

3 Vertical and horizontal cooperation in countering organised fraud in the European Union

Experience of Lithuania

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Introduction

Lithuanian criminal procedure foresees that all criminal acts (including crimes related to organised fraud) are investigated and prosecuted following the same procedures provided in the Code of Criminal Procedure¹ (CCP). The legality principle applies to pre-trial investigations and prosecutions in Lithuania, since, in accordance with Art. 2 of the CCP, a prosecutor and a pre-trial investigator must institute criminal proceedings in every case in which the elements of a criminal act become apparent and shall take all measures to conduct, as soon as possible, the pre-trial investigation to uncover the criminal act. According to the doctrine of Lithuanian criminal procedure, the legality principle in the criminal justice system also means that pre-trial investigators and prosecutors must react to all information concerning the commission of criminal acts and must adopt all necessary pre-trial investigative decisions and conduct all necessary pre-trial investigative actions for the detection of criminal acts.²

The pre-trial investigation of every criminal act starts from the date of the opening of a pre-trial investigation and ends with the transfer of the indictment or any other final procedural act to the court.³ The main tasks of the pre-trial investigation are to: (a) promptly and properly identify all the circumstances of the criminal act; (b) identify the person who committed the criminal act; (c) enable a proper examination of the case in the court; etc. When these challenges are fulfilled, the pre-trial investigation has to be completed by the preparation of an indictment (the traditional function of the prosecutor),

1 Lietuvos Respublikos baudžiamojo proceso kodeksas, *Valstybės žinios*, 2002, No. 37-1341.

2 G. Goda, M. Kazlauskas and P. Kuconis, *Baudžiamojo proceso teisė*, Vilnius: Teisinės informacijos centras, 2005, p. 67; G. Goda, *Lietuvos Respublikos baudžiamojo proceso kodekso komentaras. I-IV dalys (1–220 straipsniai)*, Vilnius: Teisinės informacijos centras, 2003, p. 13; G. Švedas and R. Merkevičius, Presentation of National Systems of Investigation, Prosecution, Evidence and Procedural Safeguards: Lithuania, in K. Ligeti (ed.), *Toward a Prosecutor for the European Union*, Oxford: Hart Publishing, 2013, Volume 1, p. 411; G. Švedas, *Criminal Law in Lithuania*, Wolters Kluwer, 2022, p. 199, et seq.

3 G. Goda, M. Kazlauskas and P. Kuconis, *Baudžiamojo proceso teisė*, Vilnius: Teisinės informacijos centras, 2005, p. 288.

which is an integral part of the pre-trial investigation. The prosecutor chooses the moment of the indictment. Such a decision is made by the prosecutor only when he or she considers that the circumstances of the committed criminal act are identified, there is no more need for any pre-trial actions and it is clear that the trial court will be able to prove the guilt of the suspect.⁴

The pre-trial investigation shall be organised and led by a prosecutor. The prosecutor may instruct the police or another investigative institution to carry out a pre-trial investigation of any crime, or misdemeanour, or individual pre-trial investigation actions. When deciding which pre-trial investigation institution shall conduct a pre-trial investigation, it is necessary to take into account who conducted the operational investigation, to assess the investigators' experience in investigating this category of cases and other circumstances that determine the effectiveness of further investigation. If necessary, the prosecutor may form an investigation team of officials from several different pre-trial investigation institutions. Moreover, pursuant to Art. 170 of the CCP, the prosecutor may, on his or her own initiative, take a decision to conduct a pre-trial investigation, which shall be organised and conducted by him or her.

1. Cooperation of the national law enforcement authorities

1.1 National network of law enforcement authorities responsible for countering organised fraud

Art. 164 of the CCP states that pre-trial investigation shall be conducted by officers of pre-trial investigation institutions. Art. 160 of the CCP prescribes that the main pre-trial investigative institution is the police. The other specialised pre-trial investigative institutions are the Special Investigations Service, the Financial Crimes Investigations Service, the State Fire Prevention Service, the State Border Guard Service and the Customs, in respect to criminal acts which come to their notice when discharging the primary functions provided for in the laws regulating their activities and the Prosecutor General's recommendations. The Lithuanian network of law enforcement authorities, responsible for countering fraud and organised fraud,⁵ comprise mainly the Financial Crime Investigation Service, the Lithuanian Police, the Special Investigations Service and the Customs authorities of Lithuania.

According to the laws and Prosecutor General's recommendation, "On the distribution of the pre-trial investigation between the institutions of the pre-trial investigation",⁶ pre-trial investigation of the crimes and misdemeanours

4 Ibidem, p. 343.

5 "Fraud and organised fraud" in this research means PIF offences.

6 Lietuvos Respublikos Generalinio prokuroro Rekomendacijos dėl nusikalstamų veikų tyrimo paskirstymo ikiteisminio tyrimo įstaigoms, *Valstybės žinios*, 25 April 2003, No. 39-1805.

related to state taxes, state (municipal) fees, state social insurance and other contributions established in Chapter XXXII “Crimes and Misdemeanours Against the Financial System” of the Criminal Code⁷ (CC) shall be conducted by the Financial Crime Investigation Service (FCIS). It should be noted that the Financial Crime Investigation Service is a centrally specialised Lithuanian authority responsible for the investigations of criminal acts related to the receipt and use of the European Union (further, also EU) and foreign financial assistance funds, in addition to illegal enrichment crime provided in Art. 189¹ of the CC.

The Financial Crime Investigation Service is the main Lithuanian law enforcement institution responsible for the prevention, detection and pre-trial investigation of fraud and organised fraud, money laundering and terrorist financing, the illegal receipt and use of the funds of the financial support from the European Union and illegal enrichment. The activity of the FCIS and its 4 territorial units are regulated, *inter alia*, by the Law on The Financial Crime Investigation Service of the Republic of Lithuania.⁸ The mission of the FCIS is to protect the state financial system by revealing and investigating crimes and misdemeanours in addition to other violations of law. The goal of the Financial Crime Investigation Service is to elaborate methods of countering criminal activities against the State financial system. The Service pursues this objective by implementing the measures of criminal intelligence, disclosing and conducting the pre-trial investigation and prevention of criminal acts, implementing the measures of countering money laundering and terrorist financing, and the means, which warrant the legitimacy of the receiving and use of the financial support funds of the European Union and other foreign countries, performing the expertise of one’s commercial and financial activity and submitting the specialist’s conclusion on it. According to the aforementioned Law on the Financial Crime Investigation Service, the main functions of the FCIS are: (a) pre-trial investigation of international and domestic criminal acts related with the fraud and avoidance of value added tax (VAT), excise duties, income tax and other taxes in addition to the fraudulent management of accounts; criminal acts related to the illegal receipt and use of EU support funds; legalisation of the proceeds of crime (money laundering) and illicit enrichment; criminal acts in the field of swindling and misappropriation or squandering of property in such financial institutions as banks and credit unions and manipulating the prices (fraud) in the energy sector, etc.; (b) application of criminal intelligence measures, conducting investigation of economic and financial activities; (c) implementation of preventive measures against criminal acts and other violations of law against the financial system, financial assistance of the European

7 Lietuvos Respublikos baudžiamasis kodeksas, *Valstybės žinios*, 2000, No. 89-2741; No. 112-4973.

8 Lietuvos Respublikos finansinių nusikaltimų tyrimo tarnybos įstatymas, *Valstybės žinios*, 30 March 2002, No. 33-1250.

Union and foreign states, as well as anti-money laundering and terrorist financing measures; (d) co-operation with law enforcement and other institutions and agencies of the Republic of Lithuania and foreign states, international organisations on issues within the sphere of competence of the Service; (e) collection, analysis and assessment of the information on illegal receipt and use of financial assistance of the European Union and foreign states; etc.

Currently, the primary attention of the FCIS is paid to the prevention, disclosing and pre-trial investigation of criminal acts related to money laundering, VAT embezzlement, illegal receipt and use of the funds of the financial support from the European Union and other foreign countries. The FCIS focuses on the disclosure and pre-trial investigation of large-scale, sensitive and cross-border criminal acts adversely affecting the European Union and (or) national financial system. In 2021, the FCIS recorded a total of 622 criminal acts (in 2019, this figure stood at 875), investigated as many as 527 criminal acts (in 2019, this number totalled 555). As many as 82.5 percent of all the recorded criminal acts were investigated (in 2019—45.5 percent). Moreover, in 2021, the FCIS was given 334 tasks to carry out investigations of the economic financial activity, out of which 195 (or 58 percent) were prepared by the officials of the Service, and 139 (or 42 percent) by the officials of other law enforcement institutions. In 2021, specialists of the Financial Crime Investigation Service, having completed the investigations of the economic financial activity, submitted 653 conclusions and explanations of the specialists⁹ (in 2018, this figure stood at 662).¹⁰

With a view to preventing the illegal embezzlement of the European Union and other foreign countries financial support, The Board of the Illegal Support Prevention and Investigation of the FCIS maintains close cooperation with the Lithuanian authorities, responsible for the European Union and other foreign countries financial support management, law enforcement institutions and tax administrators, such as the Ministry of Finance of Lithuania (Managing Authority); the National Audit Office of Lithuania; the Ministry of Agriculture of Lithuania; the Central Project Management Agency; the Lithuanian Business Support Agency; the European Social Fund Agency; the Environmental Projects Management Agency; the National Paying Agency under the Ministry of Agriculture of Lithuania; the Transport Investment Directorate; the State Tax Inspectorate under the Ministry of Finance of Lithuania; the Investment and Business Guarantees, Ltd., etc.

