lithuania.

Temporary restriction of the right of property or other type of seizure of the items, documents and other property subject to the order is applied for the period until a decision concerning its transfer to the applying State or its confiscation is made, or until the authority which has issued the order informs about cancellation thereof, or until maximal terms of applying procedural compulsory measures expire, which are in parallel cases determined by the CCP. The authority which has issued the order must be given a prior written notice about the termination of the temporary restriction or any other actions for terminating the enforcement of the order freezing property or evidence.

Use of the Certificate of the Order on Freezing of Property or Evidence as the instrument of EU legal co-operation provided for during implementation of the Framework Decision 2003/577/JHA is not frequent. In 2010 the Prosecutor General's Office as a competent institution received and recognised only one and issued one order. In 2009 four orders on freezing of property or evidence were received of which three were recognised. No orders were issued in 2009.

It should be noted that efficient international legal assistance between the Member States is provided further to the provisions of the **Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union** (2000) and the Protocol thereof. No statistical data on the number of requests for mutual legal assistance issued and received in this particular field is available.

4.1.2.1. Experience when acting as an issuing State

Competent authorities

In Lithuania the document regarded as the order on freezing of property or evidence is adopted by a prosecutor, pre-trial investigation judge, or court.

Certified copies of the following procedural documents specified in the CCP are regarded as orders on freezing of property or evidence in Lithuania:

- a decision of a prosecutor to impose temporary restriction of ownership rights (Art 151 of the CCP),
- a ruling of a pre-trial investigation judge to extend the period of temporary restriction of ownership rights (Art 151 of the CCP),

- court ruling to impose or extend temporary restriction of ownership rights (Art 151 of the CCP),
- a ruling of a pre-trial investigation judge to conduct a search (Art 145 of the CCP),
- a ruling of a pre-trial investigation judge to conduct a seizure (Art 147 of the CCP);

On the grounds of the above-mentioned procedural decision and application of a prosecutor or court, the Prosecutor General's Office shall issue a certificate of the order on freezing of property or evidence. The certificate shall be signed by the Prosecutor General or his Deputy (item 15 of the Rules).

The institution issuing the order, i.e. the prosecutor, court, etc., is indicated in the certificate.

Content and format of the freezing order

Due to the fact that certified copies of the procedural documents specified in the CCP are treated as orders on freezing of property or evidence, the general rules of procedural documents are applicable. The CCP specifies the content of the decision to impose temporary restriction of ownership rights in more detail (Art 152 of the CCP).

The procedure of drafting the certificate of the order and sending it as well as the certified copies of the procedural documents related to the temporary protection of items, documents, and other property to the judicial institutions of the Member States, is defined by the above-mentioned rules.

The rules define that when addressing the Prosecutor General's Office regarding issuing of a certificate of the order, a prosecutor or court shall provide the following:

- request (which includes preliminary date when the executing state shall be served with the request for transfer of evidence, or when it shall be served with the request for confiscation);
- notification of the location of property or evidence shall be attached to the request;
- copy of the procedural document regarded as the order on freezing of property or evidence;
- draft certificate of the order.

In 2007 and 2008 TAIEX together with the Prosecutor General's Office organised seminars throughout Lithuania during which the then new instrument of legal co-operation of the EU, namely the order on freezing of property or evidence, was introduced to the prosecutors.

Main transmission options

According to the Item 17 of the Rules, the certificate of the order on freezing of property or evidence and certified copies of the procedural documents are transferred directly (enabling presentation of a written document in such a way that the implementing State could verify its authenticity) to the competent judicial institution of the implementing State. In all cases a copy of the certificate of the order is sent to the International Liaison Office of the Lithuanian Criminal Police Bureau.

In any matter related to the forwarding and implementation of an issued certificate of the order on freezing of property or evidence, the Prosecutor General's Office directly contacts the competent institutions of the Member State (item 19 of the Rules). Prosecutor General's Office is both the central institution for communication and the ARO.

Unknown recipient authority

Unknown receiving institution can be established by using the Atlas of the European Judicial Network, contact points, or Eurojust National Members. There have been no problems in this respect.

Other

Mechanisms for discussing the nature of the request with the requesting State have not been established. In every case an individual decision is made. Measures to keep the requesting State updated are not defined by the law. In order to extend the term of the freezing order, competent foreign law enforcement institutions are addressed additionally. Such level of communication is currently deemed sufficient.

There have been no specific difficulties regarding the subsequent treatment of the evidence or property which has been frozen in the executing State. If procedural acts in respect of subsequent management of frozen property must be performed, the execution of the requests for confiscation is organised further to the rules applicable. Application of Framework Decision 2006/783/JHA would simplify current procedures. Its added value is also that it clearly regulates the possession of the confiscated property, and the distribution thereof between the accepting and implementing states.

4.1.2.2. Experience when acting as an executing State

Mechanics of receipt

Execution of the order on freezing of property or evidence which was issued by another Member State is regulated by Art 77(2) of the CCP. Said Article does not provide for the ways of receiving the order. They may be delivered in any way that provides the written document so that the authentication thereof is possible, for example both by fax and e-mail.

The order is verified and the decision regarding its recognition is made by the Prosecutor General's Office. Said institution also organises its enforcement.

