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Subject: **EVALUATION REPORT ON THE TENTH ROUND OF MUTUAL  
EVALUATIONS**  
**On the implementation of the European Investigation Order (EIO)**  
**REPORT ON LITHUANIA**

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**EVALUATION REPORT ON THE  
TENTH ROUND OF MUTUAL EVALUATIONS  
On the implementation of the European Investigation Order (EIO)  
  
REPORT ON LITHUANIA**

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## 1. EXECUTIVE SUMMARY

The 10th round of mutual evaluations focusses on the Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters ('the Directive'). The aim of the evaluation is to consider not only the legal issues but also the practical and operation aspects linked to the implementation of the Directive. It provides a valuable opportunity to identify areas for improvement as well as best practices to be shared among Member States. The evaluation further promotes the effective implementation of the instrument and aims to enhance mutual trust among the Member States' judicial authorities.

The visit was very well prepared by the Lithuanian authorities and the evaluation team was able to meet the relevant bodies dealing with the European Investigation Order (EIO). The open and cooperative spirit in which the discussions took place ensured that the evaluation team got a good overview of the Directive's application in Lithuania.

The evaluation team established that the EIO generally works well in Lithuania, with the Lithuanian practitioners always trying to cooperate to the fullest extent possible to gather evidence. Nevertheless, the evaluation team identified some areas for improvement that need to be addressed at national and at EU level (see Chapter 23).

Lithuania has a unique system when it comes to issuing an EIO in the pre-trial stage. Public prosecutors cannot sign and issue EIOs themselves, they must submit a reasoned request through specialised prosecutors at local or national level, after which the chief prosecutor is competent to sign the EIO. Although the chief prosecutor could in theory refuse to sign the EIO, the Lithuanian practitioners explained that this has never occurred. Where necessary, discussion takes place between the lead prosecutor, the specialised prosecutor and the chief prosecutor. Although this is an unusual approach, the high level of specialisation by the competent authorities and the coordination between them ensures that Lithuanian EIOs are of high quality.

With regard to the rights of victims, the evaluation team particularly welcomes the fact that the Lithuanian law goes beyond the requirements of Article 1(3) of the Directive and gives victims the right to ask for an EIO to be issued (*see best practice No 1*).

It should be noted that during the visit, it was explained to the evaluation team that Lithuanian judges contact witnesses abroad directly to set up a hearing via video and/or audio conference. Although the evaluation team acknowledges the practical advantages of this approach, it considers that gathering evidence abroad without issuing an EIO is not in line with the Directive (*see recommendation No 3*).

Furthermore, the evaluation team found that there may be a need for further clarification or revision at EU level regarding the EIO forms, the speciality rule, the application of EIOs in connection with ensuring the accused person's presence at trial, exceptionally high costs and the concept of intercepting telecommunications (*recommendation No 14-18*).

## 2. INTRODUCTION

The adoption of Joint Action 97/827/JHA of 5 December 1997<sup>1</sup> ('the Joint Action') established a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime.

In line with Article 2 of the Joint Action, the Coordinating Committee in the area of police and judicial cooperation in criminal matters ('CATS') agreed after an informal procedure following its informal meeting on 10 May 2022 that the 10th round of mutual evaluations would focus on the EIO.

The aim of the 10th round of mutual evaluations is to provide added value by offering the opportunity, via on-the-spot visits, to consider not only the legal issues but also – and in particular – relevant practical and operational aspects linked to the implementation of Directive 2014/41/EU. This will allow shortcomings and areas for improvement to be identified, together with best practices to be shared among Member States, thus contributing towards ensuring more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the EU.

More generally, promoting the coherent and effective implementation of this legal instrument at its full potential could significantly enhance mutual trust among the Member States' judicial authorities and ensure better functioning of cross-border judicial cooperation in criminal matters within the area of freedom, security and justice. Furthermore, the current evaluation process could provide helpful input to Member States that may not have implemented all aspects of Directive 2014/41/EU.

Lithuania was the ninth Member State to be visited during this round of evaluations, as provided for in the order of visits to the Member States adopted by CATS.<sup>2</sup>

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<sup>1</sup> Joint Action of 5 December 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime.

<sup>2</sup> ST 10119/22 and WK 6508/2023.



In accordance with Article 3 of the Joint Action, the Presidency drew up a list of experts in the evaluations to be carried out. Pursuant to a written request sent to delegations by the General Secretariat of the Council of the European Union, Member States have nominated experts with substantial practical knowledge in the field.

Each evaluation team consists of three national experts, supported by one or more members of staff from the General Secretariat of the Council and observers. For the 10th round of mutual evaluations, it was agreed that the European Commission and Eurojust should be invited as observers.<sup>3</sup>

The experts entrusted with the task of evaluating Lithuania were Mr Łukasz Zimicz (Poland), Ms Maria Mounti (Cyprus), and Ms Jūlija Muraru-Kļučica (Latvia). Observers were also present: Ms Ana Wallis de Carvalho (Eurojust), together with Ms Anastasia Pryvalova from the General Secretariat of the Council.

This report was prepared by the team of experts with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in Lithuania from 22 to 26 May 2023 and on Lithuania's detailed replies to the evaluation questionnaire together with its detailed answers to the follow-up questions.

The evaluation team had the opportunity to meet representatives from the Ministry of Justice, the Prosecutor General's Office, the Vilnius and Kaunas Regional Public Prosecutor's Offices, the Vilnius County Court, the National Courts Administration (NCA), the Lithuanian Criminal Police Bureau and a member of the Lithuanian Bar Association. All the bodies present provided the evaluation team with interesting and detailed presentations on their role in relation to the EIO. The presentations provided an excellent starting point for in-depth discussions between the evaluation team and the practitioners on how the EIO is applied in practice in Lithuania.

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<sup>3</sup> ST 10119/22.

### 3. TRANSPOSITION OF DIRECTIVE 2014/41/EU

Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 on the European Investigation Order in criminal matters has been transposed in Lithuania in the Law of the Republic of Lithuania on Mutual Recognition and Execution of Decisions by EU Member States in Criminal Matters, adopted on 13 November 2014 (as amended by the Law of 1 June 2017, No XIII-397, by the Law of 11 June 2020, No XIII-3053, by the Law of 28 June 2022, No XIV-1237). Hereafter, this law will be referred to as ‘the Implementing Law’.

### 4. COMPETENT AUTHORITIES

#### **Issuing Authorities**

Article 59(2) of the Implementing Law has, in accordance with Article 2(c)(i) of the Directive, appointed the following issuing authorities. During the pre-trial stage, a public prosecutor’s office is considered the appropriate issuing authority. Depending on the case, it may be a regional public prosecutor’s office (RPO), the Prosecutor General’s Office (PGO) or the European Delegated Prosecutor. During the trial stage, the court handling the case is considered the issuing authority.

No other authority has been appointed as issuing authority in accordance with Article 2(c)(ii) of the EIO Directive. In Lithuania, the procedure of validating an EIO does not exist.

#### *Pre-trial stage*

Firstly, the RPO (in total five offices: Vilnius, Kaunas, Klaipėda, Šiauliai and Panevėžys) is the issuing authority if the regional prosecutor is leading the investigation in which it is necessary to issue an EIO. The regional prosecutor may also issue an EIO at the request of the pre-trial investigator (such as a police investigator).

Secondly, the PGO is the issuing authority when the PGO is conducting the pre-trial investigation. The PGO may also issue an EIO at the request of the pre-trial investigator (such as a police investigator) if the investigation is being led by the PGO. Furthermore, the PGO has sole competence to issue an EIO when its necessary to temporarily surrender an arrested person or a person serving an imprisonment-related sentence from the Republic of Lithuania or to the Republic of Lithuania.

Finally, the European Delegated Prosecutor is the issuing authority when the European Public Prosecutor's Office (EPPO) has been designated as the competent authority.

Some coercive measures, such as house searches, need approval from the pre-trial investigation judge. The public prosecutor leading the investigation must submit the application to the judge. Once the judge has authorised the requested measure(s), the approval is sent back to the public prosecutor who remains the issuing authority for the EIO. In Lithuania, the pre-trial investigation judge is not competent to issue an EIO. As the leader of the investigation, the public prosecutor is considered the competent authority in deciding whether an EIO is necessary.

Lithuania has a unique system when it comes to issuing an EIO in the pre-trial stage. The public prosecutor in charge of the investigation and the initiator of the EIO cannot sign and send the EIO him/herself. The prosecutor must first submit a justified request to the specialised prosecutor, either at RPO or at PGO level, depending on which office is leading the case (Article 59(3) of the Implementing Law). The draft EIO and the decision of the competent authority to order the specific measure must be attached to this justified request. The final version of the EIO is sent to the deputy chief prosecutor or chief prosecutor who is the only competent authority to sign the EIO. The role of the specialised prosecutors is explained in more detail in the *Guidelines for issuing EIOs and sending them to other EU Member States during the pre-trial investigation and for recognising EIOs received by the Republic of Lithuania* (as approved by Order No. I-206 of the Prosecutor General, 14 June 2017). The contact details and function of the lead prosecutor, the specialised prosecutor and the (deputy) chief prosecutor are provided in Section K of Annex A (details of the issuing authority).