9 Finansinių nusikaltimų tyrimo tarnybos prie Lietuvos Respublikos vidaus reikalų ministerijos 2021 m. metinė ataskaita, <https://fntt.lt/data/public/uploads/2022/06/svp-fntt-2021-metine-ataskaita-2021-03-21-tg.pdf>.

10 Financial Crimes Investigation Service Under the Ministry of Interior of the Republic of Lithuania Activity in 2019 Report, https://fntt.lrv.lt/media/viesa/saugykla/2023/11/vhX_mN-GNIY.pdf.

It should be noted that on 24 May 2002, the Financial Crimes Investigations Service, in decision¹¹ No. 747 of the Government of the Republic of Lithuania, was designated as a coordinating authority responsible for collaboration with the European Anti-Fraud Office (OLAF) and taking part in the activities of the Anti-Fraud Coordination Service (AFCOS).

The Lithuanian Police is the main policing institution in Lithuania. The Lithuanian Y dot. Police is a statutory organisation, ensuring public order and safety, detecting and investigating criminal acts and other violations of law in addition to rendering other social (humanitarian) aid for people. The police activity is regulated, *inter alia*, by the Law on Police of the Republic of Lithuania.¹² The main tasks of the Lithuanian Police are to: (a) protect human rights and freedoms; (b) ensure public order and safety; (c) prevent criminal acts and other violations of law; (d) detect and investigate criminal acts and other violations of law; etc.

The Lithuanian Police comprises the Police Department and other Police units. The Commissioner General of Police can establish police units subordinate to the Police Department on a territorial and non-territorial basis and assign them to perform certain (special) police functions. In the context of combatting fraud and organised fraud, it is important to mention the Lithuanian Criminal Police Bureau (further, also LCPB). The LCPB is tasked with preventing and detecting serious and major crimes, criminal activities which arouse public interest, activities related to the functioning of criminal organizations, organized groups and their members, as well as to coordinate investigations. The LCPB operates in the entire territory of Lithuania and is primarily responsible for the prevention, disclosure and pre-trial investigation of: (a) the most serious and high-profile crimes; (b) serious and very serious crimes of interregional and international character; (c) crimes and misdemeanours that cause serious damage to the state or individuals; (d) crimes and misdemeanours committed by high-level organised crime groups; (e) crimes and misdemeanours against property, property rights and property interests, economy and business-related order, and (f) crimes and misdemeanours against the financial system and cybercrime.

Apart from being the national crime investigation authority, the LCPB actively cooperates with foreign countries and international organisations, conducts joint criminal investigations and organises cross-border, joint police operations. Furthermore, amongst the other key functions of the LCPB, there is support and coordination and cross-border cooperation between police and other law enforcement authorities of Lithuania and Interpol, *Europol*, *SIRENE* and law enforcement authorities of other foreign countries.

11 Lietuvos Respublikos Vyriausybės, 24 May 2002 nutarimas, No. 747, Dėl institucijos, atsakingos už bendradarbiavimą su Europos kovos su sukčiavimu tarnyba (OLAF), paskyrimo, *Valstybės žinios*, 29 May 2002, No. 53-2092.

12 Lietuvos Respublikos policijos įstatymas, *Valstybės žinios*, 27 October 2000, No. 90-2777.

The Special Investigation Service (SIS) is the main anti-corruption law enforcement agency of the Republic of Lithuania. The main task of the SIS is to reduce corruption as a threat to human rights and freedoms, the principles of the rule of law and economic development. The activity of the SIS and its 4 territorial units is regulated, *inter alia*, by the Law on the Special Investigation Service of the Republic of Lithuania.¹³ In accordance with the Law on the Special Investigation Service, the key areas of the activities of the SIS are: criminal investigations and criminal intelligence due to corruption and corruption-related crimes, corruption prevention, anti-corruption education and analytical anti-corruption intelligence. The Special Investigations Service shall: (a) carry out criminal intelligence measures in detecting and preventing corruption (active and passive corruption, abuse of office, trading in influence, etc.) and corruption related crimes (fraud, embezzlement or misappropriation of property, money laundering, etc.); (b) conduct a pre-trial investigation of the mentioned criminal acts; (c) co-operate with other law enforcement institutions; (d) collect and analyse public or classified information held by the SIS about corruption and related social and economic phenomena, use of this new analytical data for the state or municipal institutions and officials decisions, relevant for the reduction of the corruption; (e) prepare and implement corruption prevention and other measures; (f) jointly with other law enforcement institutions, implement crime control and prevention programmes; etc.

Apart from being the national crime investigation authority, the SIS operates at an international level to strive for common benefits in the fight against corruption and the strengthening of corruption prevention and public awareness raising areas. The SIS encourages international cooperation among the interested parties, related anticorruption institutions and international organisations, shares its best practices and assumes responsibility for the best practices from others. Moreover, the SIS exchanges experience and information in the field of corruption investigation, corruption prevention and anti-corruption education and strengthens institutional capacity.¹⁴

The international interest in the experience of the SIS is steadily increasing. The SIS cooperates with many international organisations (such as the Organisation for Economic Co-operation and Development (OECD), the Anti-Corruption Network for Eastern Europe and Central Asia (OECD ACN), the European Partners Against Corruption (EPAC) and the European Union Contact-point Network Against Corruption (EACN), the European Anti-Fraud Office (OLAF), the Council of Europe's Group of States Against

13 Lietuvos Respublikos specialiųjų tyrimų tarnybos įstatymas, *Valstybės žinios*, 19 May 2000, No. 41-1162.

14 For example, in the end of 2019, the SIS signed a grant agreement with the European Anti-Fraud Office (OLAF) on a new project “Enhancing the analytical capacity of law enforcement authorities to detect and prevent fraud and corruption affecting the financial interests of the EU” under the OLAF-Hercule III program.

Corruption (GRECO), the United Nations Office on Drugs and Crime (UNODC) and others) and participate in their activities.

The Customs authorities of Lithuania's mission is legitimate, safe, fair and smooth international trade in Lithuania. Customs authorities activity is regulated, *inter alia*, by the Law on Customs of the Republic of Lithuania.¹⁵ According to this Law, the Customs authorities of Lithuania have a pivotal role in the close co-operation with other authorities, allowing them to: to protect the financial interests of the European Union and the Republic of Lithuania, to support legitimate trade and strengthen competitiveness; to ensure the correct payment of duties and taxes; to combat counterfeiting and piracy; to support the fight against other types of fraud, organised crime, drugs and terrorism by processing information, identifying changes in trade patterns and undertaking risk assessment; to detect financial fraud, terrorist and criminal activities; etc.

The customs authorities of Lithuania consist of the Customs Department, territorial customs units and special customs offices (such as Customs Criminal Service, etc.). Territorial customs units are the main institution for the investigation of administrative offences involving smuggling, deceit of customs, unlawful possession of goods subject to excise duties, unlawful failure to bring goods or products outside Lithuania. It should be noted that the main institution responsible for the pre-trial investigation of criminal acts involving smuggling, deceit of customs, unlawful possession of goods subject to excise duties, unlawful failure to bring goods or products outside Lithuania is the Customs Criminal Service (further, also CCS). According to the aforementioned Law on Customs, the main tasks of the CCS (which is a law enforcement agency) in the area of its competence are: (1) to collect criminal intelligence for disclosing smuggling, deceit of customs, unlawful possession of goods subject to excise duties, unlawful failure to bring goods or products outside Lithuania; (2) to disclose and investigate criminal acts and other violations of legal acts related to customs activities; (3) to collect, analyse and evaluate information on the development of trends in smuggling, deceit of customs, unlawful possession of goods subject to excise duties, unlawful failure to bring goods or products outside Lithuania, economic, social and criminogenic reasons for the existence and development of smuggling, deceit of customs, unlawful possession of goods subject to excise duties, unlawful failure to bring goods or products outside Lithuania; and (4) to carry out international and interdepartmental cooperation in the prevention and pre-trial investigation of crimes involving smuggling, deceit of customs, unlawful possession of goods subject to excise duties, unlawful failure to bring goods or products outside Lithuania, illegal migration, etc.

The Prosecution Service is responsible for prosecution in the Lithuanian legal system. The Prosecution Service of the Republic of Lithuania comprises

15 Lietuvos Respublikos muitinės įstatymas, *Valstybės žinios*, 30 April 2004, No. 73-2517.

the General Prosecutor's Office of the Republic of Lithuania and territorial prosecutor's offices. The General Prosecutor's Office of the Republic of Lithuania is an autonomous and independent state authority, which helps to ensure lawfulness and assists courts in the administration of justice. Art. 118 of the Constitution of the Republic of Lithuania¹⁶ prescribes that only the prosecutor shall prosecute criminal cases on behalf of the State, shall carry out pre-trial investigations and shall supervise the activities of pre-trial investigators and institutions. These constitutional provisions are more explicitly established in the Law on the Prosecution Office of the Republic of Lithuania,¹⁷ which prescribes that prosecutors shall: (1) organise and lead pre-trial investigations; (2) conduct pre-trial investigations or separate investigative actions; (3) control the procedural and criminal intelligence activities of the pre-trial investigative institutions; (4) sustain a criminal charge before the court; (5) coordinate the activities of pre-trial investigative institutions; etc.

The European Delegated Prosecutors Office¹⁸ started operating within the General Prosecutor's Office in 2021. The Office consists of 4 European Delegated Prosecutors (appointed by the European Prosecutor's College) and 3 prosecutor's assistants. One of the European Delegated Prosecutors was appointed as the coordinator of the Office. The General Prosecutor's Office of Lithuania was informed about the appointment of the Office coordinator.