Having received an order, the prosecutor of the Prosecutor General's Office shall verify the following:

- whether the order on freezing of property or evidence has a certificate and whether the latter is exhaustive and complies with the order;
- whether the translation of the received documents into Lithuanian or English is available.

In case of failure to meet said conditions, the prosecutor may refuse recognition of the order, or may establish a final term for its provision or updating, or may accept a document of equal value instead of the certificate, or may exempt the institution issuing the order from this requirement if the information provided is sufficient.

The prosecutor of the Prosecutor General's Office shall verify the certificate of the order and assess the exhaustiveness thereof before deciding on recognition. The prosecutor may set a term for the provision of additional or supplemented information. As it has already been mentioned, there is little experience to this extent. In the few cases, requests were sent in English and Russian languages.

In one example the certificate was not sufficiently detailed and no translation into Lithuanian or English was enclosed. Subsequently the order was not recognised. Due to the fact that it was provided as a part of a request for mutual legal assistance, the request for freezing of property was implemented like all the other requests in that specific rogatory letter.

Competent authorities

As already mentioned, the prosecutor of the Prosecutor General's Office verifies and decides on the recognition of the order.

Besides the above-mentioned formal requirements (form and language), the prosecutor of the Prosecutor General's Office shall verify absence of the mandatory grounds for non-recognition of the order¹.

The order is recognised by the decision of the prosecutor. A decision to recognise the order, not to recognise it, or to suspend it is usually made within 24 hours from receiving it. The institution which issued the order shall be immediately informed of the decision made and grounds thereof. If the circumstances resulting in suspension of the order are no longer relevant, the Prosecutor General's Office shall on its own discretion undertake acts in order to implement the Order and shall inform the issuing institution of such fact.

Having made a decision to recognise the order, the prosecutor of the Prosecutor General's Office shall implement it by temporarily limiting the ownership rights of a person in respect of the property specified in the order, or by conducting a search or seizure, or by undertaking other acts specified in the CCP. Execution of acts of implementation of the order may be commissioned to territorial Prosecutor's Offices or pre-trial investigation institutions.

Temporary restriction of ownership rights or other seizure of items, documents, or other property in respect of which the order was issued shall be imposed until the decision in respect of transferring them to the issuing State or confiscation thereof is made, or until the institution which had the order issued informs about its cancellation, or until the maximum terms of imposition of procedural measures of constraint defined by the CCP are due. The institution which issued the order shall in advance be informed in writing of the intended ending of the temporary restriction of ownership rights or of other acts ending its execution.

¹ See list under 4.1.2. above

Requests for transfer of the items, documents, or other property specified in the order, or confiscation thereof sent by other States together with the order or received later shall be considered in the procedure defined by the CCP and international treaties of Lithuania. When solving said issues the Prosecutor General's Office acts as the ARO.

Prosecutor General's Office informs of recognition of the order and its enforcement. The institution which issued the order shall in advance be informed in writing of the expected outcome of the temporary restriction of ownership rights, or of other acts ending the execution of the order.

Legal remedies

According to Paragraph 8 of the Article 77(2) of the CCP, the ruling of the prosecutor to recognise the order freezing property or evidence may be appealed to the pre-trial judge in accordance with the procedures of CCP. On the filing of the complaint, as well as on the outcome of the complaint, the authority which issued the order has to be informed in writing.

Evaluation of added value

It is difficult to assess the overall added value of the Framework Decision and the efficiency and effectiveness of the new special legal co-operation instrument because the Lithuanian experience both as the issuing State and implementing State is not extensive.

The rare application of the instrument in practice is due to the following factors:

- Before the procedure of the order came into force, the requests of other Member States regarding imposition of temporary measures of protection in respect of property or evidence were being successfully executed by providing mutual legal assistance;
- Not all of the Member States have implemented the Framework Decision 2003/577/JHA, or having implemented it use it in practice;
- More efficient application of said measure would benefit from the implementation in the Member States of other procedures to which the principle of mutual recognition is applied, for example procedures specified in the Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders.

Lithuania has implemented the Framework Decision 2003/577/JHA in full, therefore no further acts in the field of legislation are deemed necessary. The actual efficiency of this measure depends on the attitude of the Member States towards it: whether it is needed and whether law enforcement institutions decide to apply such instrument in every separate case. Practical experience from actual cases confirms that depending on the individual situation of the investigation, the measures that fit the situation best and are most efficient are chosen. Thus, traditional conventional co-operation mechanisms and specific ones based on mutual recognition can be successfully combined.

4.2. Confiscation (including 2005/212/JHA and 2006/783/JHA)

4.2.1. At national level

4.2.1.1. Legal basis

According to Lithuanian criminal law, confiscation of property is a penal sanction. Imposition fundamentals of this penal sanction are set in Articles 67 and 72 of the CC, which state that it may be imposed on an adult person or a minor in conjunction with a penalty, released from criminal liability or from a penalty (when the imposed custodial sentence has been suspended). Property transferred to other natural or legal persons may be confiscated regardless of whether or not criminal proceedings are instituted against the said persons.