The specialised prosecutor provides the lead investigator with advice based on the draft EIO. The specialised prosecutors are not competent to reject an EIO. However, it is possible in theory for the (deputy) chief prosecutor to not sign the EIO and thus reject it. The evaluation team expressed the view that this is rather unusual. The Lithuanian practitioners, however, explained that this has never happened before and when needed, discussion took place between the lead prosecutor, the specialised prosecutor and the (deputy) chief prosecutor.

### *Trial stage*

The court dealing with the case is the issuing authority in the trial stage. In the first instance, the district and the regional courts may issue an EIO. In the appeal stage, the court may issue an EIO if it has been decided to reopen the examination of evidence. Unlike prosecutors, there are no specialised judges and thus all judges may issue an EIO.

### *Applying for an EIO as a suspect/victim*

Pursuant to Article 178 of the Lithuanian Code of Criminal Procedure (CCP), the suspect and the victim (or their legal representatives) may request the prosecutor to carry out the investigative measures in Article 97 and Sections XII and XIV of the CCP in the pre-trial stage. As these measures fall within the scope of the EIO, the suspect and the victim may request that this instrument is issued. The law in Lithuania provides possibilities beyond the requirements of Article 1(3) of the Directive, as victims may also request an EIO to be issued. The evaluation team welcomes this legislation as it supplements the victim's rights under Directive 2012/29/EU<sup>4</sup> (*see best practice No 1*).

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<sup>4</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the right, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

If a request from a suspect or victim is rejected, the prosecutor is obliged to justify the decision. This decision may be appealed against by filing an appeal to the pre-trial investigation judge pursuant to Article 178(3) of the CCP. The specialised prosecutors present during the visit explained to the evaluation team that when they receive a draft EIO, they are not made aware of how the prosecutors initiated the proceedings. Therefore, the specialised prosecutors, at RPO or at PGO level, could not tell the evaluation team whether suspects or victims often initiate an EIO in the pre-trial stage. The evaluation team also had the opportunity to discuss this matter with a Lithuanian defence lawyer. He explained that there were no issues concerning the right of a suspect to request the prosecutor to issue an EIO. However, it was not clear to the evaluation team how often this occurs in Lithuania.

In the trial stage, participants in the proceedings may request, at the preparatory hearing, that additional witnesses or experts are summoned or other evidence is obtained pursuant to Article 270 CCP. Decisions on these requests are taken by the judge and, pursuant to Article 439(2) CCP, may not be appealed. However, a rejection of the request does not mean that the participant may not make another request in the evidence examination stage. During the visit, the judge interviewed explained that it was not unusual for a defendant to ask the court to hear a witness located abroad. Furthermore, the defence lawyer interviewed had not encountered any issues in this respect.

### **Executing Authorities**

Article 51(1) of the Implementing Law appointed the following executing authorities in accordance with Article 2(d) of the Directive. The public prosecutor's office (either the RPO, the PGO or the European Delegated Prosecutor) is competent to receive and execute the EIO when it is issued in the pre-trial stage. When an EIO is issued during the trial stage, the district courts are competent to receive and execute it.

In the pre-trial stage, the specialised prosecutors are the first to receive the EIO. They check the grounds for refusal and decide whether to recognise the EIO or whether it is necessary to transmit it to another executing authority.

The Lithuanian authorities explained that owing to the clear division of competence between the trial and pre-trial stage, it is very important that Section G of Annex A of the EIO Directive (the stage of the investigation) is completed. The practitioners at both stages, trial and pre-trial, explained that there were cases where they needed to ask the issuing State for additional information to clearly determine the stage of the investigation. Clearly stating the stage of the investigation in Section G benefits the efficient judicial cooperation between Member States. Therefore, the evaluation team sees fit to make a recommendation to all Member States in this respect (*see recommendation No 6*).

### **Central Authority**

Lithuania has appointed two Central Authorities with regard to the EIO: in the pre-trial stage it is the Prosecutor General's Office, in the trial stage it is the Ministry of Justice. During the visit, Lithuania explained that both Central Authorities can provide assistance to the competent authorities, for example when help is needed in establishing the correct executing authority in another Member State. However, the Ministry of Justice would not transmit the EIO on behalf of the court.

Generally, incoming EIO's are received directly by the competent Lithuanian authorities. In addition, it is possible according to Lithuanian law (Article 51(2) of the Implementing Law) for the Central Authorities to receive an EIO and transmit it to the competent authority. Further correspondence takes place directly between the competent authorities in both Member States. The role of the Ministry of Justice as the Central Authority is relatively limited compared to the PGO, as the latter is also competent to issue and execute EIOs.

## 5. SCOPE OF THE EIO AND RELATION TO OTHER INSTRUMENTS

### *Scope of the EIO*

Article 3 of the EIO Directive has been transposed by Article 59(1) of the Implementing Law. In Lithuania, an EIO can be issued when it is necessary to obtain evidence that is available to a competent authority of another Member State or where there are grounds for believing that evidence is or can be available in another Member State and action must be taken as set out in the relevant provisions of the CCP.

Lithuania reported no issues in identifying the appropriate investigative measure when executing an EIO. If an investigative measure does not exist in Lithuania or if it is not possible to use the requested measure in that particular case, Lithuania always consults the issuing State about alternatives to execute the EIO to the fullest extent possible. The evaluation team considers this a best practice (*see best practice No 2*).

Generally, Lithuania only issues and executes EIOs with the purpose of gathering evidence. As executing State, Lithuania has received EIOs to freeze assets for the purpose of confiscation. In these cases, Lithuania will offer the issuing State to issue a freezing order according to Regulation (EU) 2018/1805. The practitioners are more flexible when it comes to the service of documents by means of an EIO. Even if the purpose of serving documents is not evidence gathering, Lithuania still executes such EIOs, especially when they are combined with other measures that do have the aim of collecting evidence.

The Lithuanian practitioners gave examples of EIOs that had been received in combination with an EAW and a freezing order, for example when a house needed to be searched and the resident needed to be arrested at the same time. In these cases, it is very important to coordinate the execution of the various instruments, so the house is not searched before the person has been arrested. The prosecutors present during the visit did not express any particular problems with coordinating the execution of various instruments but stressed the importance of including all relevant information about other instruments in the EIO. Even though the EIO form (Section D), only covers the connection with a previous EIO, Lithuania has, in the view of the evaluation team, a best practice of always including all other relevant instruments (*see best practice No 3*). The evaluation team finds it important to recommend to all Member States to reference all relevant instruments, such as an EAW or an existing JIT, when issuing an EIO (*see recommendation No 7*).

*Procedures in which an EIO may be issued*

According to Article 59(2) of the Implementing law, an EIO may be issued during the pre-trial investigation and the trial in court. Lithuania has not appointed an authority under Article 2(c)(ii) of the EIO Directive. This means that an EIO cannot be issued in administrative proceedings.



## 6. CONTENT AND FORM OF THE EIO

### 6.1. General challenges

During the visit, the evaluation team asked the practitioners whether they had any suggestions for improving the forms. Overall, the practitioners were positive about the EIO forms. To ensure uniformity in the working methods, the PGO prepared explanatory notes regarding the EIO. The evaluation team sees this as a best practice (*see best practice No 4*).

Cases where additional information is needed in relation to Section G and Section D (as described in chapters 4 and 5) were rare, according to the practitioners. However, the Lithuanian authorities did point out the benefit of improving Section G so the status of the investigation could be ticked in a box. The evaluation team is of the opinion that suggestions like this are simple yet effective in streamlining cooperation. Therefore, the evaluation team invites the Commission to look into ways to make the EIO form more user-friendly (*see recommendation No 14*).

From time to time, the Lithuanian executing authorities find that EIOs are incomplete or inaccurate. In most cases, this concerns practicalities such as an incorrect bank account number or a reference to a missing annex. These issues are usually resolved in a timely manner with the issuing authorities, according to Lithuania.

### 6.2. Language regime

Lithuania accepts EIOs in English and Lithuanian. During the visit, the practitioners explained that in most cases, EIOs in English are translated into Lithuanian before they are executed. This is especially the case when the EIO needs to be referred to the police, the pre-trial investigation judge regarding the performance of actions within his/her competence or the judge for the execution. The EIO is only executed in the English language when it concerns a limited amount of data or if the requested data is already available.

Furthermore, the practitioners explained that the translations into Lithuanian are often of poor quality, possibly because it is hard to find a good translator into Lithuanian in some Member States. Even though a good translation into (legal) Lithuanian is ideal when receiving an EIO, practitioners prefer an EIO in good English instead of poor Lithuanian to avoid the need to consult with the issuing State about what is actually being requested.

As the issuing State, Lithuania tries to translate the EIO into the official language of the executing Member State, especially when it is an urgent matter. However, Lithuania is a small country and it may be hard to find a translator for some languages. In these cases, Lithuania translates the EIO into English, providing the executing State accepts EIOs in this language. The evaluation team is of the view that Member States should accept EIOs in English, particularly in urgent cases (*see recommendation No 8*).

Furthermore, the Lithuanian authorities reported that the contact person listed in the EIO did not always speak English, which can make direct communication difficult. The evaluation team sees it fit to recommend that all Member States make sure the point of contact named in the EIO speaks English to a sufficient level (*see recommendation No 9*).

In the questionnaire, the courts expressed a problem with paying for translation when issuing an EIO. It is stated that the courts' management teams are concerned about excessive translation costs and urge the judges to assess the need for issuing EIOs responsibly. This statement was concerning for the evaluation team and during the visit the practitioners were asked to provide more information on this matter. The judge interviewed explained that she did not feel pressured not to issue an EIO because of the translation costs. The example in the questionnaire might be related to the general use of instruments and the courts' recourses and not directed at EIOs specifically, as explained by the practitioners. Still, the evaluation team is of the view that translation costs should not influence the decision of a judge to issue an EIO.