1.2 Analysis of the practice of cooperation of national law enforcement authorities (good and bad practices and experiences)

The analysis of the legal regulation and doctrine of criminal procedure, in addition to the opinion of experts,¹⁹ allows for the conclusion that (in general) cooperation of national law enforcement authorities in Lithuania may be considered to be effective. However, it also allows for the singling out of the strengths and certain problems of legal regulation, organisational and institutional aspects of practical implementation of the cooperation between national authorities.

Laws on national law enforcement institutions responsible for the fight against organised fraud crimes (FCIS, Police Department, SIS, CCS, etc.) provide that these institutions have the right to cooperate with other national and foreign institutions. Nevertheless, there is a different legal framework for state authorities to provide information on cooperation by other national

16 Lietuvos Respublikos Konstitucija, *Vilnius*, 2005.

17 Lietuvos Respublikos prokuratūros įstatymas, *Valstybės žinios*, 2003, No. 42-1919.

18 Regulation of the Office of the European Delegated Prosecutors. General Prosecutors of the Republic of Lithuania Order, No. I-56 of 8 March 2021.

19 The expert opinion consists of information gathered during the interviews with 6 prosecutors who hold positions at various levels (including EPPO and Eurojust) and 3 pre-trial investigation officers. The interview took place in October–December of 2021.

institutions. For example, Art. 5 of the aforementioned Law on Financial Crimes Investigation Service, provides that the

Service shall co-operate with law enforcement institutions and agencies in accordance with the procedure laid down by laws and other legal acts. The Service shall co-operate with other state and municipal institutions and agencies in implementing crime control and prevention programmes and including public organisations, natural and legal persons in these activities. The manner of its co-operation with tax administrators shall be established by the Ministry of the Interior and the Ministry of Finance.

Art. 5 of the mentioned Law on Special Investigations Service states that while performing the tasks assigned to it, the Special Investigations Service shall maintain professional links with other institutions of the Republic of Lithuania, also with various agencies, organisations and enterprises, and shall encourage personal initiative of natural and legal persons in implementing anti-corruption measures.

Meanwhile, Art. 11 of the mentioned Law on Customs provides that “the Customs, having information about suspected violations of legal acts, the prevention or investigation of which belongs to other law enforcement institutions of Lithuania, shall immediately submit it to these law enforcement authorities within its competence”.

Moreover, as an example of the good practice of the cooperation between national law enforcement authorities bilateral and multilateral national cooperation agreements should be mentioned, such as the Agreement between the Criminal Intelligence Institutions, the Prosecutor General’s Office of the Republic of Lithuania and the District Courts on the sanctioning of the means of criminal intelligence in the criminal intelligence telecommunications network (2018), Agreement between the Criminal Intelligence Institutions and the Prosecutor General’s Office on Co-operation and Coordination of Criminal Intelligence (2017), Cooperation agreement between the Customs Department, State Border Protection Service, Financial Crime Investigation Service and Police Department (2010), Cooperation agreement between the Customs Department and Police Department (2005), etc. The main aim of these agreements is to make cooperation among different state institutions more effective at central and operational levels. For example, pursuant to the provisions of the Interagency Cooperation Agreement between Police, Customs and State Border Guard Service (signed on 20 May 2002), working groups are formed and contact persons appointed at central, regional and local levels of the police, customs and State Border Protection Service. As a result, cooperation forms are established, forms of sharing criminal intelligence and other data from institutional databases have been defined, etc. In addition, it should be noted that criminal intelligence activities and institutional cooperation in

the investigation of organised fraud crimes, in accordance with the Law on Criminal Intelligence of the Republic of Lithuania²⁰ and the recommendation of the Prosecutor General of Lithuania, “On Approval of the Recommendations on the Law on Criminal Intelligence, Application of the Norms of the Code of Criminal Procedure and Use of Criminal Intelligence Information in Criminal Proceedings”,²¹ must be coordinated and ensured by the prosecutor.

The assessment of the legal regulation allows for the conclusion that the legal framework for inter-institutional cooperation and the division of competences are sufficiently appropriate and accurate, whilst the opinion of experts shows that practical cooperation and the exchange of criminal intelligence (though improved over the past 5 to 10 years) could be more effective. Furthermore, experts confirmed the opinion already expressed in the doctrine of criminal procedure that that the main difficulty (or even challenge) is mutual trust, which determines effective day-to-day cooperation (especially exchange of information of criminal intelligence) between different institutions.²² In addition, some experts have indicated inadequate national legislation, where the grounds for the application of the criminal intelligence measures are linked to the seriousness²³ of the crime under investigation, as well as strict interpretation of these requirements in the jurisprudence of the Supreme Court of Lithuania.²⁴

One of the most beneficial aspects of the cooperation of national law enforcement authorities is that Lithuania has its own specialised authority, the FCIS, which is responsible for pre-trial investigations of criminal acts related to the illegal receipt and use of EU support funds. As a result, pre-trial investigations are concentrated in one institution. The FCIS also has a competence to perform measures of criminal intelligence. The police and the prosecution are not actively involved in the initial phase of the pre-trial investigations of criminal acts related to the illegal receipt and use of the EU support funds. Nevertheless, experts (representatives of national law enforcement authorities) have mentioned that the police are gradually engaging in such pre-trial investigations, and it is a bit worrying since it is not an easy task for prosecutors to coordinate and control pre-trial investigation actions of both law enforcement authorities. Other experts (mostly prosecutors) stated that the prosecution

20 Lietuvos Respublikos kriminalinės žvalgybos įstatymas, *Valstybės žinios*, 2012, No. 122-6093.

21 Lietuvos Respublikos Generalinio prokuroro įsakymas, Dėl Rekomendacijų dėl Kriminalinės žvalgybos įstatymo, Baudžiamojo proceso kodekso normų taikymo ir kriminalinės žvalgybos informacijos panaudojimo baudžiamajame procese patvirtinimo, *Valstybės žinios*, 2013, No. 2-83.

22 G. Švedas, Prevention of Illicit Trade in Tobacco Products: Experience of Lithuania, in C. Nowak (ed.), *Combating Illicit Trade on the EU Border: A Comparative Perspective*, Springer, 2021, p. 139.

23 Seriousness of the crime depends on the maximum term of the imprisonment punishment provided in the sanction of the Article of Special Part of the Criminal Code.

24 Ruling of the Supreme Court of Lithuania in criminal case No. 2K-P-94-895/2015.

should expand the participation of the prosecutors in the area of combatting (pre-trial investigation and prosecution) fraud and organised fraud.

It should be noted that the FCIS maintains close cooperation not only with law enforcement institutions, but also with the Lithuanian authorities responsible for the management of the European Union and other foreign countries financial support and tax administrators. It is beneficial since the FCIS usually has special agreements with these authorities and can access their databases. Although it is considered to be a positive aspect, which could result in more effective cooperation and successful pre-trial investigations, not all information needed for pre-trial investigations is available in these databases. For example, if a farmer who has received support from EU support funds declares the information of a concrete project by entering it onto a system (database) of certain authority, only part of the data becomes visible. Detailed information of a possible administrative offence or committed criminal act (for example, who, where, when, how and with whose help it operated) is inaccessible. Thus, it becomes necessary for the pre-trial investigation authorities to contact those authorities repeatedly and request the necessary data. This hinders the effectiveness of the cooperation. The administrative authorities themselves do not have enough resources (either economical or human) to provide pre-trial investigation authorities with such information as quickly as is required, and this results in delays of the pre-trial investigations and prosecutions. Conversely, the experts (representatives of law enforcement institutions) have also provided few examples of good administrative cooperation, such as information from the State Tax Inspectorate on their audit and the identification of suspicious transactions (cash flow “walking”) in an organic farm that was supported by the EU funds. The beginning of this criminal case²⁵ was grounded on a precisely well-prepared State Tax Inspectorate act and later insights provided by a specialist of the State Tax Inspectorate. An additional example is related to the cooperation of the Research Council of Lithuania, which provided clearly explained information on bio/nano technologies and chemistry issues (areas in which the pre-trial investigation officer is completely incompetent), without which pre-trial investigation would be practically impossible.

Moreover, there are some anomalies (obstacles) in legal regulation regarding the legitimate use of such information gathered solely by accessing databases. There are no clear rules in the CCP (or other laws) according to which it could be confirmed that such access to a relevant database is lawful. Accordingly, it raises the question as to whether the use of such data is lawful and whether it can be used directly in pre-trial investigation and prosecution. Whereas if, for instance, the FCIS asks the State Tax Inspectorate directly to provide relevant data and receives an official answer with confirmation that the data has been obtained in accordance with agreement between the FCIS and the State Tax

25 Ruling of the Supreme Court of Lithuania in criminal case No. 2K-223-976/2020.

Inspectorate, it can be used immediately in pre-trial investigation (there are no questions about the lawfulness of the received data). However, compared to the opportunity of the national law enforcement authorities access to the databases directly, this method of obtaining information is takes more time.

One more challenge, as mentioned by experts, (representatives of national law enforcement authorities), is the primary source (national law enforcement institution or administrative agency), which is obliged to determine and inform pre-trial investigation authorities that the contract regarding EU support was breached. It is not clear whether there are enough human resources within the administrative authorities, lawyers and other specialists who are sufficiently competent to determine whether this infringement is of an administrative or criminal nature. In addition, the term within which the actual breach of the contract regarding EU support and report of a possible criminal act must be submitted to the competent investigation authority or prosecutor also remains unclear. It is obvious that the effectiveness of a pre-trial investigation depends on how rapidly the competent investigation authority is informed about the breaches of the contracts regarding EU support which may lead to criminal acts. Moreover, the longer the time frame is, the greater the risk of corruption.