Since 11 December 2010 extended confiscation of property is laid down in the CC (Article 72(3) of the CC). Extended confiscation of property means taking into ownership of a state of property held by the offender, or the part of it disproportionate to the legitimate income of the offender, when there is reason to believe that the property has been obtained by criminal means. Extended confiscation shall be imposed only in the presence of all the following conditions:

- the offender is convicted for a less serious, serious or grave premeditated crime of which he had or could have material benefits;
- the offender has the property obtained at the time of the commission of an act forbidden by this Code, after the commission of this act or within five years preceding the commission of this act, the value of which does not correspond to his legitimate income and the difference exceeds the sum of 250 MSL, or within the period specified in this paragraph he has transferred such property to other persons;

- the offender does not justify the legality of the property acquisition at the criminal proceedings.

4.2.1.2. Types of crime

The CC does not define that confiscation of property may be imposed only in cases of particular crimes. Consequently, confiscation of property may be imposed as regards all criminal acts. It is worth noting that confiscation of property may be imposed both in cases of crime and misdemeanours.

4.2.1.3. Competent authority

The only competent authority to decide on penal sanctions, including confiscation of property and extended confiscation of property, is a court. Confiscation of property and extended confiscation may be imposed by releasing the person from criminal liability or from a penalty under the court judgement or the court order. A copy of the mentioned document of proceedings shall be presented to the person concerned.

Article 342 of the CCP provides that a writ of the execution of the judgement on penal sanctions, for example confiscation of property and extended confiscation of property, shall be presented to the bailiffs.

4.2.1.4. Legal remedies

Under the procedure laid down by law, the person on whom the confiscation of property has been imposed shall have the right to appeal against the judgement. During the execution process of confiscation of property or extended confiscation of property, the person may defend his/her rights under the procedure laid down by the Code of Civil Procedure and the Instruction of Execution of Judicial Decisions.

4.2.1.5. Role of ARO

Due to the fact that the Lithuanian Criminal Police Bureau and Prosecutor General's Office act as the ARO only in cases of international cooperation, the ARO will take part in confiscation of property only when it is executed at the request of another State. Generally, confiscated property is transferred to the State Tax Inspectorate which evaluates such property and arranges it for sale according to the procedure laid down by the Government.

4.2.2. *Possibilities for confiscation referred to in Article 3(2) of Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property*

Article 72(3) of the CC providing extended confiscation of property entered into force in December 2010. According to the Article mentioned, extended confiscation of property refers to the taking into the ownership of a state of property held by the offender, or the part of it disproportionate to the legitimate income of the offender, when there is a reason to believe that the property has been obtained by criminal means.

Extended confiscation shall be imposed only in the presence of all the conditions listed under 4.2.1.1. above.

The property subject to confiscation that has been transferred to another natural or legal person shall be confiscated when at least one of the following conditions is fulfilled:

- the property has been transferred upon conclusion of a simulated transaction;
- the property has been transferred to offender's family members or close relatives;
- the property has been transferred to a legal person, whose head, governing body member or participants, owning no less than fifty percent of the shares (shares, contributions, etc.), are an offender, his family members or close relatives;
- a person to whom the property has been transferred or persons which have held senior positions of the legal person and had the right to represent him, to make decisions on behalf of the legal person or to control activities of the legal person, were aware, or ought to have been aware and could have been aware that this property obtained by criminal means or by illegal funds of the offender.

However, the article provides that confiscation of property may not be imposed on the property or part of it of the offender or third party, which may not be recovered according to international treaties of which Lithuania is a party, the Code of Civil Procedure and provisions of other relevant legislation.

Where the property subject to confiscation or part of it has been concealed, consumed, belongs to third parties, cannot be taken for other reasons, or the confiscation of this property is inexpedient, a court shall recover from the offender or other persons a sum of money that is equivalent to the value of the property subject to confiscation (so-called value confiscation). However, according to information provided to the expert team during the evaluation mission, in practice value confiscation is not used when the money has been transferred abroad.

4.2.3. *Possibility to 'pierce the corporate veil'*

The legislation currently in force allows for the confiscation of property owned by corporations in both cases mentioned above. Article 72(4) of the CC provides that the property subject to confiscation and owned by another natural or legal person may be confiscated regardless of whether or not the person has been convicted for the commission of an act forbidden by the Code, provided that:

- upon transfer of the property to the offender or other persons, he/she was aware, or ought to have been aware and could have been aware that this property would be used to commit the act forbidden by the Code;
- the property has been transferred to him/her upon conclusion of a simulated transaction;
- the property has been transferred to him/her as to the offender's family member or close relative;
- the property has been transferred to him/her as to the legal person, whose head, governing body member or participants, owning no less than fifty percent of the shares (shares, contributions, etc.), are an offender, his family members or close relatives;

- upon an acquisition of this property, he/she or persons which have held senior positions of the legal person and had the right to represent him, to make decisions on behalf of the legal person or to control activities of the legal person, were aware, or ought to have been aware and could have been aware that this property was the instrument or measure to commit the act forbidden by the Code or its outcome.

It is worth noting that if the property which is subject to confiscation or part of it has been concealed, consumed, belongs to third parties, cannot be taken for other reasons or confiscation of this property is inexpedient, a sum of money equivalent to the value of the property subject to confiscation can be recovered.