### 6.3. Issuing additional EIOs, splitting EIOs, conditional EIOs

When it receives an EIO in the pre-trial stage, the competent prosecutor's office inserts it in the IBPS "International Legal Assistance module" (hereafter: IBPS), which is an electronic tool for international legal assistance. The first prosecutor to receive the EIO makes the decision on recognition. It can be seen in the system whether the EIO is related to an earlier EIO and who the executing authority was. If an EIO needs to be split, for example if the measures requested need to be executed in several districts, the EIO can easily be referred to the various districts through the IBPS system. One advantage of this system is that the various measures in the EIO can be executed at the same time. The Lithuanian practitioners explained that EIOs are often split into several districts in the pre-trial stage and that the system works well in practice. During the visit, the evaluation team got the impression that the IBPS system is indeed a very useful tool for dealing with EIOs and considers it a best practice by Lithuania (*see best practice No 5*).

During the visit, the prosecutors explained that the issuing authority would not automatically be informed about an EIO being sent to several regions for execution. However, important information about competent authorities is provided in Annex B.

The practitioners present during the visit could not say whether it was ever necessary to split an EIO in the trial stage, for example if witnesses in several parts of the country need to be heard. However, the judge from the Vilnius County Court explained that every judge was competent to execute an EIO in the whole country. Thus, if the majority of the witnesses to be heard lived in Vilnius, the other witnesses would be invited to the Vilnius Court, while if the majority of the persons to be interviewed lived in another city, that court would execute the entire EIO. In theory, splitting an EIO into several districts is also possible in the trial stage. The Implementing Law provides for broad judicial discretion in the execution of EIOs (Article 53(3) Implementing Law).

Furthermore, when executing an EIO for a videoconference, the courts always try to hold the videoconference on the date requested by the issuing authority even if that means adjusting the agenda of the Lithuanian court. This shows the flexible overall approach of the Lithuanian authorities to the execution of EIOs.

The practitioners explained that the courts do not have access to the IBPS system unless a pre-trial judge needs to authorise a specific investigative measure. In that case, the lead prosecutor can grant (limited) access to the judge to process the authorisation of the measure.

#### **6.4. Orally issued EIOs**

The Lithuanian authorities mentioned that EIOs issued orally are not accepted in Lithuania. There have been instances where the Lithuanian authorities were informed through Eurojust that an EIO was being prepared and were asked for advice on the feasibility of the requested measures. Although the practitioners are always open to discussing the possibilities of executing an EIO in Lithuania, no action is taken until the EIO is received in written form.

## **7. NECESSITY, PROPORTIONALITY AND RECOURSE TO A DIFFERENT TYPE OF INVESTIGATIVE MEASURE**

Article 6 of the EIO is adopted properly in Article 59(5) of the Implementing Law. In Lithuania, the issuing authority places important criteria on the assessment of necessity and proportionality for issuing an EIO. The criteria include the type and seriousness of the crime, the objective sought by means of investigative measures, the conclusive force – whether performing the investigative action would substantially violate the rights and legitimate interests of other persons (not just participants in the proceedings), the length of the EIO execution and translation costs. Before drafting an EIO, the prosecutor leading the investigation and the specialised prosecutor may come to the conclusion that, based on the above criteria, it is not feasible to send an EIO.

With regards to Article 10 of the EIO Directive (recourse to a different type of investigative measure), the Lithuanian prosecutors provided the evaluation team with examples of when they had used a less intrusive investigative measure to execute an EIO (Article 52(8) Implementing Law). For example, if bank information is requested through search and seizure, Lithuania requests the information from the bank by court order. The Lithuanian practitioners explained that there was no need to exercise the more intrusive measure because the same results could be achieved another way. In some cases, when deciding to have recourse to a different (less intrusive) investigative measure, the Lithuanian executing authorities, do not consult the issuing State. The Lithuanian practitioners had not experienced any problems with issuing States in this respect.

The evaluation team notes that Article 10(4) of the Directive specifically stipulates that the executing authority informs the issuing authority before deciding to have recourse to a different investigative measure. Article 52(8) of the Implementing Law has correctly transposed the Directive on this matter. However, in practice it seems that Lithuanian practitioners do not always consult the issuing State. The evaluation team recommends that Lithuania consults the issuing authority in these situations in line with the Directive (see recommendation No 1).

## 8. TRANSMISSION OF THE EIO FORM AND DIRECT CONTACT

Article 7 of the EIO is adopted properly in Article 60 of the Implementing Law. According to Lithuanian law, the Lithuanian issuing authority forwards the EIO directly to the competent authority of the other Member State or to the Central Authority of that Member State, if one has been appointed. If the identity of the executing authority is unknown, the Lithuanian issuing authority may consult the contact points of the European Judicial Network or Eurojust.

During the evaluation visit, as well as in the questionnaire, the Lithuanian practitioners stressed the importance of all Member States keeping the information on the EJM website up to date, especially regarding the application of specific investigative measures and the contact information. The evaluation team agrees and sees fit to make recommendation to all Member States about keeping the information on EJM updated (*see recommendation No 10*).

The Lithuanian practitioners explained to the evaluation team that Lithuania transmitted EIOs by post and by e-mail during the COVID-19 pandemic. Lithuania still accepts EIOs transmitted electronically. The original form is not necessary as long as the scanned copy is clear. The Lithuanian prosecutors explained that they are almost ready to implement e-EDES and that it is linked with to their national IBPS system. The courts have not yet started their preparations to apply e-EDES. Lithuania is to be commended for connecting the national IBPS system to e-EDES (*see best practice No 5*).

During the execution of EIOs, Lithuanian practitioners most frequently communicate directly via e-mail. According to the Lithuanian practitioners, direct contact with the executing Member State may be difficult when there are multiple executing authorities involved or when another authority has been appointed to execute an EIO. In these instances, it can take more time to track the status of an EIO. When difficulties arise (e.g., replies to enquiries are not received), assistance is sought through the EJM contact point or Eurojust.

## 9. RECOGNITION AND EXECUTION OF EIO AND FORMALITIES

Article 9 of the EIO Directive is implemented in Articles 51 (authorities) and 52 (recognition), 53-58 (execution) and 55-58 (formalities) of the Implementing Law.

As the executing State, Lithuania usually complies with the formalities requested by the issuing State. On the other hand, the practitioners mentioned that in some cases Lithuania is asked to comply with formalities that are clearly not applicable in the given situation, such as giving notice of the rights of a minor in an interview, where the person being interviewed is an adult. If Section I (formalities) is not filled in in the EIO form, Lithuania executes the EIO in accordance with its national law.

The Lithuanian practitioners provided the evaluation team with examples of formalities required under national law when Lithuania is the issuing State. When Lithuania issues an EIO to hear a suspect for example, the executing authority is requested to serve the formal notice of suspicion. With this document, the suspect can exercise his/her right to defence under Lithuanian law. According to the Lithuanian practitioners, there have been many occasions when this formality was not complied with, with no explanation from the executing authorities. The Lithuanian CCP may provide an obligation for other formalities to be respected, such as the mandatory presence of a defence lawyer in certain circumstances. The Lithuanian practitioners explained that this formality was not always respected; some Member States argued that because of the high costs, a defence lawyer would not be invited. Because of the obligations under Lithuanian law, Lithuania was not able to continue with the hearing in that case.

According to the evaluation team, Member States should comply with the requested formalities, as stipulated in the Directive, as it is crucial for the admissibility of evidence in the issuing State (*see recommendation No 11*).

## **10. ADMISSIBILITY OF EVIDENCE**

During the visit, Lithuanian authorities mentioned a case where the Lithuanian court had found evidence obtained in Sweden via an EIO inadmissible. It was related to the obtaining of data from the suspects' computer without the computer being seized first. The Lithuanian court agreed with the suspect that the information could not have been rightfully obtained and that the evidence was inadmissible.

Further details about this case were not shared with the evaluation team other than that it was an isolated case and did not affect the overall judicial cooperation between Lithuania and other Member States.

Lithuanian practitioners, including the defence lawyer present during the visit, had not experienced any other cases in which the admissibility of evidence was an issue at trial.

## **11. SPECIALITY RULE**

The EIO Directive does not have a general provision on the speciality rule. However, Article 62(2) of the Implementing Law stipulates that, unless a competent authority of the other Member State indicates otherwise, the evidence and other information obtained during the execution of the EIO may be used only within the scope of the proceedings referred to in the EIO.

In accordance with its national law, Lithuania, as the issuing State, always asks for consent when it wishes to use information provided by foreign authorities in other proceedings. Furthermore, when the Lithuanian authorities execute an EIO, they trust the issuing State will not use the evidence for other proceedings without requesting consent from Lithuania first.

During the visit, the evaluation team pointed out that the Directive itself did not contain a general provision on speciality. However, the Lithuanian practitioners present at the table expressed that, in their view, the speciality rule is a general rule in judicial cooperation between Member States and should always be respected.



If the execution of an EIO in Lithuania reveals that a crime has been committed other than the one that gave rise to the EIO, Lithuania opens a domestic investigation after consulting the issuing State. The documents prepared for the execution of the EIO are only used in the new domestic investigation if consent has been obtained from the issuing authorities.

