



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 18 November 2011

17135/11

**CRIMORG 208
COPEN 332
EJN 165
EUROJUST 196**

NOTE

from:	Lithuanian delegation
to:	Delegations

No. prev. doc.:	12399/1/07 REV 1 CRIMORG 134 COPEN 121 EJN 25 EUROJUST 45; 8302/4/09 CRIMORG 55 COPEN 68 EJN 24 EUROJUST 20 REV 4
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Subject:	Evaluation report on the fourth round of mutual evaluations "the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States" - Report on Lithuania and Final report
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I. Report on Lithuania

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

Under consideration. Although there are no practical problems faced so far as regards the MOJ as the present Lithuanian issuing authority in conviction matters, the question on entrusting judicial authorities with the power to issue EAWs is expected to be put forward to political level by the end of the year.

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

Liaisons between these institutions are regular and sufficient. The actions are taken and the questions are solved on a case-by-case basis.

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

The IT equipment of prosecutors is updated. The new information system of prosecution office (IPS) was launched. The prosecutors from OPG (Prosecutor General's Office) dealing with EAW have direct access to the Register of Suspects, Accused and Convicted persons, to the LITEKO-judicial information system. ILO (International Liaison Office) has database on all EAW issued by Lithuanian authorities – it is one-call-step for OPG or MOJ (Ministry of Justice) to get information from ILO about previous EAW.

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

Each year Lithuania provides information on EAW collected by all three institutions (OPG, ILO, MOJ) jointly.

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

This matter was solved in practice. If the prosecutor decides not to apply to Vilnius Regional Court regarding execution of the EAW, he takes a resolution and sends it to Vilnius Regional Court for approval.

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

Lithuania has provided the Council General Secretariat with the modified notification pursuant to Article 6(3) of the FD, in conjunction with Article 6(2), designating Vilnius Regional Court as the executing authority (doc. No. 13629/08 COPEN 172 EJM 59 EUROJUST 79). The OPG remains the competent authority to receive EAWs.

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

The provisions of the Code of Criminal Procedure do not limit judges to gather information directly by their own initiative.

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

As it is stated in Article 9¹(3)(1) of the Criminal Code of the Republic of Lithuania, the surrender of a person concerned under the EAW shall not be permitted where surrender would violate fundamental human rights and/or freedoms. In practice there were only few cases where this provision was applied by the Lithuanian executing authority.

Lithuania adheres to its opinion that the latter ground for refusal is appropriate in the light of Article 1(3) and recital 12 of the FD on the EAW.

Moreover, it should be noted that the Commission in its evaluation report (SEC(2011) 430 final) has stresses that the FD on the EAW does not mandate surrender where an executing judicial authority is satisfied, taking into account all the circumstances of the case, that such surrender would result in a breach of a requested person's fundamental rights arising from unacceptable detention conditions.

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

It is not an outstanding issue anymore.

After the consultations with the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania it has been agreed that surrendered persons are allowed to cross Lithuanian state border without international travel documents in exceptional cases. The permission is granted on the basis of Regulation (EC) No. 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code). Pursuant to Article 5(4)(c) the crossing of external Lithuanian border of the surrendered person without relevant documents is considered as ground of national interest, therefore, there are no delays for that aforementioned reason.

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

The Training Centre of the National Court Administration each year arranges the courses on EAW for judges, assistants of judges and prosecutors. In 2008 there was one training session organised (20 judges and 10 prosecutors participated), in 2009 – 3 sessions (54 judges, 24 assistants of judges, 25 prosecutors in total participated), in 2011 – 1 session (35 judges, 1 assistant to a judge, 10 prosecutors participated). The training sessions on EAW are also foreseen for the year 2012.

The MOJ has re-provided the courts with the checklist as to which information should be reflected in the EAW when issuing it. The courts are also consulted by EAW experts on case-by-case basis.

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

The wording of Article 73(5) of the Code of Criminal Procedure of Lithuania was not changed. In Lithuania's opinion the latter provision does not forbid to take into account all the circumstances of the case while making a decision. The judge is free to invoke the principle of rationality.

II. Final report

Recommendation 1: The Council calls on those Member States that have not done so to consider restricting the mandate of non-judicial authorities, or to put equivalent measures in place so as to ensure compliance with the Framework Decision with regard to the powers of judicial authorities.

Please see the answer to recommendation 1 of the Report on Lithuania.

Recommendation 2: The Council urges Member States to analyse their practices and, where necessary, to take measures to promote direct communication between national judicial authorities dealing with EAW cases and their counterparts abroad.

Please see the answer to recommendation 7 of the Report on Lithuania.

Recommendation 3: The Council calls upon Member States to provide, or continue to provide, judges, prosecutors and judicial staff with appropriate training on EAW and foreign languages (in particular those most useful for making direct contact with competent authorities in other Member States), including meetings and joint activities with authorities from other Member States involved in EAW cases, and to explore ways to promote training on EAW matters for defence lawyers. Given the fact that the defence lawyers' organisation and training, in many Member States, is outside the State administration, methods to promote this training should be explored. This topic is in general one that the European Judicial Training Network could examine. Financial support should be provided for that kind of activities under EU JHA financial programmes.

Please see the answer to recommendation 10 of the Report on Lithuania.

Recommendation 4: The Council calls upon Member States and the EJN to explore ways of optimising the use of the support tools available to facilitate the application of the EAW (e.g. by making the EAW Atlas, part of the EJN website, available in all EU official languages). Member States, EJN and Eurojust are called upon to take measures to raise awareness of the role of these latter so that practitioners make full use of specific capacities of each of them when processing EAWs.

The updating of information should be improved by administrative bodies of EJN. Lithuania has repeatedly informed EJN about the changes of contacts, addresses, however, the information in the EJN website was not updated.

Recommendation 11: The Council encourages Member States to analyse their practice with a view to identifying means of resolving problems associated with the practical application of the speciality rule. The coordination within Member States should be improved.

Consideration should also be given to the possibility of making the notifications envisaged in Article 27(1) and 28(1) of the Framework Decision.

The Prosecutor General's Office gathers statistical information on application of the speciality rule. In cases of execution of the EAW the Prosecutor General's Office always informs the issuing state about statement of surrendered person regarding speciality rule.

Recommendation 16: The Council calls on Member States to check their practice when acting as executing Member State and, where necessary, to take measures to ensure that the issuing authority is provided with timely and accurate information on the progress of the EAW procedure, in particular on the final - enforceable - decision, as well as on the period of detention of the requested person, bearing in mind that the length of the EAW procedure should not be extended. To that end, it agrees that the possibility of developing a standard form for providing information be examined by its preparatory bodies.

The Prosecutor General's Office always informs the issuing state about the process and results of the execution of the EAW.

Recommendation 18: The Council encourages those Member States that have not yet done so to set up appropriate mechanisms for gathering, processing and circulating information on EAW cases and other items relevant to them, such as investigations pending and arrest warrants already issued.

Please see the answer to recommendation 3 of the Report on Lithuania.

III. Additional information

By the Order of the Minister of Justice and Prosecutor General of the Republic of Lithuania No. 1R-312/I-140 of 7 October 2009 Lithuania has made amendments to the Rules for issuing EAW and taking over of persons pursuant the EAW. These amendments have introduced proportionality requirement for the issuance of EAWs.