4.3. Cooperation at European level - Implementation of Framework Decision 2006/783/JHA

Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders is not yet implemented in Lithuania.

Draft law of the Articles 34, 132(1), 151, 342, 362, 364, 365, 365(1), 365(2), 409, and 412 of the CCP, amendments and supplements to its Annex and Articles 17(3), 365(3), 365(4) supplementing the CCP are being prepared, which implement the Framework Decision concerned.

The current Article 365 of the CCP already provides for a possibility to recognise and enforce the decision of a court of a Member State or foreign state in general. Even though this Article seems to be widely used in practice when executing foreign judgements on custodial sentences after transfer of the sentenced persons, and it can also be applied to judgements on confiscation when the request is received based on international treaties, it does not further regulate the procedure of recognition of the judgements.

In the new draft law a detailed regulation of the procedure for the recognition of foreign judgements is foreseen. Additionally, in the same draft law new Articles 365(3) and 365(4) will specifically implement the Framework Decision 2006/783/JHA¹. It should be noted that the implementation of

¹ The new Article 365(3) will set the basis and procedure for recognising confiscation orders issued by a court of a Member State. This Article includes definitions for cases when Lithuanian courts may refuse to recognise and execute the confiscation order. In order to establish an efficient mechanism for the execution of the provisions of the Framework Decision and the rules set in the draft Article 365(3) of the CCP, the CCP is supplemented by

the Framework Decision concerned determines not only supplementing the CCP with new articles, but also certain amendments to the existing ones.

Furthermore, the draft law supplements the CCP by a new Article 17(3) which introduces the concept of confiscation orders made by a court of a Member State.

The mechanism of controlling the execution of the financial sanction assigned by a competent judicial institution of a Member State is described in detail. Taking into account the complexity of the issues, dealt with by the Lithuanian courts, concerning recognition and execution of an order issued by a court or a competent institution of a Member State, the draft law stipulates that the issues mentioned should be handled by the district courts as the Court of First Instance. In order to form a single judicial practice, the draft law specifies that issues concerning the application of mutual recognition to financial sanctions should be also in the competence of the district court.

4.4. Conclusions

- During the evaluation mission, the expert team was informed that Lithuania applies a very strict statute of limitation. As the judges and prosecutors pointed out, it is extremely important especially in financial crime cases that the running of the limitation period is suspended at the latest when a case is opened in court. The expert team was informed that currently defence lawyers and the accused have a lot of possibilities to delay the criminal procedure jeopardising in specific financial crime cases. However, Article 95 of the CC (Statue of Limitations of a Judgement of Conviction) was amended in June 2010 prolonging in general the limitation periods for the different categories of crimes and introducing additional grounds for the suspension of the running of the limitation periods during trial. Naturally, these new rules are applicable only to crimes committed after the entry into force of the new law.
- One of the most interesting recent legal developments in the area of financial investigations is the concept of illicit enrichment (Art 189(1) of the CC). The theoretical principles of the legislation are clear: the presumption of innocence is absolute, and the principle of burden of proof holds. If during the pre-trial investigation phase the suspect cannot prove the legal source of the assets, the prosecutor needs to prove the *illicit* origin of the income during the

Article 365(4).

proceedings in court. In practice the parallel existence of the concepts of extended confiscation and illicit enrichment is somewhat confusing. Illicit enrichment can be seen to constitute an actual charge against the suspect whereas extended confiscation is considered to be only part of the sentencing.

- As is the case with illicit enrichment, many important parts of the legislation relevant for the fight against financial crime are fairly recent, and there are only very few examples of their application, let alone statistics informing about the popularity and efficiency of the application. This leads to the conclusion that the anti-financial crime legislation is strong, modern and extensive, but that its benefit and workability in practice are very difficult to evaluate at this early stage.
- According to information provided by the judiciary during the evaluation mission, hearing witnesses via a video link is not possible due to lack of necessary equipment. Only the High Administrative Court currently has this possibility. This equipment would greatly facilitate the hearing of witnesses not only nationally in financial crime cases but also internationally as regards for example mutual legal assistance cases.
- The Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders is not yet implemented in Lithuania. Current Article 365 of the CCP provides for a possibility to recognise and enforce the decision of a court of a Member State or foreign state in general, but does not regulate the procedure further. Furthermore, as regards confiscation, it can be applied to judgements on confiscation when a request is received based on international treaties. The new draft law will provide a detailed regulation of the procedure for the recognition of foreign judgements, and will feature new Articles dedicated to the implementation of the Framework Decision 2006/783/JHA. The draft law is currently being deliberated in the Parliament.

5. PROTECTION OF THE FINANCIAL INTERESTS OF THE EU - AVAILABLE MECHANISMS, PARTICULARLY COOPERATION WITH OLAF

5.1. Pro-active transmission of information and transmission of information on request to Olaf

The rules on the responsibilities of those state institutions in charge of the administration of the assistance of the European Union Structural Funds for Lithuania were adopted in May 2001 by Resolution No 649. The rules on the administration of the EU Cohesion Fund in Lithuania were adopted in August 2001 by Resolution No 1026.