In assessing the organisational aspects of co-operation between pre-trial investigation institutions, it is necessary to mention one example of a negative experience related to the issue of human resources of institutions. Practically, all law enforcement institutions have indicated a lack of qualified professionals (pre-trial investigations officers). This is implicitly confirmed by the doctrine of Lithuanian criminal procedure, which indicated a lack of appropriate education for pre-trial investigation officers, as one-third of them have no higher legal education, and 22 percent did not even have a law degree.²⁶ Perhaps due to the lack of qualified specialists, the former reforms of the legal framework of individual law enforcement institutions (for example, police, Special Investigation Service, State Security Department, etc.) were often aimed at providing higher salaries and wider social guarantees, which would entice pre-trial investigation officers from other institutions. Such “competition” between pre-trial investigation institutions determines the “migration” of pre-trial investigation officers from one institution to another for financial reasons. Moreover, such a situation adversely affects the pyramid of the legal system, since a pre-trial investigation officer, without any objective background, may receive a higher salary and wider social guarantees than a prosecutor. Some experts (mostly prosecutors) noted that it is an especially vital organisational aspect since the pyramid of legal systems needs to be consistent.

26 Ž. Navickienė, Ikitėisminio tyrimo organizavimo optimizavimas Lietuvoje: Nunc ar ad feliciora tempora? in H. Malevski and G. Juodkaitė-Granskienė (eds.), *IX Criminalistics and Forensic Examination: Science, Studies, Practice*, Vilnius and Charkovas: Lietuvos teismo ekspertizės centras, 2013, pp. 307–308.

In the context of human resources, some problematical issues regarding the use of special knowledge and forensic examination must be mentioned. The doctrine of Lithuanian criminal procedure revealed some weaknesses in the usage of forensic examinations. These weaknesses were defined as an overload of forensic examinations and respectively long terms of the performance of forensic examinations.²⁷ In almost every pre-trial investigation of criminal acts related to fraud and organised fraud, forensic experts who carry out forensic examinations are needed. This forensic practice shows that, for example, between 2013 and 2015, in Lithuania, economical forensic examinations were most often performed in criminal cases concerning: a) Fraud (Art. 182 of the CC), Misappropriation of Property (Art. 183 of the CC), Squandering of Property (Art. 184 of the CC), making up 37.1 percent of all economical forensic examinations; b) Non-payment of Taxes (Art. 219 of the CC), Submission of Incorrect Data on Income, Profit or Property (Art. 220 of the CC), Fraudulent Accounting (Art. 222 and 223 of the CC) – 29.6 percent of all economical forensic examinations; c) Illegal Engagement in Economic, Commercial, Financial or Professional Activities (Art. 202 of the CC), Fraudulent Statement on Company Activities (Art. 205 of the CC), Credit Fraud (Art. 207 of the CC), Debtor's dishonesty (Art. 208 of the CC), Criminal bankruptcy (Art. 209 of the CC), Forgery of a Document or Use or Realisation of a Forged Document (Art. 300 of the CC) – 12.1 percent of all economical forensic examinations; d) Abuse of Office (Art. 228 of the CC) – 7.6 percent of all economical forensic examinations.²⁸

As an example, if the object of the EU support is the construction of the buildings, special knowledge in construction is inevitable in order to assess the compliance of building complexes with actual works, in addition to or deviations from estimations. It should be noted that this type of examination was until 2014 performed only by private forensic experts, the number of which was insignificant, and this situation unduly prolongs the process of obtaining a conclusion from an expert examination. Due to the permanent demand of construction examination, the new type of construction examination was introduced into the practices of the Forensic Science Center of Lithuania. The tasks of said examination are as follows: to determine the compliance of buildings and other construction works to their projects, their prats and (or) legal regulation, to determine the reasons for damages or collapses of buildings and

27 G. Juodkaitė-Granskienė and A. Gorbatkov, Forensic Examinations in Lithuania: 30 Years of Experience (1990–2020), in G. Švedas and D. Murauskas (eds.), *Legal Developments During 30 Years of Lithuanian Independence: Overview of Legal Accomplishments and Challenges in Lithuania*, Springer, 2021, pp. 188–189.

28 M. Barkauskas and A. Spiečiūtė, Juodkaitė-Granskienė G. Ekonominių ekspertinių tyrimų galimybės tiriant ūkines ir finansines nusikalstamas veikas, in G. Švedas, J. Prapiestis and A. Milinis (eds.), *Baudžiamoji justicija ir verslas*, Vilnius: Vilniaus universiteto Teisės fakultetas, Registrų centras, 2016, p. 319.

other construction works and the amount and type of works necessary for rebuilding.²⁹

However, it should be noted that pre-trial investigation officers and prosecutors do not always have sufficient competence to formulate questions for forensic examination. The assessment carried out in the Forensic Science Centre of Lithuania shows that about 10 percent of the questions submitted for forensic examination do not correspond to the competence of the forensic expert. This is due to the fact that they require answers to legal questions or the answer to them does not require special or expert knowledge. It should be noted that the effectiveness and results of economic forensic examinations depend on the formulation of the questions and the objects of the examination. Incorrectly worded questions may not even be answered by a forensic expert. Questions that are too broadly formulated may lead to an additional examination that is completely unnecessary for the final results. Moreover, a forensic expert may misunderstand incorrectly or too broadly formulated questions and perform an incomplete examination.³⁰ In order to avoid such errors, the Forensic Science Centre of Lithuania has prepared methodological recommendations³¹ for the appointment of economic forensic examinations, which indicate the tasks to be solved by a specific forensic expert examination and typical formulations of questions.

Finally, a lack of technical equipment utilised by national law enforcement institutions may be also mentioned. Criminals of modern times, and their intelligence, are more advanced. Currently, they use information technologies and other innovations, communication and the movement of funds is more rapid and, as a result, national law enforcement institutions cannot afford not to match the pace of this. However, experts reiterated the opinion, already expressed in the doctrine of criminal procedure,³² that progress in the supplying of technical equipment to national law enforcement institutions is not as rapid as it should be and needs to be improved.

29 G. Juodkaitė-Granskienė and A. Gorbakov, *Forensic Examinations in Lithuania: 30 Years of Experience (1990–2020)*, in G. Švedas and D. Murauskas (eds.), *Legal Developments During 30 Years of Lithuanian Independence: Overview of Legal Accomplishments and Challenges in Lithuania*, Cham: Springer, 2021, p. 193.

30 M. Barkauskas, A. Spiečiūtė and G. Juodkaitė-Granskienė, *Ekonominių ekspertinių tyrimų galimybės tiriant ūkines ir finansines nusikalstamas veikas*, in G. Švedas, J. Prapiestis and A. Milinis (eds.), *Baudžiamoji justicija ir verslas*, Vilnius: Vilniaus universiteto Teisės fakultetas, Registrų centras, 2016, pp. 314, 316.

31 Ekonominės (bankininkystės, buhalterinės, finansų, darbo ekonomikos) ekspertizės: Metodinės rekomendacijos, <https://www.ltec.lt/ekonomine-metodines>.

32 G. Švedas, *Prevention of Illicit Trade in Tobacco Products: Experience of Lithuania*, in C. Nowak (ed.), *Combating Illicit Trade on the EU Border: A Comparative Perspective*, Cham: Springer, 2021, p. 142.

1.3 Recommendation for improvement

Recommendations for the improvement of cooperation on national law enforcement authorities may relate to the improvement of the legal framework, the training and professional development of prosecutors, pre-trial investigation officers and public service officials, in addition to the organisational aspects related to the involvement of prosecutors in pre-trial investigations of fraud and organised fraud with EU funds, in addition to supplying better national law enforcement authorities with technical equipment and modern technologies.

The main directions of the improvement of the legal framework would be as follows:

- (a) to provide legal opportunities for national law enforcement authorities to have direct access to databases of other administrative authorities and to use this data lawfully. Moreover, information stored in these databases could be more detailed and better categorised (for example, by project groups or types);
- (b) to unify (or harmonise) the legal framework for the national law enforcement institutions, to provide information (including information of criminal intelligence) to other state institutions and to promote (in various ways, for example by training, joint seminars and exchange of “good practice”) law enforcement institutions and their criminal intelligence unit cooperation, which should include the exchange of criminal intelligence information;
- (c) to provide more precise regulation of the grounds in addition to the terms of the application of measures of criminal intelligence.

The main directions of the training and professional development of prosecutors, pre-trial investigation officers and public service officials would be as follows:

- (a) to prepare and implement general and special training programmes on various issues of criminal procedure, criminal law, criminal intelligence and forensic examination.

The main directions of the improvement of the organisational aspects would be as follows:

- (a) to encourage (in various ways) prosecutors to be more consistent and the increased involvement of prosecutors in pre-trial investigations of crimes related to fraud and organised fraud with EU funds;
- (b) to provide for a harmonised and competitive remuneration and social security system for pre-trial investigation officials of all national law enforcement institutions and prosecutors;

- (c) to allocate more resources for the acquisition of technical equipment, modern technologies, in addition to the digitisation of law enforcement and administrative institutions.

Finally, as highlighted by experts, it would also be very useful to monitor, analyse, identify and summarise the trends of administrative violations and criminal acts of fraud and organised fraud related to EU funds in addition to the preparation of recommendations for pre-trial investigation and prosecution of these criminal acts.

2. Cooperation between national law enforcement authorities and EU institutions

2.1 *National legal framework related to cooperation between national law enforcement authorities and EU institutions (Europol, OLAF and Eurojust, future cooperation with EPPO)*

Europol. The cooperation of Lithuania with the *Europol* (which started as early as 1996) was initially focused on only certain areas. Specifically, joint training programmes and investigations of separate criminal acts. Lithuanian police officers participated, at *Europol's* invitation, in a number of police operations aimed at investigating illegal migration flows, trends in the trafficking of human beings and the magnitude of vehicle thefts.