Member States have diverging views on whether the speciality rule is applicable in the context of the EIO Directive. This leads to different approaches among national authorities with some always asking for consent before using information in other proceedings, and others assuming that it is not necessary to ask for consent within the context of the EIO. According to the evaluation team, it would be beneficial for the judicial cooperation between Member States if there was a clear line on speciality. Therefore, the evaluation team invites the Commission to clarify the application of the speciality rule with regard to the EIO (*see recommendation No 15*).

## **12. CONFIDENTIALITY**

Article 19 of the EIO Directive is properly implemented in Article 53(13) of the Implementing Law.

Article 53(13) of the Implementing Law states that the data specified in the EIO must not be publicly disclosed beyond the extent that is necessary in order to ensure the execution of the EIO. Article 53(13) further states that if the authority that has recognised the EIO is unable to ensure non-disclosure of the data provided in the EIO, it must immediately notify the competent authority of the other Member State of this fact. However, in practice no notifications had been received or sent under Article 19(2) of the Directive, according to Lithuania.

Lithuania executes EIOs in accordance with its national CCP, which contains provisions on the non-disclosure of pre-trial investigation information (Article 177 CCP). It is through this provision that a Lithuanian prosecutor can prevent a bank from notifying its clients about an order for information. The evaluation team notes that this complies with Article 19(4) of the Directive, where Member States are obliged to ensure that banks do not disclose any information to their clients in the context of the EIO.

During the visit, Lithuanian practitioners explained that they had not encountered any problems regarding confidentiality either as the issuing State or as the executing State.

## 13. GROUNDS FOR NON-EXECUTION

### 13.1. General

The grounds for non-execution are correctly transposed in Article 52 of the Implementing Law. Following the EIO Directive, the grounds for refusal in Article 52 of the Implementing Law are optional.

Generally, non-execution of the EIO by Lithuania is the result of practical issues such as an incomplete form or unclear information. Although clarification or additional information in those instances is requested by Lithuania, some Member States do not reply, resulting in the non-execution of the EIO.

In their reply to the questionnaire, the Lithuanian authorities stated that the execution of EIOs had been refused in Lithuania in cases where EIOs had been issued in relation to the proceedings referred to in Article 4(b) of the Directive (proceedings brought by administrative authorities). During the visit, the evaluation team asked the Lithuanian authorities to provide more information about this statement, such as whether the EIOs had only been refused because they were issued in Article 4(b) proceedings. The Lithuanian practitioners replied that they execute EIOs issued by competent administrative authorities providing they are duly validated by a judicial authority, as stipulated in the Directive.

As issuing State, the Lithuanian authorities had encountered situations where the execution of the EIO was impossible because the requested measure would not be allowed in a similar domestic case in the executing State. Furthermore, Lithuanian EIOs had also been refused because they were considered to be disproportionate.

In general, Lithuania had not experienced any issues worth mentioning regarding the possible grounds for non-execution of dual criminality, ne bis in idem or immunities or privileges.

### 13.2. Fundamental rights (Article 6 TEU and Charter)

In the view of the Lithuanian authorities, an EIO may be used in order to ensure the presence of a defendant at trial via videoconference. Although the practitioners commented that it was a burden on the courts' resources, Lithuania does execute such requests. On the other hand, in some Member States, allowing a defendant to attend his/her trial via videoconference is considered to be a violation of their fundamental rights. Lithuania has therefore seen EIOs refused for this reason.

The purpose of the EIO is to gather evidence (see also recital 25 of the EIO Directive) and attending a trial does not always have this purpose. As Member States have differing opinions on this matter, the evaluation team would like to make a recommendation to the Commission to clarify the application of the EIO in connection with ensuring the accused person's presence at his or her trial (*see chapter 20.2 and recommendation No 16*).

## 14. TIME LIMITS AND GROUNDS FOR POSTPONEMENT OF RECOGNITION OR EXECUTION

Articles 12 and 15 of the EIO Directive are properly implemented in Article 53(5) to (7) of the Implementing Law.

When acting as the executing State, Lithuania respects the time limits set out in the EIO in most cases. According to the Lithuanian authorities, incoming EIOs are usually executed in less than 90 days. Execution may take longer depending on the requested duration of the measure or the need to consult the issuing authority. The IBPS system is a useful tool for keeping track of the time limits as it sends automatic reminders to the prosecutors dealing with the EIO (*see best practice No 5*). In the trial stage, execution may take longer when the person to be heard cannot be found and usually the issuing State is informed about the delay.

In their written reply, the Lithuanian authorities mentioned that when acting as issuing State, the time limits were often not complied with by the executing State. However, during the visit the Lithuanian practitioners mentioned that they did not see the timely execution of their EIOs as being a systematic problem. Incidents may occur, but overall Lithuania is satisfied with the speed with which Lithuanian EIOs are executed.

Lithuania usually marks an EIO as urgent when there are strict deadlines in place regarding the custody of a suspect or the securing of evidence. Furthermore, an EIO could be marked as urgent if the requested investigative measure requires coordination with other Member States, if a hearing is scheduled soon or to ensure that evidence is not destroyed. These reasons are also frequently encountered by Lithuania as executing State. Nevertheless, the box “urgent” is sometimes ticked without further clarification, according to the practitioners. In the view of evaluation team, Member States should provide all relevant information regarding the urgency of the case, such as an upcoming trial date, to ensure the timely execution of the EIO (*see recommendation No 12*).

## **15. LEGAL REMEDIES**

Article 14 of the Directive is implemented in Article 53(14) of the Implementing Law.

### *Executing Authority*

When Lithuania acts as the executing authority, Article 53(14) stipulates that measures carried out in the execution of the EIO may be appealed against in cases specified in the CCP. According to the Lithuanian CCP, when procedural actions and resolutions are taken by a pre-trial investigation officer, a prosecutor or a pre-trial investigating judge, parties to the proceedings and persons subjected to coercive measures may file an appeal against the actions performed (Articles 62-65 CCP).

The Lithuanian authorities explained that in practice, legal remedies were most frequently invoked against search and seizure. According to Article 149 CCP, a copy of the ruling ordering the search or seizure must be presented to the person on whose premises the search is being carried out. After the search, a copy of the list of the seized objects or documents must be given to that person as well. The person concerned is then informed of the legal remedies available to them at this time. As stipulated in Article 53(14), the lodging of an appeal suspends the transfer of items to the issuing State, unless sufficient reasons are indicated in the EIO that an immediate transfer of the objects, documents or property is essential for the success of criminal proceedings or for the preservation of human rights and freedoms, unless the transfer would cause serious damage to a person.

According to Article 52(13) of the Implementing Law, court rulings and prosecutor's resolutions (approvals) and decisions specified under Articles 51 and 52 Implementing Law (regarding the recognition and refusal of the EIO) are not subject to appeal.

The Lithuanian defence lawyer present during the visit explained that in his experience, the persons subjected to coercive measures in the context of the EIO, were well informed of their rights to a legal remedy.

Article 57(2) of the Implementing Law clearly states that if the person is interviewed by remote audio or video conference, that interview must be conducted in such manner as not to contradict the fundamental principles of the criminal procedure in the Republic of Lithuania.

#### *Issuing Authority*

In Lithuania, there is no procedure for appealing an EIO being issued as a whole. However, as mentioned above, the separate measures as ordered by a prosecutor or judge, including in relation to an EIO, can be appealed according to Articles 62-65 CCP.

According to Lithuanian authorities, a suspect may appeal the issuing of an EIO regarding videoconferencing. However, the CCP does not provide the option of appealing the court's decision to interview a witness. During the visit, it was explained to the evaluation team that following the Gavanozov II judgement (CJEU, Case C-852/19), witnesses were nonetheless allowed to appeal such EIOs in practice.

## **16. TRANSFER OF EVIDENCE**

Article 13 of the EIO Directive is properly implemented in Article 53(8) and (14) of the Implementing Law.

Regarding the execution of EIOs and the transfer of evidence, the Lithuanian issuing authorities indicated that it can be difficult to understand whether their request has been executed and to what extent when they receive the results of the EIO. Particularly since the results are often in another language. A cover letter summarizing the actions taken is considered very useful as it allows the issuing authorities to immediately understand the actions taken by the executing State. When executing an EIO, the Lithuanian authorities always include a cover letter with a translation into English describing the results attached. The evaluation team sees this approach as a best practice (*see best practice No 6*). With regard to the benefits for the issuing State, the evaluation team would like to recommend that when sending the results, all Member States provide a summary/cover note to explain what has been done to execute the request (*see recommendation No 13*).

## **17. OBLIGATION TO INFORM - ANNEX B**

Article 16 of the EIO Directive is properly implemented in Article 51(4) of the Implementing Law.

When acting as an executing authority, it is standard procedure to send Annex B and Lithuania always includes information on the authority the EIO was sent to for execution in the Annex. Within the prosecutor's offices, the IBPS system ensures that Annex B is sent on time. Furthermore, the Lithuanian authorities reported a positive development with regard to receiving Annex B in response to Lithuanian EIOs.

## 18. COSTS

Article 21 of the EIO is transposed in Article 53(12) of the Implementing Law. According to Lithuanian law, Lithuania bears the cost of executing the EIO with the exception of the costs which arise within the territory of another EU Member State and costs related to the provisional surrender of a person from the Republic of Lithuania or to the Republic of Lithuania, costs related to the participation of officers of another EU Member State in the performance of procedural measures within the territory of the Republic of Lithuania as well as the costs of transcription, decoding or decrypting data collected from information transmitted via electronic communication networks, which are covered by the other EU Member State.