The FCIS was appointed as the institution responsible for the cooperation with the European Anti-Fraud Office (OLAF) by Resolution No 747 in May 2002. The respective officers responsible for the disclosure and investigation of the acts related to fraud and any other illegal activities detrimental to the financial interests of the European Communities were appointed by the Order No 29-V of the Director of the FCIS in March 2003.

The administrating agencies are responsible for the correct spending of the funds and have to verify the right application of the related regulations. If they suspect illegal activities, this has to be reported to the FCIS that can carry out investigations into possible offences affecting the EU budget.

The FCIS is responsible for the notification of irregularities to the European Commission concerning the pre-accession funds and structural funds for the programming period 2004-2006, whilst the irregularity notification duty concerning the programming period 2007-2013 lies with the Ministry of Finance and Agriculture.

In line with the (general) rules on identifying and eliminating irregularities in the use of EU financial assistance and rules on restricting access to EU financial assistance¹, each managing or paying authority appoints an irregularities inspector. This inspector coordinates the activities of the

¹ Order No 1K-307, 17 October 2005

relevant body for the detection, investigation, elimination and prevention of irregularities. Detected irregularities have to be investigated, and if subsequently it is established that the irregularity may constitute a criminal offence, this has to be reported to the FCIS. The detection of irregularities should, where necessary, lead to suspension of payments. The project executor has to redress the irregularity, stop the assistance or modify the terms and conditions of the assistance.

Already in 2004 the Lithuanian Government laid down rules for the administration and financing of measures under the single programming document of Lithuania 2004-2006 (amended in 2005). The order includes rules on project applications, selection of projects, control mechanisms and the (general) reporting on the use of the funds. Checks on the projects are foreseen, and if the implementing agency identifies an irregularity, it has to inform the intermediate body that can subsequently suspend or terminate payments, cancel the project agreement and recover payments. An irregularity that could be a criminal offence has to be reported to the FCIS.

According to the rules on the distribution of roles and responsibilities between institutions implementing the Lithuanian strategy for the use of EU structural assistance for 2007-2013 and of operational programmes¹, the relevant executing agencies examine infringements and inform the Ministry (and if necessary other public authorities), the managing authority and the certifying authority of them. The executing agencies are also responsible for the recovery of the funds from the implementing body. These rules also require that the executing agencies inform the FCIS without delay if they suspect a criminal offence in this respect.

On 12 November 2008 the Lithuanian government laid down specific rules on the administration and financing of operational programmes (Human Resources Development Programme, Economic Growth Operational Programme and Cohesion Promotion Operational Programme for the period 2007-2013)². Under these rules the implementing authority has to register irregularities and notify the FCIS of possible criminal offences. Irregularities inspectors have to be appointed by both the managing authorities and the implementing authorities. The first category has to report irregularities to the implementing authorities and to the European Commission; the latter is responsible for prevention and investigation of irregularities. A permanent working group of the irregularities inspectors is set up.

¹ Resolution No 1139, 17 October 2007

² Resolution No 1225, 12 November 2008

The Minister of Finance defined implementing rules with regard to the abovementioned Resolution for the investigation and detection of irregularities¹. An irregularity investigation report by an irregularities inspector is the first written assessment referred to in Art 27(b) of Commission Regulation (EC) 1828/2006. The authority which notified the FCIS of an irregularity that could also be a criminal offence continues its investigation and does not await the outcome of (criminal) court proceedings. If no irregularity is established, the investigation is closed. However, if the court finds that a criminal offence has been committed, the (administrative) investigation is re-opened.

The FCIS meets on a regular basis (four to five times per year) with the responsible administrative authorities. During their meetings not only practical case-related issues are discussed, for instance the recovery of unduly paid grants, but also trends in irregularities/frauds affecting the EU budget are considered². In some cases, actions are prepared to prevent or block (further) payments to beneficiaries who have violated the applicable rules and therefore are no longer entitled to those payments. The prosecutor has to decide on the transfer of information from criminal files to the responsible agencies they may need for recovery purposes.

FCIS analyses the reports for notification and the reports on irregularities that could be criminal offences and produces statistics (type of irregularities, areas concerned, etc.). These statistics and analyses can be used for prevention purposes.

The FCIS can carry out checks itself in all areas related to the receipt and use of the EU and foreign states' financial aid funds. It can also assist OLAF during its on-the-spot checks, also in cases related to direct expenditure.

OLAF has a cooperation agreement, in the form of an exchange of letters, with the FCIS since January 2004. In the agreement on cooperation with OLAF, it is required that the FCIS, in line with the national law, shall provide to OLAF information related to cases on (possible) fraud and other

¹ Order No 1K-173, 29 May 2009

² The FCIS can establish that frauds/irregularities affecting the EU budget occur in all relevant areas, where the main point shifted from agriculture to business development and the protection of the environment. Currently, the FCIS observes that a considerable number of cases concern the submission to the state authorities of incorrect information with respect to the financial strength of the beneficiaries (such as fake credit-agreements or bank guarantees).

violations, detrimental to the EC financial interests. This agreement defines the assistance to be provided by OLAF and the various tasks of the FCIS with respect to the coordination of anti-fraud measures at the national level, the assistance to be given to OLAF, and the exchange of information, both between the various bodies in Lithuania and with OLAF. Under this agreement, mutual assistance requests in customs matters have to be transmitted directly to the customs and vice versa, and OLAF shall inform the FCIS of all requests and replies thereto as soon as they have been transmitted.