On 10 February 2004, the Cooperation Agreement between the Republic of Lithuania and the Europol came into force. The purpose of this agreement was, *inter alia*, to improve cooperation between the Member States of the European Union, acting through *Europol*, and Lithuania in the fight against serious transnational criminal acts. This Agreement remained in force until the date of the accession of Lithuania to the Europol Convention. The Europol Convention, and the additional protocols therein, were ratified on 22 April 2004 through the Law on the Ratification of the Europol Convention and the additional protocols contained within it (which came into force on 1 May 2004).³³ Upon the ratification by Lithuania of the Europol Convention and the additional protocols pertaining to said Convention, Lithuania became a full member of *Europol*, whose activities are currently regulated by Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA.³⁴

33 Lietuvos Respublikos įstatymas dėl konvencijos, parengtos vadovaujantis Europos Sąjungos sutarties K.3 straipsniu, dėl Europos policijos biuro įsteigimo (Europolo konvencijos) ir jos protokolų ratifikavimo, *Valstybės žinios*, 30 April 2004, No. 69-2384.

34 Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and

The Government of the Republic of Lithuania, by implementing Council Decision of 6 April 2009, establishing the European Police Office (Europol),³⁵ designated the State Data Protection Inspectorate as a national supervisory authority, which aims to independently monitor the lawfulness of the transfer, retrieval and transmission of personal data to the *Europol*, and obliged Commissioner General of Police to appoint the liaison office between the *Europol* and Lithuanian law enforcement institutions.³⁶ Accordingly, the Europol and the Interpol National Unit, the Lithuanian National Division of the International Relations Board of the Lithuanian Criminal Police Bureau was established as a constituent part of the Lithuanian Criminal Police Bureau, which serve as a liaison office between the *Europol* and Lithuanian law enforcement agencies.³⁷ The key function of this Unit is the submission of the information and intelligence necessary for the performance of *Europol* tasks, responding to the information requests of *Europol*, the constant updating of the submitted data and submitting the information to be stored in the automated system of *Europol*.

Currently, Lithuania is being represented by two police and customs liaison officers at the *Europol*. The tasks of a police liaison officer are the continuous collection and exchange of information concerning actual cases, the strengthening of ties among competent institutions, the provision of consultations and assistance to the officers of law enforcement and other competent institutions of a state recipient. Over the last few years, information exchange and operations conducted with the *Europol* and foreign partners have most often been related to such areas as organised crimes against property (robberies, thefts), drug trafficking, fraud (suspicious financial operations), as well as thefts of vehicles and vehicle parts. Germany, France, the United Kingdom and Scandinavian countries are the countries with whom information is commonly exchanged.

It should be noted that the General Prosecutor's Office of the Republic of Lithuania also maintains contacts with the *Europol* and takes part in various international projects.

The European Anti-Fraud Office (OLAF). As already mentioned, on 24 May 2002, the Financial Crimes Investigations Service was designated

replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA. Official Journal of the European Union, L 135, 24 May 2016, pp. 53–114.

35 Council Decision of 6 April 2009 establishing the European Police Office (Europol). Official Journal of the European Union, L 121, 15 May 2009, pp. 37–66.

36 Lietuvos Respublikos Vyriausybės 2009 m. gruodžio 23 d. nutarimas No. 1706, Dėl 2009 m. balandžio 6 d. Tarybos sprendimo 2009/371/TVR dėl Europos policijos biuro (Europolo) įsteigimo įgyvendinimo, *Valstybės žinios*, 28 December 2009, No. 153-6933.

37 Lietuvos policijos generalinio komisaro 2007 m. rugpjūčio 3 d. įsakymo No. 5-V-522, Dėl Lietuvos kriminalinės policijos biuro nuostatų ir struktūros schemos patvirtinimo pakeitimas, *Valstybės žinios*, 7 January 2010, No. 2-116.

as a coordinating authority responsible for collaboration with the European Anti-Fraud Office (OLAF) and participating in the activities of the Anti-Fraud Coordination Service (AFCOS) Group. In accordance with Art. 7 of the aforementioned Law on the Financial Crime Investigation Service, one of the main functions of the FCIS is to coordinate the cooperation of national law enforcement institutions and other institutions with the OLAF in addition to collecting, accumulating, analysing and summarising information related to the illegal receipt and use of financial assistance of the European Union and foreign states.

Cooperation between the Financial Crime Investigation Service and the OLAF is based on the Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013, concerning investigations conducted by the European Anti-Fraud Office (OLAF) and the repealing Regulation (EC) No 1073/1999 of the European Parliament, and of the Council and Council Regulation (Euratom) No 1074/1999³⁸ and the Agreement on the administrative cooperation between the FCIS and OLAF. The Regulation and Agreement provide that the OLAF shall: (a) provide the Member States with assistance in organising close and regular cooperation between their competent authorities in order to coordinate their actions aimed at the protection of the financial interests of the EU against fraud; (b) contribute to the design and development of methods of preventing and combating fraud, corruption and any other illegal activity affecting the financial interests of the EU; (c) promote and coordinate, with and among the Member States, the sharing of operational experience and best procedural practices in the field in the protection of the financial interests of the EU; and (d) support joint anti-fraud actions undertaken by Member States on a voluntary basis. Meanwhile, the FCIS, in accordance with the aforementioned Agreement, shall, *inter alia*: (a) carry out inspections in Lithuania in cases of (possible) fraud and other violations affecting the financial interests of the EU, if necessary, together with OLAF representatives; (b) ensure the prompt and efficient transmission of information to OLAF concerning fraud and other violations; (c) assist OLAF representatives in their missions and inspections in Lithuania; (d) ensure appropriate contacts between the other Lithuanian authorities and the OLAF.

The General Prosecutor's Office of the Republic of Lithuania also maintains direct contact with the OLAF and participates in various international projects.

38 Regulation (EU, Euratom) No. 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No. 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No. 1074/1999. Official Journal of the European Union, L 248, 18 September 2013, pp. 1–22.

The Eurojust (European Union Agency for Criminal Justice Cooperation). The Lithuanian National Office at Eurojust started its activities after the accession of Lithuania to the European Union on 1 May 2004. The functions of the Lithuanian National Member at Eurojust are performed by the prosecutor of the General Prosecutor's Office of the Republic of Lithuania.

Art. 37(2) of the Law on the Prosecutor's Office provides that Lithuania at Eurojust is represented by the Lithuanian National Member for Eurojust, his or her Deputy and his or her Assistant. The Lithuanian National Member for Eurojust, his or her Deputy and his or her Assistant shall be appointed by the Prosecutor General of Lithuania for a term of 5 years, on the proposal from the Commission for the Selection of the Lithuanian National Member for Eurojust, his or her Deputy and his or her Assistant. In accordance with Art. 37(2) and 37(4) of the Law on the Prosecutor's Office, the National Member for Lithuania at Eurojust, his or her Deputy and his or her Assistant are guided by the legislation of the Republic of Lithuania and the European Union and have the powers of a prosecutor. They also perform the functions provided in the European Union legal acts governing Eurojust³⁹ and the functions established by the Prosecutor General of Lithuania; for example, an order of the Prosecutor General of Lithuania "On the approval of Eurojust national coordination system"⁴⁰ establishes functions such as improving coordination between national institutions, ensuring the exchange of available information between competent prosecution authorities, improving cooperation between competent authorities and facilitating the international, mutual legal assistance and assistance in the resolution of conflicts of jurisdiction (due to parallel proceedings).

In 2020, the Lithuanian Desk at Eurojust was involved in 105 new cases, 24 coordination meetings, 3 coordination centres and 8 joint investigation teams. As the Lithuanian National Member for Eurojust practice of recent years shows, Lithuania is primarily involved in cooperation for the investigation of such serious crimes with international dimensions including various forms of fraud; money laundering; the trafficking of human beings; international drug trafficking or smuggling and those committed by organised criminal groups. Lithuanian prosecutors usually apply to the Lithuanian National Member for Eurojust with requests for transfer or expedite execution of the European Investigation Order, or with requests for other forms of international, mutual legal assistance, in addition to the enforcement of other international

39 Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (PE/37/2018/REV/1). Official Journal of the European Union, L 295, 21 November 2018, pp. 138–183.

40 Lietuvos Respublikos generalinio prokuroro 2011 m. spalio 28 d. įsakymas, No. I-290, Dėl Eurojusto nacionalinės koordinavimo sistemos nuostatų patvirtinimo, <https://www.prokuraturos.lt/data/public/uploads/2015/12/eurojust-nac-koordinav-sistem-nuostatatai-2011-10-28.pdf>.

cooperation instruments in other countries; with requests to assist in the resolution of conflicts of jurisdiction; with a request to organise a co-ordination meeting with representatives of other countries at Eurojust and with a request for consultation on various issues of international cooperation.

The European Public Prosecutor's Office (EPPO). Lithuania, believing that it was necessary to strengthen the protection of the financial interests of the European Union whilst developing a common area of justice, was one of the European Union Member States that supported the idea of the European Public Prosecutor Office from the outset. In 2020, in order to ensure the proper functioning of the EPPO and its officials in Lithuania, amendments were adopted to the Code of Criminal Procedure of the Republic of Lithuania,⁴¹ the Law on Mutual Recognition and Enforcement of Judgments in Criminal Matters of the Member States of the European Union of the Republic of Lithuania⁴² (further, also Law on Mutual Recognition and Enforcement of Judgments in Criminal Matters) and the Law on the Prosecutor's Office.⁴³

As foreseen in Art. 174 of the Code of Criminal Procedure,

The European Public Prosecutor's Office, in accordance with its competence in the field of investigation and prosecution of criminal acts, participates in criminal proceedings through the European Delegated Prosecutor and the European Public Prosecutor acting on behalf of the European Public Prosecutor's Office in the territory of the Republic of Lithuania.