According to Article 21 of the EIO Directive, the executing State bears the costs related to the execution of the EIO on its territory. However, the Directive gives the executing State the opportunity to consult the issuing State if the costs for the execution are deemed exceptionally high. In exceptional circumstances, the Directive gives the issuing State the possibility to withdraw the EIO or to bear part of the cost.

The Lithuanian Implementing Law also covers the provisions of Article 21 of the EIO Directive with regard to instances where the cost of executing the EIO is deemed exceptionally high. However, in such instances, under Article 53(12) of the Lithuanian Implementing Law, if the consultation procedure with the issuing authority for splitting the costs fails, the authority that has recognised the EIO may decide to refuse the execution of the EIO in full or in part.

According to the evaluation team, the provision in the Implementing Law provides an extra ground for refusal not provided in the Directive. Moreover, recital 23 of the Directive explicitly states that the mechanism of consulting on exceptionally high costs should not constitute an additional ground for refusal. That is why, even though the Lithuanian authorities indicated that it had never happened before, the evaluation team would like to recommend to Lithuania that it considers amending the paragraph on costs in the Implementing Law to bring it into line with the Directive (*see recommendation No 2*).

Furthermore, the evaluation team notes that it is often unclear for Member States when to label costs as exceptionally high. Guidelines at EU level would be useful to provide authorities with a starting point when entering into discussions about the costs (*see recommendation No 17*).

## **19. COORDINATION OF THE EXECUTION OF DIFFERENT EIOS IN DIFFERENT MEMBER STATES AND/OR IN COMBINATION WITH OTHER INSTRUMENTS**

If requests based on other instruments (such as detaining a person on the basis of an EAW) are implemented along with an EIO in Lithuania, they are coordinated via Eurojust or via direct contacts with authorities from the issuing State. If an EIO pertains to activities taking place in several Member States at the same time, the required actions are coordinated through Eurojust. The Lithuanian authorities have experience with such cases only in the pre-trial phase.

## **20. SPECIFIC INVESTIGATIVE MEASURES**

### **20.1. Temporary transfer**

Temporary transfer is regulated in Articles 22 and 23 of the EIO Directive and has been transposed in Article 55 of the Implementing Law. Prosecutors from the PGO have the exclusive competence, even at trial stage, to issue and execute EIOs related to the temporary transfer of a person for the purpose of carrying out an investigative measure (Articles 51(1)(3) and 59(2)(3) of the Implementing Law). Organizing the surrender of a person always falls within the competence of the Lithuanian Criminal Police Bureau, and the penitentiary institution, in the event that the surrender has to be executed from Lithuania.

In Lithuanian law, there is no specific procedure for ascertaining the consent of the transferred person to the temporary transfer. However, consent is always necessary before Lithuania can execute an EIO concerning the temporary transfer of a person from Lithuania or to Lithuania (Article 54 (1)(5) of the Implementing Law). Otherwise, if the person does not give his/her consent, the execution of the EIO may be terminated based on the court's ruling or the prosecutor's decision. In cases where the person who has been arrested or is serving a custodial sentence is unable to exercise his/her rights due to his/her age, disability or illness or any other important reason, the legal representative of this person is given the opportunity to express his/her opinion about the surrender (Article 54(1)(5) which implements Article 22(3) of the EIO Directive).



The Lithuanian authorities gave one example where an EIO was issued for the transfer of a convicted person to Lithuania for the purposes of giving evidence as a witness, participating in a simultaneous questioning of other participants and in the inspection of the crime scene. However, the execution of the EIO had to be refused because the person did not agree to the temporary transfer to Lithuania. As a solution, another EIO was issued to interrogate the person in the presence of the police.

The practitioners had not encountered any problems in ensuring that a person temporarily transferred to Lithuania was held in custody during the transfer.

According to Article 56 of the Implementing Law, arrested persons or persons serving an imprisonment-related sentence may be transited through the Lithuanian territory to another Member State only if consent has been granted by the PGO. While Article 22 of the EIO Directive stipulates that a transit of a person through the territory of the third country may be granted further to application accompanied by ‘all necessary documents’, Article 56(2) of the Implementing Law specifies that a request from a competent authority of another Member State and a copy of the EIO, along with their translations into Lithuanian or English, are necessary.

To sum up, both the Implementing Law and the practitioners correctly distinguish between temporary transfer based on the EAW for the purposes of prosecution, and temporary transfer within the scope of the EIO for the purposes of collecting evidence.

## 20.2. Hearing by videoconference

Hearing by videoconference, as regulated by Article 24 of the EIO Directive, has been implemented in Article 57 of the Implementing Law, which specifies the conditions and requirements for the execution of an EIO with regard to a hearing via videoconference. The article stipulates that the issuing and executing authorities must agree on the practical procedure of the interview, after which the Lithuanian executing authority is obliged to summon the person to be interviewed in accordance with the CCP and to verify his/her identity. Hearing via videoconference is provided for in Article 8<sup>2</sup>(1 and 2) of the CCP, which states, briefly put, that procedural actions in a pre-trial investigation and court proceedings may be taken by means of videoconference only in exceptional cases and where it is impossible to follow the usual proceedings. However, the Lithuanian authorities explained that the prerequisites mentioned in Article 8<sup>2</sup>(1 and 2) of the CCP apply only in domestic cases and are not taken into account when a hearing via videoconference is carried out in Lithuania on the basis of an EIO.

If a videoconference resulting from an EIO is conducted in the pre-trial investigation phase, the public prosecutor is present and - if necessary - an interpreter/translator (Article 57(4) of the Implementing Law). If a suspect is interrogated, the defence counsel may also be present. If an EIO concerning a hearing via videoconference is issued during the trial stage, a judge will be present instead of the public prosecutor. According to Article 57 of the Implementing Law, the interview is conducted by the authorities of the issuing Member State in compliance with the rules set out in its legislation on condition that such rules do not violate the Constitution or legislations, of the Republic of Lithuania or contradict the fundamental principles of its criminal procedure. Nevertheless, the Lithuanian authorities (prosecutor or judge) are always present throughout the entire interview.

In general, the rooms where hearings via videoconference are conducted are well equipped, according to the Lithuanian practitioners. However, the Lithuanian authorities reported that the quality of the communication had been an issue during some hearings (when the Lithuanian authorities had issued an EIO and when they executed one). However, it was always possible to resolve the issues and it had never led to a hearing being cancelled.

During the evaluation visit, the Lithuanian authorities explained that they had encountered cases where the issuing authority had asked for a person to be heard as a witness who according to Lithuanian law should be considered a suspect. In such cases the Lithuanian authorities always consult the issuing State about the way in which the videoconference should be carried out and discuss the alternatives so as not to infringe the rights of the person being interviewed. Regardless of the status of a witness or a suspect, Lithuanian law (Articles 80 and 82 of the CCP) also provides the concept of a “special witness”, who can be heard in relation to a crime he/she allegedly committed. Under this status the person cannot be held liable for giving false testimony or subjected to procedural coercive measures. Hearing such a person as a “special witness” is often a good alternative when there is uncertainty about the status of the person.

The Lithuanian authorities had not encountered cases in which the suspect/accused had not consented to a hearing via videoconference either in the pre-trial investigation or the trial phase. Article 57 of the Implementing Law does not mention the matter of consent. In domestic cases, pursuant to Article 8<sup>2</sup> (1) of the CCP, the disagreement of a participant in the proceedings does not prevent action being taken using these means, unless a pre-trial investigation officer, a prosecutor or a pre-trial investigation judge recognises the disagreement as reasonable. The Lithuanian authorities explained that the same rules apply for consent in relation to an EIO as they do in domestic cases.

According to Lithuanian law (Article 63 of the CCP), the witness or suspect can challenge the issuing of the EIO for a hearing via videoconference or a hearing conducted via videoconference in response to an EIO. This seems to comply with the CJEU judgement *Gavanozov II* (CJEU, C-852/19).

It should be noted that the Lithuanian courts often contact the person to be interviewed directly and conduct the interview via videoconference without issuing an EIO to the Member State where the person is located. While the evaluation team acknowledges the practical advantages of this method, it considers that the practice of gathering evidence in another Member State without issuing an EIO is not in line with the Directive. The evaluation team therefore recommends that Lithuania reconsiders the practice of interviewing persons via videoconference in another Member State without issuing an EIO (*see recommendation No 3*).

### *Hearing of defendants by videoconference at trial*

During the visit, there was a debate on the possibility of using an EIO to allow a defendant to participate in his/her entire trial via videoconference. According to Lithuanian law, it is possible to issue and execute an EIO for the purpose of allowing a defendant to attend his/her trial via videoconference for the duration of the proceedings (Article 8<sup>2</sup>(2)). However, the Lithuanian practitioners have seen EIOs issued in this respect refused because some Member States believe that using videoconferencing in such cases is outside the scope of the Directive as it does not serve the purpose of evidence gathering.

The evaluation team is of the opinion that more clarification on the application of the EIO to ensure the presence of the defendant in the main trial would be beneficial to all Member States to ensure a more coherent approach on the matter (see Chapter 13.5 and *recommendation No 16*).