The Twinning Project “Protection of Communities’ Financial Interests and Fight against Fraud” (2005-2008) concluded that the number of reports on suspected criminal activity submitted by the administering agencies to the FCIS is rather low, compared to the total number of EU financed projects. Lithuanian legal acts entitle the implementing institutions to check all administered projects. However, it was also established during the Project that there was a lack of financial resources for the implementation of these provisions and that majority of the agencies did not use their own risk assessment methodology for the identification of most risky projects.

In line with this, the FCIS has developed a risk assessment methodology. Its target is to ensure the timely identification and assessment of risks in the projects financed from the assistance funds of the EU and third countries. The demand for training was also assessed and the training strategy of the FCIS officers was developed: eight training courses (seminars) and two study visits have been delivered with the participation of 189 officers from the FCIS and 123 representatives from the other Lithuanian institutions. The participants of these events got acquainted with the legal and preventive methods, risk analysis and management implemented by the EU institutions for combating VAT fraud, and the criminal investigation practices in the EU Member States.

5.2. Role of the European Commission in a criminal investigation involving fraud against the financial interests of the Communities

The European Commission can participate in the criminal proceeding by general provisions of the CCP. Thus far there is no information on the participation of the representatives of the European Commission in criminal investigations related to fraud against the financial interests of the Communities.

5.3. Possibility for Olaf agents to take part in the criminal investigation

This is possible in line with the relevant Lithuanian legislation. The procedural position of an *expert* is described in the CCP. According to Art 84, a person who has the necessary special knowledge and is included on the list of experts of Lithuania can be appointed as an expert. If there are no experts of the required speciality on the list of experts, a person who has not been included in the list can also be appointed. When needed, a person who is or can be listed as an expert in any Member State or in a country with which Lithuania has signed an agreement on legal assistance, can be appointed as an expert.

The CCP provides the rights, duties and responsibilities of experts. An expert is liable:

- to examine the materials of the case relating to the subject of expert examination;
- to request to be provided with additional information necessary for presenting a conclusion;
- to be present when actions related to the subject of expert examination are performed and during the hearing.

An expert must, when called, appear before the court and give an objective conclusion about the questions put to him. However, an expert shall not present his conclusion if the materials submitted to him are insufficient for making a conclusion, or are outside the scope of his special knowledge. In these cases the expert shall make a written statement that he is not able to give a conclusion.

Where an expert fails to make his appearance without a valid reason before the court, or when he refuses to perform his duty without a lawful ground, procedural coercive measures may be applied against him under the Article 163 of the CCP.

The CCP separates between the definition of an expert and a *specialist*. Taking this into consideration, OLAF officers could take part in the process as specialists, because a specialist shall be a person who has adequate special knowledge and skills, and who has been appointed by a pre-trial investigation institution to conduct examination of tangible objects and submit a conclusion on the issues within his competence. An officer of a pre-trial investigation institution, or a person not employed at that institution, may be a specialist. Specialists, who are officers of a pre-trial

investigation institution, have been informed, in their official capacity, about liability under the Article 235 of the CC for giving a false conclusion or explanation. The specialists who are not officers of a pre-trial investigation institution shall be informed about the liability under Article 235 of the CC each time when they are invited to participate in the process

According to information from FCIS, OLAF officers have not participated in any process as experts.

5.4. Possibility for Olaf agents to take part in a joint investigative team

According to the Lithuanian system, the officers of OLAF have a possibility to participate in a joint investigation group. Point 1 of the Recommendations concerning the establishment and activity of an international joint investigation groups, approved by Order No I-203 of the General Prosecutor, provide that joint investigation groups can include officers of the Member States or other countries, including officers of the institutions established according to the Treaty of the European Union. According to Point 13 of Recommendations, the mutual Agreement to establish a group between the General Prosecutor's Office and the competent institutions of the countries or the institutions established according to the Treaty of the European Union can foresee the participation of OLAF officers in the activity of the group. Their competence in the investigation process shall be determined by an additional agreement, which is attached to that Agreement. The officers of OLAF shall perform tasks in the way as it is stated in the Agreement, except in cases where the leader of the group following the national laws decides that their participation in the procedural actions is impossible.

5.5. Coordinating body for contacts with Olaf

As elaborated above, the FCIS has been appointed as the institution responsible for cooperation with the European Anti Fraud Office (OLAF). The Law on the FCIS was accordingly amended in 2003. It stipulates that, among its other tasks, the FCIS ensures the disclosure and investigation of criminal acts and other violations of law related to the receipt and use of the financial assistance of the European Union and foreign countries.

The FCIS is an institution of pre-trial investigation. The FCIS as well as the police is accountable to the Ministry of the Interior, and the prosecutors control the pre-trial investigations carried out by the FCIS, as well as organise and manage them.

In order to strengthen the inter-institutional cooperation in Lithuania, the FCIS has signed cooperation agreements with the majority of the state institutions, establishments and organisations, including law enforcement institutions such as the customs, the police, the State Border Guard Service, the Special Tasks Service, and the State Security Department.