The European Delegated Prosecutor and the European Public Prosecutor are entitled to perform the functions of a prosecutor and adopt decisions during pre-trial investigation and prosecution in accordance with the rules of criminal procedure laid down in Council Regulation (EU) 2017/1939 of 12 October 2017, implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO")⁴⁴ (further, also Regulation (EU) 2017/1939), the Code of Criminal Procedure and other laws of Lithuania (for example, mentioned Law on Criminal Intelligence).

41 Lietuvos Respublikos baudžiamojo proceso kodekso 35, 168, 170, 214, 217, 218, 234, 381, 418, 426 straipsnių ir priedo pakeitimo ir Kodekso papildymo 17⁴, 67¹ straipsniais įstatymas, TAR, 2020-06-22, No. 13619.

42 Lietuvos Respublikos įstatymo, Dėl Europos Sąjungos valstybių narių sprendimų baudžiamosiose bylose tarpusavio pripažinimo ir vykdymo, No. XII-1322 1, 51, 59, 65, 69 straipsnių ir priedo pakeitimo ir Įstatymo papildymo nauju XIV skyriumi įstatymas, TAR, 22 June 2020, No. 13623.

43 Lietuvos Respublikos prokuratūros įstatymo No. I-599 1, 11, 28, 29, 34¹ straipsnių pakeitimo ir Įstatymo papildymo 37¹¹, 37¹² straipsniais įstatymas, TAR, 22 June 2020, No. 13620.

44 Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'). Official Journal of the European Union, L 283, 31 October 2017, pp. 1–71.

The functions and powers of the European Public Prosecutor and the European Delegated Prosecutor shall relate to the pre-trial investigation and prosecution of criminal acts provided in Regulation (EU) 2017/1939 and national laws. In accordance with the legal acts of the European Union and national laws, the European Public Prosecutor may perform the functions of the European Delegated Prosecutor in the Republic of Lithuania. In this case, the European Public Prosecutor shall have the same powers as the European Delegated Prosecutor. Moreover, the European Public Prosecutor and the European Delegated Prosecutor have the power to prosecute in all of the courts in Lithuania. Concurrently, the procedures of communication with law enforcement authorities of foreign countries and international organisations, in cases where the competent authority is the EPPO, are regulated by Art. 67(1) of the Code of Criminal Procedure, which states that intercommunication with foreign authorities and international organisations occurs in accordance with the previously mentioned Regulation (EU) 2017/1939, Code of Criminal Procedure and other laws (for example, mentioned Law on Mutual Recognition and Enforcement of Judgments in Criminal Matters, etc.).

2.2 Analysis of the practice of cooperation

The analysis of the legal regulation and doctrine of criminal procedure, in addition to the opinions of experts, allows the identification of specific strengths and certain issues connected to legal regulations, organisational and institutional aspects of the practical implementation of the cooperation between national law enforcement authorities and the *Europol*, the *OLAF*, the *Eurojust* and the EPPO. Overall, cooperation between national law enforcement authorities and the *Europol*, the *OLAF* and the *Eurojust* is considered smooth and effective; there are no fundamental issues regarding its legal framework.

According to the opinion of experts, liaison officers, appointed for a certain period of time to represent the interests of their country and those of national law enforcement agencies as well as to pursue direct cooperation, constitute one of the most efficient cooperation forms focused in the *Europol*. Liaison officers, whose workplaces are based in the *Europol* headquarters, and being on good terms with one another, may at any time informally discuss topical issues and mediate in solving various problems or presented tasks. They may give advice on such matters as how to carry out certain investigative activities more effectively or how national law enforcement systems function. Such practices, as a rule, enable the saving of time in ongoing “live” investigations.

In assessing cooperation with the *OLAF*, the experts (representatives of national law enforcement authorities) noted that there are few cases in which the *OLAF* provides information that needs to be checked as a result of possible violations or criminal acts in Lithuania, in addition to information provided by the law enforcement institutions of Lithuania that needs to be verified by *OLAF* representatives. For example, the *FCIS* receives an average of 5

notifications per year; of those, pre-trial investigations are initiated in only 1 or 2 instances. In addition, experts pointed out that the information provided by the OLAF to competent authorities of Lithuania sometimes is “out of date” and that the additionally requested assistance in ongoing pre-trial investigations is not always provided promptly. The former practice of having a permanent representative for relations with a specific state (including Lithuania) has been indicated as a beneficial aspect of the cooperation with the OLAF, but this practice has unfortunately changed in recent years.

According to the opinion of experts (prosecutors), one of the beneficial aspects of the cooperation through the Eurojust is the very simple, smooth and completely unbureaucratic procedure, since the national prosecutor from the General Prosecutor’s Office or territorial prosecution office may ask the Lithuanian National Member of Eurojust by email or telephone to provide information on the pre-trial investigation being organised and indicate what assistance is expected from the Eurojust and other EU Member States. In case of specific issues, the Lithuanian National Member in Eurojust has excellent opportunities to promptly obtain the necessary, relevant information from a representative of another EU Member State; to hold a co-ordination meeting by inviting representatives of the EU Member States concerned to discuss the criminal case or hold an online meeting (Eurojust ensures a secure connection); if needed, representatives of other agencies (*Europol*, OLAF, etc.) may be involved in the co-ordination meeting; the possible assistance of other agencies in the case is discussed; the best forms of cooperation are proposed during the co-ordination meetings (for example, to create a Joint investigation group, to resolve jurisdictional issues by discussing in which country it is better to prosecute certain persons). It should be noted that there is always feedback from another EU Member State on the measures taken with regard to, for example, the assistance provided.

Conversely, experts indicated that, before contacting the Eurojust, national authorities should gather as much information as possible via other channels, such as the liaison officers at *Europol*. In addition, there is a need for greater dissemination of information pertaining to the capabilities of Eurojust and its possible provision of assistance in criminal matters for national law enforcement institutions (especially the courts). Concurrently, the number of cooperation agreements signed with third-party countries would facilitate the work of Eurojust. When such a cooperation agreement is signed, the liaison prosecutor for that country is in the Eurojust and cooperation occurs in the same way as with the EU Member States. In the absence of such a cooperation agreement, additional issues arise (in particular with regard to the transfer of personal data to a third party).

Currently, it is difficult even now to assess the completeness (or potential gaps) in the legal framework for cooperation between the EPPO and national prosecutors and law enforcement authorities, in addition to the effectiveness of practical cooperation, due to the fact that there are an insignificant number of practical examples of such cooperation in concrete criminal cases: according

to the 2021 EPPO Annual Report,⁴⁵ in Lithuania there were 13 active cases (of which 2 investigations were started in 2021), in addition to 1 ongoing case in the trial phase in court. It should be noted that the doctrine of Lithuanian criminal procedure was indicated that, for proper implementation of the Regulation, it will be necessary to adopt amendments to address nearly 30 aspects, which are directly related to the pre-trial investigation and prosecution of criminal cases.⁴⁶ Concurrently, the mentioned amendments to the Code of Criminal Procedure, the Law on the Prosecutor's Office, the Law on Mutual Recognition and Enforcement of Judgments in Criminal Matters, adopted by the Seimas of the Republic of Lithuania, resolved many of the previously mentioned aspects, but not all of them. In the opinion of the author of this chapter, it is only necessary to reiterate the doubts expressed in the doctrine of Lithuanian criminal procedure⁴⁷ regarding regulatory gaps in areas such as the national system of whistle-blowing and whistle-blower protection (Law on Whistleblower Protection of the Republic of Lithuania⁴⁸ and Criminal Code), criminal intelligence activity (Law on Criminal Intelligence), questions of lifting the national or international privilege or immunity from criminal jurisdiction (Statute of the Seimas of the Republic of Lithuania).⁴⁹

From the point of view of the experts (prosecutors), the European Public Prosecutor's Office, in the context of mutual legal assistance, should become a useful innovation, which focuses on inter-institutional cooperation and the exchange of information between the *Europol*, the Eurojust and the OLAF. Experts (prosecutors) believe that, if the EPPO succeeds in gaining its leadership and implementing its competences, it will be an achievement for the whole cooperation in combating fraud and organised fraud in the European Union. European prosecutors are proactive and strongly encourage cooperation between law enforcement authorities and their criminal intelligence units. The European prosecution mechanism may be beneficial in cases in which cooperation between national law enforcement authorities of the EU Member States is needed, since European Delegated Prosecutors cooperate directly with European Prosecutors and have powers related to mutual legal assistance. However, as mentioned by experts (prosecutors), the effective operation of the EPPO has been impeded for some time by the fact that Slovenia has not appointed its own European Prosecutor.

45 EPPO, *2021 EPPO Annual Report*, Luxembourg: Publications Office of the European Union, 2022, pp. 40–41.

46 G. Švedas and U. Markevičiūtė, The EPPO Implementation: A Perspective from the Republic of Lithuania, in K. Ligeti, M. J. Antunes and F. Giuffrida (eds.), *The European Public Prosecutor's Office at Launch: Adapting National Systems, Transforming EU Criminal Law*, series Giustizia Penal Europea, CEDAM, Wolters Kluwer, 2020, p. 173.

47 *Ibidem*, pp. 181–183.