### **20.3. Hearing by telephone conference**

Although Article 25 of the EIO Directive specifies hearing by telephone conference, the Lithuanian CCP and the Implementing Law do not provide this measure. When receiving an EIO with a request for a hearing by telephone conference, the Lithuanian authorities consult the issuing authority and suggest another investigative measure, such as a hearing via videoconference. The practitioners have not encountered any problems connected with this specific investigative measure.

However, during the visit the evaluation team learned that in practice Lithuanian judges sometimes call witnesses abroad, if their contact information is known, to conduct an interview without issuing an EIO beforehand. The evaluation team repeats the recommendation made in Chapter 20.2 regarding videoconferencing and applies it to telephone conferencing as well (*see recommendation No 3*).

## Information on bank and other financial accounts and banking and other financial operations

While there are two separate articles regarding information about bank and other financial accounts (Article 26) and information about banking and other financial operations (Article 27) in the EIO Directive, the Implementing Law does not include any specific provisions in this respect. However, on the basis of Articles 53(1) and 59(1) of the Implementing Law, Article 155 of the CCP (the prosecutor's right to examine information) is applicable to both incoming and outgoing EIOs in Lithuania.

The majority of the EIOs received by Lithuania concern bank information in fraud and money laundering investigations (mainly from Latvia, Estonia, Poland, Germany and Spain). If an EIO of this kind is issued during the trial stage, it is recognised by the district court. If an EIO concerning banking information is issued during the pre-trial investigation stage, it is recognised by the regional prosecutor or by the PGO. Furthermore, the same general rules regarding issuing an EIO (Article 59 Implementing Law) are applied when it comes to issuing an EIO concerning banking information.

The above-mentioned Article 155 CCP gives the public prosecutor the right, once consent has been obtained from the pre-trial investigation judge, to request that the entity (including banks) grants access to any documents necessary for the investigation of a criminal act. While establishing the name of the holder (owner) of the bank account does not require the approval of the pre-trial investigation judge, there is a need to obtaining the judge's consent if the EIO pertains to obtaining information about banking transactions. When executing a request for bank information, it does not matter whether the account holder is a suspect or a witness, providing a link to the crime at issue has been established.

The bank provides the requested information in electronic format with a cover letter on paper. Until e-EDES becomes fully operational, the Lithuanian authorities will continue to use electronic carriers such as CDs or USB sticks to transmit the evidence gathered to the issuing authority. Lithuanian banks are ordered by the prosecutor not to disclose any information to their clients regarding the request for information about their account (see also Chapter 12).

When the Lithuanian authorities issue an EIO concerning banking information, they do not attach the decision from the prosecutor or the pre-trial investigation judge to the EIO form. References pertaining to the issuing of this decision (e.g. its date) are made in Section C.

Article 26(1) of the EIO Directive provides a legal basis for issuing an EIO to determine whether a natural or legal person subject to the criminal proceedings concerned holds or controls any bank accounts located in the territory of the executing State. During the visit, the Lithuanian practitioners explained that, when receiving an EIO to determine whether the involved person or entity holds any bank accounts in Lithuania, they execute the EIO to the fullest extent possible, although minimal information on why the request was addressed to Lithuania is preferred. A lack of information about a bank account number by the issuing State is not a ground for refusal. However, the Lithuanian authorities would try to obtain more data from the issuing State in that case, possibly via the law enforcement authorities, owing to the lack of a central register of bank accounts in Lithuania. Furthermore, the public prosecutor's office does not have access to the system of the State Tax Inspectorate in all cases.

#### **20.4. Covert investigations**

Covert investigations included in Article 29 of the EIO Directive are covered in Lithuanian law in Articles 53(1) and 59(1) of the Implementing Law, and in Articles 158, 159 and 160 of the CCP in the context of the EIO.

During the course of the visit, the evaluation team was given a short presentation on Lithuania's legislative framework for undercover investigations. In national proceedings, it is possible to gather evidence through covert investigation before an investigation has been formally launched. The legal basis for the gathering of this information is provided by the Criminal Intelligence Law (CIL). All information gathered through the CIL must be verified by the measures carried out in accordance with the CCP as soon as the criminal investigation has been formally opened. Otherwise, the information collected is inadmissible in the course of the criminal proceedings. After launching the investigation, the information collected is declassified and transferred to the pre-trial investigation file.

When executing an EIO in Lithuania, it is not possible to use the CIL; the EIO requesting a covert measure can be executed by the Lithuanian authorities only on the basis of the CCP. According to the CCP, covert investigations include the following covert actions in a pre-trial investigation:

- Actions of pre-trial investigation officers who do not disclose their identities (Article 158 of CCP). In exceptional cases, where it is impossible to identify offenders otherwise, persons who are not pre-trial investigation officers can conduct an investigation following a procedure prescribed by this article. Although there is no specific provision in the CCP, the use of civil infiltrators in the course of such action is allowed in Lithuania. Whether a civil infiltrator can take this action is assessed on a case-by-case basis with special attention paid to possible risks he/she may encounter.
- Permission to perform actions imitating a criminal act (Article 159 of CCP); they are taken by the pre-trial investigation officers;
- Covert surveillance (Article 160 of CCP), conducted by the pre-trial investigation officers; covert surveillance includes also controlled delivery.

All the actions mentioned above must be authorised by decision of a pre-trial investigation judge.

When issuing an EIO relating to a covert measure, the prosecutor from the Prosecutor's General Office or a Regional Prosecutor's Office needs prior authorisation from the court. The court authorisation is not attached to the EIO but its existence must be mentioned in it.

For the purposes of executing an EIO concerning a covert measure, it is sufficient for the Lithuanian authorities to have an indication in the EIO that it has been issued in accordance with the national law of the issuing Member State and that a court has authorised the measure, if necessary according to national law of that State.

Before executing an EIO issued to carry out undercover pre-trial investigation measures, an agreement should be reached with the issuing authority about the conditions for performing the requested measures (Article 52(3)(11) of the Implementing Law). There are no special requirements about the form this agreement should take. The requested activities can be coordinated in advance between the competent authority from the issuing Member State and its Lithuanian counterpart.

If the criminal proceedings are conducted in Lithuania, it is not necessary to issue an EIO for the purposes of using an agent from another Member State on the territory of Lithuania in the course of such criminal proceedings.

Material gathered as a result of the undercover pre-trial investigation measures is protected only by the confidentiality of the investigation (it is not protected by a classified clause). As a consequence, there are no problems with the transmission from Lithuania to the issuing State of material collected as a result of covert investigation measures.

According to Article 161 of the CCP, a person on whom any covert investigation measures were imposed is notified of their application when it is possible without prejudice to the success of the investigation. When executing an EIO, the Lithuanian authorities notify the person concerned only when the issuing State has confirmed that the notification will not prejudice the investigation. In cases of doubt, consultation between the executing and the issuing authorities is always possible. Moreover, the issuing State may also notify the person concerned of the application of covert measures by service of such notification in conformity with the Convention on Mutual Legal Assistance of 1959.

#### **20.5. Interception of telecommunication**

The interception of telecommunication with technical assistance as mentioned in Article 30 of the EIO Directive is covered by Article 154 CCP. Article 154 CCP refers not only to wiretapping conversations transmitted by electronic communication networks but also to monitoring, making recordings and storing any other information transmitted through an electronic communications network. The interception of telecommunications is limited by the technical possibilities, thus the Lithuanian authorities can only intercept certain operator services. This includes, among other things, e-mails and phone conversations. Communications through applications such as WhatsApp or Facebook Messenger are not managed by local operators and as a result cannot be intercepted. When executing an EIO, an alternative could be proposed such as installing a special monitoring program on the phone or, in urgent cases, seizing the phone during a search.



According to Article 154 CCP, the interception may be ordered only if there are grounds to believe that information may be obtained in this way about explicitly mentioned crimes. Based on the description of the criminal act in the EIO, the Lithuanian authorities decide whether the requested interception of telecommunications would be possible in Lithuania. Interception can be ordered with respect to a suspect as well as – under certain specific circumstances – victims, witnesses or other parties to the proceedings, excluding communications between the suspect/accused and their lawyer.

Interception may be ordered by the pre-trial investigation judge at the request of a prosecutor. It may be ordered for no longer than six months with the possibility of extending this measure once for another three months when investigating complicated or large-scale criminal offences.

As the executing authority, Lithuania is able to transmit the intercepted telecommunications to the issuing State either on completion of the measure or in part. It is not possible to transmit the information immediately as mentioned in Article 30 (6)(a) of the Directive.

In the pre-trial phase, the Lithuanian issuing authorities had encountered situations where the execution of the EIO was refused. The refusal was determined not by the circumstances of the case but by the impossibility of the application in the executing State of the requested measures with respect to a person who was not a suspect (the request was to apply them to persons related to the suspect).

Article 31 of the EIO Directive pertaining to the interception of telecommunications without technical assistance has been transposed by Article 58 of the Implementing Law (interception without technical assistance from the Republic of Lithuania) and Article 64 (notification of another Member State in which the subject of the interception is located). When Lithuania is the notifying State, a court considering the case during the trial stage, or during the pre-trial investigation, a regional prosecutor's office or the PGO is competent to notify a competent authority of another Member State whose technical assistance is not necessary. However, the prior existence of a ruling by a pre-trial investigation judge concerning checking, recording and accumulating information transmitted via electronic communication networks (in accordance with the aforementioned Article 154 CCP) is required.