5.6. Expectations regarding Olaf support

Participation of OLAF officers as specialists in the process would simplify correspondence and assessment at the courts of national and European procedures. Moreover, the methodological assistance of OLAF in cases related to fraud against the financial interests of the Communities would also be welcome.

Based on discussions during the evaluation mission, the FCIS would like to receive further support from OLAF or the European Commission as regards, in particular, case-related technical support during pre-trial investigations, for instance information concerning the interpretation of applicable (EU) legislation, as well as a more methodological form of assistance consisting of analyses of frauds/irregularities which can be used for prevention purposes such as early warning reports and analysis on new trends.

5.7. Conclusions

- In February 2004 the Convention on the Protection of the European Communities financial interests was ratified. Since the 2008 Commission report on the implementation of the Convention and its Protocols in the Member States, there are still certain shortcomings concerning definition of fraud under the Lithuanian criminal law. Lithuania has not changed its criminal law in this area since.
- By the Governmental Resolution No 747, the FCIS was appointed responsible for cooperation with OLAF. This resolution includes no details with respect to the coordination of activities in Lithuania, or to the exchange of information. Those rules can be found in detailed instructions to the various bodies and institutions concerned.
- During the evaluation mission, the FCIS expressed its desire to receive (more) support from OLAF and/or the European Commission, referring both to case-related technical support during pre-trial investigations and to a more methodological form of assistance consisting of analyses of frauds/irregularities which can be used for prevention purposes.

- As regards participation of OLAF officers in the process as specialists, the CCP separates the concept of experts and specialists. OLAF officers can take part in the process only as specialists, because a specialist, according to the written replies to the questionnaire, “shall be a person who has adequate special knowledge and skill, and who has been appointed by a pre-trial investigation institution to conduct the examination of tangible objects and submit a conclusion on the issues within his competence”. Against this background, it is not clear whether OLAF officers would in practice be able to take part in an on-going financial investigation/process.

6. RECOMMENDATIONS

6.1. Recommendations to Lithuania

The situation as regards financial investigations and the fight against financial crimes in Lithuania is a very promising one. The relevant legislation is modern and extensive, at some points even progressive, and gives ample opportunities for novel ways to fight financial crime. It is, however, still early days to evaluate how well this legislation works, and how efficient it will prove in the everyday law enforcement work.

Moreover, staff in the relevant authorities are motivated and dedicated to the work. The relatively high number of relevant authorities and the lack of an exhaustive central case-management system may lead to some overlaps between investigations, but according to the information received during the evaluation mission, the Cooperation Agreement effectively defines the responsibilities of the different authorities and, at least to a certain extent, thus alleviating problems in this respect and enabling the prosecutor as the leader of investigations to allocate and coordinate cases efficiently.

The lack of a coherent, measurable and intelligence-led criminal policy and subsequent priorities has to be considered a relative drawback in the Lithuanian system. The relevant authorities seem to be subject to various programmes, strategies, plans and objectives, and it is difficult to see the overall definition or coordination of the main goals in the fight against crime in general and against financial crime in specific. It is clear, however, that the will to fight crime in a coordinated way exists and that first steps in overall strategic planning have already been taken.

In order to optimise financial investigations and the fight against financial crime, the evaluation team would like to give certain recommendations.

Lithuania is invited to:

1. Define an integrated national criminal policy based on intelligence-led priorities to be implemented at the level of the competent national authorities, including concrete measures both as regards the prevention and repression of financial crime.
2. Set up a case-management system containing exhaustive information on all on-going investigations, so that the investigative authorities can coordinate their activities and the prosecutor can effectively manage the overall allocation of cases between the different authorities and identify possible links between cases, at the same time avoiding possible overlaps between the investigations and authorities.
3. Enhance the collection of statistics relating to the fight against financial crimes and financial investigations including on sentencing, resources, results, number of investigations, and so on.
4. Establish a fully-fledged ARO in the spirit of the Council Decision 2007/845/JHA. The ARO should be the central office responsible for the recovery of property and assets and not only deal with international requests for mutual legal assistance in this area.
5. Set up financial crimes training modules that are, when possible, integrated and multi-disciplinary for the judiciary, prosecuting authorities and law enforcement, and ensure that the fight against financial crime is an integral part of any relevant training curricula as regards competent authorities. The possibility to include additional resources where appropriate should be considered.
6. Increase the pro-active and intelligence-led initiation of financial crime investigations and financial investigations both in relation to the FIU and the police.
7. Consider ways to increase specialisation in the courts and among the judges as regards financial crime including special training.
8. Improve the access of relevant authorities to the central database of bank accounts managed by the State Tax Inspectorate.
9. Acquire sufficient technical equipment that enables witnesses to be heard via a video link.

10. Implement without delay the Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.
11. Conduct a follow-up on the recommendations given in this report eighteen months after the evaluation and report on progress to the Working Party on General Affairs, including Evaluations (GENVAL)

6.2. Recommendations to the European Union, its Member States, institutions and agencies

Member States are invited to:

1. Take notice of the possibility to set up a highly specialised support unit with expertise in financial and accounting matters such as the Economical-Financial Activity Inspection Unit (Financial Audit) within the FCIS.
2. Study the ways to strengthen multi-agency cooperation in the field of the fight against financial crime by establishing efficient and clear framework and instruments for the cooperation such as the Cooperation Agreement between some of the relevant authorities and the establishment of the CIAC and RAC.