48 Lietuvos Respublikos pranešėjų apsaugos įstatymas, *TAR*, 7 December 2017, No. 19743.

49 Lietuvos Respublikos Seimo statutas, *Valstybės žinios*, 25 February 1994, No. 15-249.

It should be noted that experts have expressed quite conflicting views on the Eurojust and the EPPO. Some of them have emphasised that the EPPO could perform the functions of the reformed Eurojust; others have stressed that it remains difficult to assess the effectiveness of the EPPO, in addition to the compatibility (also, avoidance of the competition) of the activities of the EPPO with national systems.

Finally, despite the fact that the overall objectives of the European Public Prosecutor's Office may be considered appropriate, the European Public Prosecutor's Office should not duplicate the resources already available in other institutions. For example, if the OLAF have analytics investigators and the *Eurojust* employs excellent information technologies specialists, it would be disproportionate to also have them in the European Public Prosecutor's Office.

2.3 *Recommendation for improvement*

Recommendations for the improvement of cooperation between national and EU law enforcement authorities may relate to the improvement of the legal framework, organisational, and institutional aspects of the practical implementation of cooperation between national law enforcement institutions and EU institutions.

The main directions of the improvement of the legal framework would be as follows:

- (a) to check and (if needed) make the necessary corrections to the legal acts regulating the national system of whistle-blowing and whistle-blower protection, criminal intelligence activity, and the questions related to the lifting of the national or international privilege or immunity from criminal jurisdiction, which shall allow European Prosecutors and European Delegated Prosecutors to perform their functions properly, and
- (b) to monitor and assess possible gaps or competition in the competence of the EPPO and the competence of national prosecution systems, as well as competence of EU institutions (Eurojust, OLAF).

The main directions of the improvement of the organisational and institutional aspects of practical cooperation would be as follows:

- (a) to apply the practice that relations with the State should be kept by the same representative of OLAF, or (alternatively) to assess the possibility of the State to have a liaison officer within the OLAF (like in the *Eurojust* and Eurojust);
- (b) to ensure that resources provided for the EPPO shall not duplicate human, technological and other resources created or available by other EU institutions (OLAF, Eurojust);
- (c) (within the competence of the EPPO and/or OLAF) to monitor, analyse, identify, and summarise trends of fraud and organised fraud related to EU funds in addition to the preparation of recommendations for their investigation and prosecution.

3. Cooperation between national law enforcement authorities and law enforcement authorities from other EU Member States

3.1 *National legal framework related to cooperation between national law enforcement authorities and their counterparts from other Member States of the EU*

The main principle for the mutual legal assistance in criminal matters in Lithuania is the valid legal basis, which for mutual legal assistance in criminal matters between the EU Member States is conventions and other legal acts (framework decisions, directives, regulations) of the European Union and laws and other legal acts, and implements European Union requirements into national law.

Most aspects of mutual legal assistance in criminal matters between the EU Member States (for example, the European Investigation Order,⁵⁰ the European Protection Order,⁵¹ Freezing and Confiscation Orders,⁵² and mutual recognition of the decisions on supervision measures as an alternative to provisional detention)⁵³ are regulated by the framework decisions and directives, the requirements of which in Lithuania were implemented in the aforementioned Law on Mutual Recognition and Enforcement of Judgments in Criminal Matters. Concurrently, the requirements of the Framework decision on European arrest warrants and the surrender procedures between the Member States⁵⁴ in Lithuania were implemented in the Criminal Code, the Code of Criminal Procedure and the Order of the Prosecutor General of Lithuania and Minister of Justice “On Approval of the rules for issuing a European arrest warrant and surrender a person under a European arrest warrant”.⁵⁵ Furthermore, certain

50 Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. Official Journal of the European Union, L 130, 1 May 2014, pp. 1–36.

51 Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order. Official Journal of the European Union, L 338, 21 December 2011, pp. 2–18.

52 Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (PE/38/2018/REV/1). Official Journal of the European Union, L 303, 28 November 2018, pp. 1–38.

53 Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention. Official Journal of the European Union, L 294, 11 November 2009, pp. 20–40.

54 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States – Statements made by certain Member States on the adoption of the Framework Decision. Official Journal of the European Union, L 190, 18 July 2002, pp. 1–20.

55 Lietuvos Respublikos teisingumo ministro ir Lietuvos Respublikos generalinio prokuroro 2004 m. rugpjūčio 26 d. įsakymas No. 1R-195/I-11, Dėl Europos arešto orderio išdavimo ir asmens perėmimo pagal Europos arešto orderį taisyklių patvirtinimo, *Valstybės žinios*, 2 September 2004, No. 134-4886.

forms of mutual legal assistance in criminal matters are also provided in the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU,⁵⁶ established by the Council, in accordance with Article 34 of the Treaty on European Union and Protocol established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union,⁵⁷ which, in accordance with Art. 4 of the Code of Criminal Procedure, may be directly applicable.

According to the Law on Mutual Recognition and Enforcement of Judgments in Criminal Matters and Code of Criminal Procedure, in principle, all requests to the national court and the prosecutor, from the competent authority of another Member State of the European Union, are received directly or via the Ministry of Justice of the Republic of Lithuania or the General Prosecutor's Office of the Republic of Lithuania (in this case, the Ministry of Justice or General Prosecutor's Office must forward the request for the execution to the competent prosecution office or court). All further correspondence, between the court or prosecutor and the competent authority of another EU Member State, is direct. It should be noted that the General Prosecutor's Office of Lithuania is the main (central) institution for issuing the European Arrest Warrant and receiving the requests for the execution of the European Arrest Warrant. Moreover, Art. 67 of the Code of Criminal Procedure, also states that in urgent cases, requests from Lithuania to other EU Member States may be sent through the prosecutor of the General Prosecutor's Office of the Republic of Lithuania, who holds the position of the Lithuanian National Member at Eurojust (or Deputy National Member of Lithuania at Eurojust).

According to Art. 85 and 86 of the Law on Mutual Recognition and Enforcement of Judgments in Criminal Matters, in cases of pre-trial investigations which fall within the competence of the EPPO, all cooperation between the EU Member States occurs through direct contacts between the European Delegated Prosecutors. If the cooperation involves an EU Member State which is not a part of the EPPO, the European Delegated Prosecutor apply

56 Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union – Council Declaration on Article 10(9) – Declaration by the United Kingdom on Article 20. Official Journal of the European Communities, C 197, 12 July 2000, pp. 3–23; Konvencija dėl Europos Sąjungos valstybių narių savitarpio pagalbos baudžiamosiose bylose, kurią pagal Europos Sąjungos sutarties 34 straipsnį patvirtino Taryba, *Valstybės žinios*, 21 October 2004, No. 154-5599.

57 Protocol established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union. Official Journal of the European Communities, C 326, 21 November 2001, pp. 2–8.

the mutual recognition measures provided for in the Law on Mutual Recognition and Enforcement of Judgments in Criminal Matters.

Furthermore, Art. 68(1) of the Code of Criminal Procedure and the order of the Prosecutor General of Lithuania, “On the approval of the description of the procedure for the exchange of information and direct consultation with the competent authorities of other Member States of the European Union”,⁵⁸ determine the prosecutor’s application to the competent authority of an EU Member State for confirmation that parallel criminal proceedings are occurring in another EU Member State; the submission of a response to a request from a competent authority of another EU Member State to provide information on whether criminal proceedings are pending against the same person in the Republic of Lithuania for the same criminal act and the procedure for the prosecutor to consult with the competent authority of another EU Member State in order to avoid parallel criminal proceedings and the potential negative consequences. All these requests should be sent and received via the General Prosecutor’s Office or prosecutor of the General Prosecutor’s Office of the Republic of Lithuania, who holds the position of the Lithuanian National Member at Eurojust (or Deputy National Member of Lithuania at Eurojust).

It should be noted that pre-trial investigation institutions and pre-trial investigation officers cannot apply directly to the EU Member State with a request for mutual legal assistance in criminal cases. If necessary, the pre-trial investigation officer must apply with such a proposal to the prosecutor, who organises and controls the pre-trial investigation. However, pre-trial investigation institutions and pre-trial investigation officers may apply the procedures of the simplified exchange of information in the course of pre-trial investigations or criminal intelligence, which are provided in the Rules for the Exchange of Information between Law Enforcement Institutions of the Republic of Lithuania and Law Enforcement Institutions of Other Member States of the European Union,⁵⁹ adopted by the Government of the Republic of Lithuania, in order to implement the Council Framework Decision 2006/960/JHA of 18 December 2006 on the simplification of the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.⁶⁰ These Rules provide a procedure for the exchange of

58 Lietuvos Respublikos generalinio prokuroro 2015 m. kovo 6 d. įsakymas No. I-71, Dėl Keitimosi informacija ir tiesioginių konsultacijų su kitų Europos Sąjungos valstybių narių kompetentingomis institucijomis tvarkos aprašo patvirtinimo, *TAR*, 6 March 2015, No. 3470.

59 Lietuvos Respublikos Vyriausybės 2009 m. birželio 17 d. nutarimas No. 633, Dėl Lietuvos Respublikos teisėsaugos institucijų keitimosi informacija su kitų Europos Sąjungos valstybių narių teisėsaugos institucijomis taisyklių patvirtinimo, *Valstybės žinios*, 30 June 2009, No. 77-3175.