If another Member State notifies Lithuania of the interception of telecommunications and no technical assistance is required, the authority competent to receive the notification is always the Police Department under the Ministry of Interior of the Republic of Lithuania. Having established the circumstances referred to in points 2 or 9 of Article 52(3) of the Implementing Law (briefly put: where it would be inadmissible according to Lithuanian law), this authority has the right to inform the foreign competent authority, within 96 hours of receipt of the notification, that the interception of telecommunications cannot be performed or that it must be terminated, and (if necessary) to point out that material already intercepted cannot be used or can be used only under specified conditions but must provide the justification for the decision. This wording reflects Article 31(3) of the EIO Directive establishing the procedure of ‘silent consent’ by the Lithuanian authorities to the interception without technical assistance if there are no obstacles to that interception on Lithuanian territory. Notification in the form of Annex C may be submitted by the issuing State prior to the interception, during the course of the interception or after it has been carried out (ex post notification).

The Lithuanian authorities had encountered cases where the Annex C was used only in the pre-trial phase of the criminal proceedings.

In cases where a bugged car or a car with a GPS tracking system travels into Lithuanian territory and technical assistance is not required, the Lithuanian authorities would accept a notification presented in the form of an Annex C in accordance with Article 31 of the EIO Directive. However, they had not had cases like that in practice. The evaluation team notes that there are differences between Member States regarding what falls under the concept of interception of telecommunications, such as the bugging of a car or a GPS tracker, and when Annex C can be used. This can have a negative effect on judicial cooperation. Considering these findings, the evaluation team finds it appropriate to recommend that the EU legislators clarify the concept of “interception of telecommunications” (*see recommendation No 18*).

## 20.6. Other investigative measures (e.g. house search)

While the EIO Directive specifies in Article 28 the specific investigative measures requiring the gathering of evidence in real time, continuously and over certain period of time, the Lithuanian Implementing Law does not explicitly mention such measures. However, this is covered by Articles 53(1) and 59(1) of the Implementing Law and Article 154 CCP which allows any other information (than conversations) transmitted through electronic communications network to be monitored, recorded and accumulated.

Articles 145 and 147 CCP are applied to EIOs concerning house searches. When issuing EIOs of this kind, the Lithuanian authorities do not attach the search warrant issued or authorised by the Lithuanian pre-trial investigative judge. However, details pertaining to this ruling are placed in Section C of Annex A. Information that would enable the person concerned to challenge the EIO is included in Section J of the EIO form.

## 21. STATISTICS

The Prosecution Offices in Lithuania implemented the IBPS system in August 2020. Thanks to the functionalities of IBPS, it has been possible to collect more detailed statistics on the EIO since the implementation of this program than before. An older module was used to collect statistics prior to August 2020 but it was only possible to see data on international cooperation as a whole, rather than being able to differentiate between the instruments.

Due to the protection of personal data, only general statistics can be extracted from the IBPS system. For example, the number of cases that have been refused can be seen but not the details of the cases. The content of an EIO is only visible to the persons directly involved in the case.

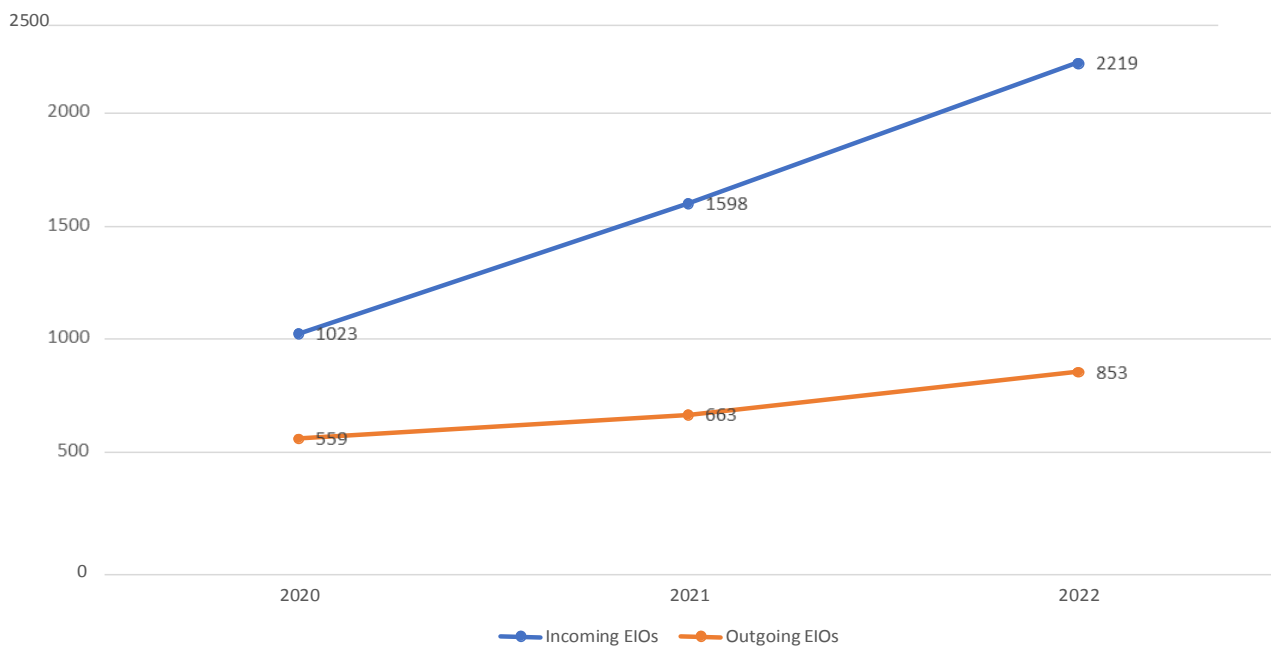
The courts in Lithuania use a different system (Lithuanian Judicial Information System) to collect statistical data. However, in the court's system, the different legal instruments of judicial cooperation are not separated. In order to have reliable statistics on the EIOs issued and executed by courts in Lithuania, the evaluation team recommends that the court's system is updated so the legal instruments can also be reviewed separately (*see recommendation No 4*).

### *Pre-trial stage*

During the evaluation visit, the Lithuanian prosecutor's offices presented the following statistical data on EIOs issued and received at the pre-trial stage over the last three years:

- 2020: 399 EIOs issued and 1023 EIOs received.
- 2021: 663 EIOs issued and 1598 EIOs received.
- 2022: 853 EIOs issued and 2219 EIOs received.

The diagram below illustrates the trends within the Lithuanian prosecution offices in numbers of incoming and outgoing EIOs.



As the issuing State, Lithuanian prosecutors have seen 16 EIOs refused in the last three years. As executing State, Lithuania refused 51 EIOs. It was established during the evaluation visit that the grounds for refusing to execute EIOs had not been registered in the official registration system.

### *Trial stage*

Based on the statistics provided by the courts over the past 5 years, courts in Lithuania<sup>5</sup> issued approximately 14 EIOs, of which 9 were executed. According to the information provided before and during the evaluation visit, the execution of EIOs is not always recorded in the Lithuanian Judicial Information System or any other recording system. Therefore, it was not possible to provide final data on the execution of some EIOs.

During the period concerned, the courts received approximately 24 EIOs of which 14 were executed and 10 were terminated, recalled or refused, because:

- the person to be questioned was heard directly in a court of the requesting State - 3 EIOs;
- the person to be questioned did not reside in Lithuania - 3 EIOs;
- the request was to ensure the person's attendance at a court hearing rather than to question them – 1 EIO;
- after reception the requesting state withdrew its request - 1 EIO;
- the person's whereabouts in Lithuania were not established - 1 EIO;
- the accused pleaded guilty –1 EIO.

According to the information provided, there were no reported cases in the trial phase where the execution of an EIO was postponed for a significant period.

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<sup>5</sup> *The data on EIOs issued and received by the courts was collected through Lithuanian Judicial Information System and may be incomplete as systematic entry of EIO data in the Lithuanian Judicial IS only started in 2020.*

## 22. TRAINING

In Lithuania, training for prosecutors on the EIO is organised by the PGO. Furthermore, specialised prosecutors provide assistance and training to the regional prosecutor's offices and serve as a first point of contact for them. According to the evaluation team, Lithuania is to be commended for the practice of specialised prosecutors (*see best practice No 7*). Training for judges is provided by the National Courts Administration (NCA).

Prior to the entry into force of the EIO Directive, the PGO organised a training for practitioners in the pre-trial stage involving prosecutors specialising in the field of international cooperation as well as other prosecutors and assistant prosecutors. Moreover, the *Guidelines for issuing EIOs and sending them to other EU Member States during the pre-trial investigation and for recognising EIOs received by the Republic of Lithuania* were approved by order of the Prosecutor General of 14 June 2017. Furthermore, the PGO collates prosecutors' training needs at the end of each year. The management of the PGO decides, based on these needs, which training will be provided in the coming year. The speakers at the training sessions are usually prosecutors. About 100 training sessions are given to prosecutors per year. There is a training session on international cooperation at least once a year. However, it should be noted that it is not compulsory to follow this training. Also, prosecutors can take part in international training provided by the ERA and the EJTN. In particular, specialised prosecutors and other representatives of public prosecutor's offices improved their qualifications with regard to EIOs at workshops dedicated to EIOs organised by the EJTN from 2018 to 2022 in Lithuania and other Member States (Germany, Austria and Spain). Furthermore, within the Lithuanian prosecution service, specialised prosecutors provide a contact point for prosecutors who have questions about how to deal with an EIO in practice. They also visit pre-trial investigation bodies and prosecutor's offices to give training on the subject of international cooperation on a regular basis.