OLAF/the European Commission is invited to:

1. Support Lithuania by providing further case-related technical support during pre-trial investigations and assistance as regards analyses of frauds/irregularities which can be used for prevention purposes.

ANNEX A: PROGRAMME FOR VISIT

Monday, 27 June 2011

Arrival of experts and meeting at the airport

Tuesday, 28 June 2011

9:45 Leaving from hotel to the Prosecutor General's Office

10:00 – 11:30 Meeting with the representatives of all institutions involved

11:30 – 11:45 Coffee break

11:45 – 13:30 Meeting with the representatives of the Prosecutor General's Office

13:30 – 15:00 Lunch

15:15 – 16:45 Meeting in the Police Department

From 18:00 Dinner

Wednesday, 29 June 2011

9:45 Leaving from hotel to the Customs Criminal Service

10:00 – 11:00 Meeting in the Customs Criminal Service

11:15 – 13:00 Meeting in the Financial Crime Investigation Service

13:00 – 14:30 Lunch

14:45 – 15:45 Meeting in the Ministry of Justice

16:00 – 17:00 Meeting in Vilnius Regional Court

From 17:15 Dinner

Thursday, 30 June 2011

9:00 Leaving from hotel to Kaunas

10:30 – 13:30 Meeting with the prosecutors and police officers in Kaunas Regional Prosecutor's Office

13:30 – 15:00 Lunch

15:15 – 16:45 Meeting in Kaunas Branch of the Financial Crime Investigation Service

17:00 Leaving from Kaunas

Friday, 1 July 2011

9:30 Leaving from hotel to the Prosecutor General's Office

9:45 – 13:00 Final meeting with the representatives of all institutions involved

ANNEX B: LIST OF PERSONS INTERVIEWED/MET

Prosecutor General's Office:

Andrius Nevera, Deputy Prosecutor General

Tomas Krušna, Deputy Chief Prosecutor, Department for Criminal Prosecution

Žydrūnas Radišauskas, Deputy Chief Prosecutor, Department for Criminal Prosecution

Ina Linevaitė, Prosecutor, Department for Criminal Prosecution

Ugnius Vyčinas, Prosecutor, Department for Criminal Prosecution

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Viktoras Biriukovas, Deputy Chief Prosecutor, Kaunas Regional Prosecutor's Office

Gintautas Tamulionis, Chief Prosecutor, Second (Organization of Pre-trial Investigation of Serious Crimes) Division, Kaunas Regional Prosecutor's Office

Gintaras Eidukevičius, Prosecutor, Second (Organization of Pre-trial Investigation of Serious Crimes) Division, Kaunas Regional Prosecutor's Office

Darius Valkavičius, Chief Prosecutor, District Prosecutor's Office of Kaunas City

Virgilijus Čirpus, Deputy Chief Prosecutor, District Prosecutor's Office of Kaunas City

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Ministry of Justice:

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Darius Žilys, Deputy Director, Department of International Law

Toma Milieškaitė, Chief Specialist, Division of Legal Cooperation, Department of International Law

Vilnius Regional Court:

Viktoras Dovidaitis, Chairman, Division of Criminal Cases

Ryšardas Skirtunas, Judge, Division of Criminal Cases

Artūras Pažarskis, Judge, Division of Criminal Cases

Customs Criminal Service:

Adas Eidukevičius, Head, International Relations Division

Vygantas Paigozinas, Head, Division of Crimes Investigation

Special Investigation Service:

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Linas Burdulis, Head, Pre-trial Investigation Division, Kaunas Department

Edvardas Rutkauskas, Head, Intelligence Unit, Kaunas Department

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Igoris Kržečkovskis, Adviser

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Andžėjus Roginskis, Deputy Head, Lithuanian Criminal Police Bureau

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ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE	ENGLISH TRANSLATION/EXPLANATION
AMO		Asset Management Office
ARO	-/-	Asset Recovery Office
AWF	-/-	Europol's Analysis Work Files
CARIN	-/-	Camden Asset Recovery Inter-Agency Network
CC		Criminal Code
CCP		Code of Criminal Procedure
CIAC		Criminal Information Analysis Centre
EIS	-/-	Europol Information System
EU		European Union
FCIS		Financial Crime Investigation Service
FIU	-/-	Financial Intelligence Unit
GENVAL		Working Party on General Affairs, including Evaluations
MDG		Multidisciplinary Group on Organised Crime
MLA	-/-	Mutual Legal Assistance

MLS		Minimum Living Standard
MTIC		Missing Trader Intra-Community Fraud
OC	-/-	Organised crime
OCTA	-/-	Organised Crime Threat Assessment
OLAF	Office européen de lutte anti-fraude	European Anti-Fraud Office
RAC		Risk Analysis Centre
ROCTA	-/-	Russian Organised Crime Threat Assessment
SIENA	-/-	Europol Secure Information Exchange Network
SIS		Special Investigation Service
STR	-/-	Suspicious Transaction Report
VAT	-/-	Value Added Tax