In addition, the PGO has prepared several documents that provide guidelines for prosecutors dealing with EIOs. Methodology materials and guidelines prepared by the PGO can be found on the intranet in the international cooperation section and are available to all prosecutors and assistant prosecutors (including a presentation on the preparation and execution of EIOs, guidelines on how to fill in an EIO, references to relevant legislation and a FAQ). EIO issues are also discussed on a regular basis through consultations and at annual meetings organised by the PGO for regional prosecutors specialising in international communication. The evaluation team would like to commend Lithuania for these practices (*see best practice No 4*).

The NCA collates the overall training needs for judges every year. This institution drafts the annual training program, which is sent to the Ministry of Justice for its approval. In 2022, no training was provided for judges on the topic of international cooperation. Training on international cooperation is expected in 2023 (on the subject ‘Global Issues Faced by Criminal Law, Aspects of practical application of the European Arrest Warrant and the European Investigation Order; issues arising in international cooperation’). Judges can also attend international training at the EJTN and the ERA on their own initiative.

During the visit, the NCA pointed out that training in international cooperation is not a priority for judges. The budget dedicated to this is tight.

In general, judges and prosecutors in Lithuania may decide for themselves which training they attend. The quality of the training is assessed by the participants in the training by completing questionnaires and providing feedback, which is then summarised by the NCA. However, it should be noted that if practitioners do not attend any training, it has a negative effect on their evaluation.

Taking all these aspects into account the evaluation team noticed that there is no special training programme for judges and court staff (assistants of judges) on EIOs and that EIO training is not organised on a regular basis, especially not for judges. That is why a recommendation is made for the Lithuanian authorities to provide training on a systemic basis, especially for judges. One option could be joint training for prosecutors and judges on international cooperation. Another option might be e-learning courses in this area (*see recommendation No 5*).

The Bar Association also prepares courses and seminars on this topic for lawyers inside the organisation given by university lecturers. A database of seminars is available for practitioners. Also, conferences on international law are organised.



## **23. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES**

### **23.1. Suggestions by Lithuania**

The Lithuanian authorities reported that the EIO works well overall and is used frequently. Furthermore, direct communication between issuing and executing authorities is seen as a very positive development. According to Lithuania, Eurojust and EJM contact points provide very valuable assistance in complex or urgent cases.

However, Lithuania mentioned that direct communication was sometimes complicated by the fact that the person on the other side did not speak English. Lithuania suggests that the EJM should continue to provide training on legal English.

Furthermore, Lithuania mentioned the importance of training at EU level and at national level to ensure the quality of EIOs. Lastly, the Lithuanian authorities advised that the EJM website needed to be updated with regard to the application of investigative measures in each Member State as there were some inaccuracies.

## 23.2. Recommendations

Regarding the application and implementation of Directive 2014/41/EU, the team of experts involved in assessing Lithuania found the Lithuanian system to be satisfactory.

The evaluation team sees fit to make a number of suggestions for the attention of the Lithuanian authorities. Furthermore, based on the various good practices identified, related recommendations are made for the attention of the EU. Lithuania should conduct an 18-month follow-up to the recommendations referred to below after this report has been agreed by COPEN.

### 23.2.1. Recommendations to Lithuania

Recommendation No 1: to consult with the issuing State before using the option of a less intrusive measure in line with Article 10(4) of the Directive (*chapter 7*).

Recommendation No 2: to consider amending Article 53(12) of the Implementing Law on costs so it does not constitute an additional ground for refusing to execute an EIO in Lithuania (*chapter 18*).

Recommendation No 3: to reconsider the practice of interviewing persons via videoconference or other means of remote communication in another Member State without issuing an EIO (*chapters 20.2 and 20.3*).

Recommendation No 4: to consider updating the court's electronic system so statistics on legal instruments can be reviewed separately (*chapter 21*).

Recommendation No 5: to provide EIO training to judges on a systematic basis (*chapter 22*).

### 23.2.2. Recommendations to the other Member States

Recommendation No 6: When sending an EIO, Member States should clearly indicate the stage of the investigation in Section G (*chapter 4*).

Recommendation No 7: When sending an EIO, Member States should mention all other instruments sent to the executing State (such as an EAW or JIT) that are connected to the same investigation, so the executing authorities have all the relevant information before executing the EIO (*chapter 5*).

Recommendation No 8: Member States should accept EIOs in English, particularly in urgent cases (*chapter 6.2*).

Recommendation No 9: Member States should ensure that the contact person mentioned in the EIO speaks English at a sufficient level to allow effective direct communication (*chapter 6.2*).

Recommendation No 10: Member States should keep the information on the EJN website up to date to enable direct contact between authorities (*chapter 8*).

Recommendation No 11: When executing an EIO, Member States should comply with the formalities requested by the issuing Member State, as these are crucial for the admissibility of evidence in the issuing Member State (*chapter 9*).

Recommendation No 12: When labelling an EIO as urgent, Member States should provide information to substantiate the urgency, such as a forthcoming trial date (*chapter 14*).

Recommendation No 13: When acting as executing State, Member States should include a final summary report with the evidence to inform the issuing State efficiently about the action that has been taken to execute its request (*chapter 16*).

23.2.3. *Recommendations to the European Union and its institutions.*

Recommendation No 14: The Commission is invited to consider making the form more user-friendly (*chapter 6.1*).

Recommendation No 15: The Commission is invited to clarify the application of the speciality rule in relation to the EIO (*chapter 11*).

Recommendation No 16: The Commission is invited to clarify the application of the EIO in connection with ensuring the accused person's presence at his or her trial (*chapters 13.2 and 20.2*).

Recommendation No 17: The Commission is invited to consider issuing guidelines on when costs can be deemed exceptionally high to give Member States the tools with which to enter into consultations (*chapter 18*).

Recommendation No 18: The Commission is invited to clarify the concept of interception of telecommunications and the related measures (*chapter 20.5*).

### 23.3. Best practices

This section includes a list of best practices to be adopted by other Member States.

Lithuania is to be commended for:

1. The possibility for victims to request an EIO (*chapter 4*).
2. The practice of always consulting the issuing Member State about alternatives if the requested measure does not exist in Lithuania or is not applicable in that particular case (*chapter 5*).
3. The practice of always including all relevant instruments in section D, such as an EAW or a JIT (*chapter 5*).
4. The documents prepared by the PGO and made available on the intranet such as the explanatory note, materials and guidelines on the EIO, references to relevant legislation and the FAQ. Also, the practice of organising annual meetings between the PGO and regional prosecutors to discuss matters related to the EIO (*chapters 6.1 and 22*).
5. The prosecutor's electronic tool for international legal assistance: the IBPS system. EIOs can be tracked easily within the system even if they are executed by several authorities. It also sends automatic reminders for time limits, to ensure timely execution. Furthermore, it has already been connected to e-EDES (*chapters 6.3, 8 and 14*).
6. When executing an EIO, Lithuania always includes a cover letter with a translation into English describing the results (*chapter 16*).
7. The practice of specialised prosecutors at regional and national level, who can provide assistance and training and serve as a first point of contact for the regional prosecutor's offices (*chapter 22*).

**23 May 2023 – Ministry of Justice, Vilnius, Lithuania**

09:30-12:30	Welcome and presentations <ul style="list-style-type: none"> <li>- Ministry of Justice</li> <li>- Prosecutor General's Office</li> <li>- Judges</li> </ul>
12:30-13:30	Lunch
13:30-16:30	Meetings with the authorities that were present in the morning

**24 May 2023 – Ministry of Justice, Vilnius, Lithuania**

09:30-12:30	Meetings with representatives of the Ministry of Justice, Prosecutor General's Office, regional prosecutors and judges
12:30-13:30	Lunch
13:30-16:30	Meetings with the representatives of the Ministry of Justice, Prosecutor General's Office, regional prosecutors, judges, National Courts Administration, Lithuanian Bar Association and police.

**25 May 2023 – Ministry of Justice, Vilnius, Lithuania**

09:30-10:30	Final Q&A with the representatives of the Prosecutor General's Office and the Ministry of Justice
10:30-12:00	Wrap-up meeting

ANNEX B: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

<b>LIST OF ACRONYMS, ABBREVIATIONS AND TERMS</b>	<b>ENGLISH</b>
CATS	Coordinating Committee in the area of police and judicial cooperation in criminal matters
CCP	Code of Criminal Procedure
CIL	Criminal Intelligence Law
CJEU	Court of Justice of the European Union
Directive	Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 on the European Investigation Order in criminal matters
EAW	European Arrest Warrant
e-EDES	e-Evidence Digital Exchange System
EIO	European Investigation Order
EJN	European Judicial Network in criminal matters
EJTN	European Judicial Training Network
ERA	Academy of European Law
EPPO	European Public Prosecutor's Office
IBPS system	International Legal Assistance module
Implementing Law	Law of the Republic of Lithuania on Mutual Recognition and Execution of Decisions by EU Member States in Criminal Matters
JIT	Joint Investigation Team
MLA	Request for Mutual Legal Assistance
NCA	National Courts Administration
PGO	Prosecutor General's Office
RPO	Regional Public Prosecutor's Office