60 Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. Official Journal of the European Union, L 386, 29 December 2006, pp. 89–100.

information between law enforcement authorities of the Republic of Lithuania (Lithuanian police, Financial Crimes Investigation Service, Special Investigation Service, and Lithuanian Customs) and law enforcement authorities of other EU Member States, ensuring closer and more effective co-operation with law enforcement authorities of other EU Member States, in addition to the simplified exchange of information in the course of pre-trial investigations or criminal intelligence. In addition, the Lithuanian Criminal Police Bureau was designated as the contact point of the Republic of Lithuania, to which law enforcement authorities of other EU Member States may send requests for information in urgent cases in accordance with the aforementioned Framework Decision.

3.2 *Analysis of the practice of cooperation*

The analysis of the legal regulation and doctrine of criminal procedure, in addition to the opinion of experts, allows the conclusion that, in general, cooperation between national law enforcement authorities and their counterparts from other EU Member States may be considered to be effective. However, it also allows the specific identification of the strengths and particular issues related to legal regulation, and the organisational and institutional aspects of practical implementation of the cooperation between national law enforcement authorities and their counterparts from other EU Member States.

The doctrine of the mutual legal assistance in criminal matters noted that, in the context of the evolving crime threat in a border-less Europe, international cooperation of law enforcement institutions will become more important than ever before, thus requiring appropriate regulatory support across the whole community.⁶¹ In the intervening period, the opinion of the majority of experts and the doctrine of the mutual legal assistance in criminal matters highlighted a number of negative aspects of cooperation in criminal matters: (a) significant differences in national legal regulation, particularly of the means and grounds of criminal intelligence,⁶² (b) different national legal regulation on material competence of the same law enforcement institutions in different EU Member States, and (c) a lack of mutual trust between law enforcement institutions and their criminal intelligence units, which results in almost no exchange of criminal intelligence information, etc.

As a beneficial aspect of the cooperation between national law enforcement authorities and their counterparts from other EU Member States,

61 K. Krassowski, Regulatory Framework Enabling International Police Cooperation in the European Union, in G. Juodkaitė-Granskienė (ed.), *XI Criminalistics and Forensic Sciences: Science, Studies, Practice*, Vilnius: Lietuvos teismo ekspertizės centras, 2015, p. 61.

62 G. Švedas, Prevention of Illicit Trade in Tobacco Products: Experience of Lithuania, in C. Nowak (ed.), *Combating Illicit Trade on the EU Border: A Comparative Perspective*, Cham: Springer, 2021, pp. 139–140.

experts mentioned the possibility of the direct submission of the request, in addition to the possibility of involving the national members of Eurojust in this process, which assists in addressing the problematic aspects of the request, the possible forms of mutual legal assistance in concrete criminal case, and the deadlines.

As highlighted in the opinion of experts, a key problematic aspect of fraud or organised fraud cases, is the aim of locating misappropriated money, which moves more rapidly than requests for mutual legal assistance. Currently, the mechanisms of criminal acts are more sophisticated and intelligent. If at least a part of the criminal act is committed abroad (also, in cyberspace or using a variety of electronic data), access to the necessary information automatically becomes more complicated.

In the opinion of experts, cooperation in criminal cases takes place mainly via the system and procedures of the European Investigation Order, and there are no fundamental problems with the application of this measure. Conversely, the efficiency of this measure also depends on the position of the Member State of the European Union, since some of them (for example, Latvia) fulfil such requests fairly rapidly, whilst from others it was difficult to obtain any requested data. Moreover, experts noted that the most commonly used argument when the requested information is not provided to another EU Member State is that it will “undermine the success of the investigation in that State”. This situation mainly concerns corruption cases and cases involving criminal intelligence. There is no doubt that such an attitude and the refusal to provide the requested information confirms the lack of mutual trust between law enforcement institutions of the individual EU Member States.

One more problematic aspect of cooperation is the importance of the concrete criminal case (or crime under the investigation), which varies among EU Member States. What is a priority in one EU Member State may be less important in another. As a result of this, it becomes more difficult to conduct effective cooperation between national law enforcement authorities of the EU Member States. As mentioned by experts, there are specific, systemic criminal acts which, from the point of view of one of the EU Member State, may be deemed a serious crime, whereas in other EU Member States it may be related to cultural aspects and not even considered a criminal act. These differences also have an impact on the efficient exchange of information necessary for pre-trial investigation and prosecution.

Finally, experts (prosecutors) also drew attention to the fact that smooth cooperation in combating fraud and organised fraud in the European Union may be weakened by the decisions of Poland and Hungary to opt out of the EPPO. Whilst Poland and Hungary remain non-members of the EPPO, the rate at which cooperation occurs between Lithuania and these countries is reduced. As a result, the success of the pre-trial investigation and prosecution itself is less guaranteed.

3.3. Recommendation for improvement

Recommendations for the improvement of cooperation between national law enforcement authorities and their counterparts from other EU Member States may relate to the improvement of the legal framework, organisational, and institutional aspects of the practical implementation of cooperation between national law enforcement institutions and their counterparts from other EU Member States.

The main directions of the improvement of the legal framework would be as follows:

- (a) to assess the efficiency of the Council Framework Decision, 2006/960/JHA of 18 December 2006, on the simplification of the exchange of information and intelligence between law enforcement authorities of the EU Member States and (if needed) to make corrections for the legal framework within the EU for a more effective exchange of the information (including information of criminal intelligence) between national law enforcement institutions of the EU Member States.

The main directions of the improvement of the organisational and institutional aspects of practical cooperation would be as follows:

- (a) to encourage (in various ways; for example, by training, joint seminars, and exchange of “good practice”) law enforcement institutions and their criminal intelligence units of the EU Member States cooperation, which should include the exchange of criminal intelligence information.

4. Cooperation between national law enforcement authorities and law enforcement authorities from non-EU Member States

4.1 National legal framework related to cooperation between national law enforcement authorities and their counterparts from non-EU Member States

The main principle for the mutual legal assistance in criminal matters in Lithuania is valid legal basis, which for mutual legal assistance in criminal matters between Lithuania and other states of the EU is the Lithuanian international treaties for mutual legal assistance in criminal matters and the Council of Europe and United Nations conventions, agreements, and protocols. In addition to the international treaties of the Republic of Lithuania, the procedure for mutual legal co-operation with foreign law enforcement institutions and courts, in addition to international organisations is established by Chapter IV of the CCP and the Criminal Code.

The Republic of Lithuania has concluded (signed and ratified) bilateral international treaties on mutual, legal assistance in criminal matters; for example,

with Ukraine,⁶³ Belarus,⁶⁴ Moldova,⁶⁵ Kazakhstan,⁶⁶ Uzbekistan,⁶⁷ China,⁶⁸ the USA,⁶⁹ Azerbaijan,⁷⁰ and Armenia.⁷¹ Moreover, the Republic of Lithuania has concluded bilateral international treaties on extradition, for example, with China,⁷² the USA,⁷³ and India.⁷⁴ In addition, bilateral international treaties on extradition and mutual legal assistance in criminal matters were signed with the United Arab Emirates in 2022.

The Republic of Lithuania has ratified these conventions on mutual legal assistance in criminal matters (including extradition): the European Convention on Extradition and its additional protocols,⁷⁵ the European convention on Mutual Assistance in Criminal Matters and its additional protocols,⁷⁶ the European Agreement on the Transmission of Applications for Legal Aid and its additional protocol,⁷⁷ the European Convention on the Transfer of Proceedings

63 Lietuvos Respublikos ir Ukrainos sutartis dėl teisinės pagalbos ir teisiųjų santykių civilinėse, šeimos ir baudžiamosiose bylose, *Valstybės žinios*, 25 November 1994, No. 91-1767.

64 Lietuvos Respublikos ir Baltarusijos Respublikos sutartis dėl teisinės pagalbos ir teisiųjų santykių civilinėse, šeimos ir baudžiamosiose bylose, *Valstybės žinios*, 8 June 1994, No. 43-779.

65 Lietuvos Respublikos ir Moldovos Respublikos sutartis dėl teisinės pagalbos ir teisiųjų santykių civilinėse, šeimos ir baudžiamosiose bylose, *Valstybės žinios*, 3 March 1995, No. 19-440.

66 Lietuvos Respublikos ir Kazachstano Respublikos sutartis dėl teisinės pagalbos ir teisiųjų santykių civilinėse, šeimos ir baudžiamosiose bylose, *Valstybės žinios*, 3 June 1998, No. 51-1399.

67 Lietuvos Respublikos ir Uzbekistano Respublikos sutartis dėl teisinės pagalbos ir teisiųjų santykių civilinėse, šeimos ir baudžiamosiose bylose, *Valstybės žinios*, 7 November 1997, No. 101-2552.

68 Lietuvos Respublikos ir Kinijos Liaudies Respublikos sutartis dėl teisinės pagalbos civilinėse ir baudžiamosiose bylose, *Valstybės žinios*, 31 August 2001, No. 75-2642.

69 Protokolas dėl Europos Sąjungos ir Jungtinių Amerikos Valstijų susitarimo dėl savitarpio teisinės pagalbos taikymo Lietuvos Respublikos Vyriausybės ir Jungtinių Amerikos Valstijų Vyriausybės sutarčiai dėl savitarpio teisinės pagalbos baudžiamosiose bylose, *Valstybės žinios*, 11 May 2006, No. 51-1861.

70 Lietuvos Respublikos ir Azerbaidžano Respublikos sutartis dėl teisinės pagalbos ir teisiųjų santykių civilinėse, šeimos ir baudžiamosiose bylose, *Valstybės žinios*, 26 July 2002, No. 75-3217.

71 Lietuvos Respublikos ir Armėnijos Respublikos sutartis dėl teisinės pagalbos ir teisiųjų santykių civilinėse, šeimos ir baudžiamosiose bylose, *Valstybės žinios*, 18 January 2005, No. 7-189.

72 Lietuvos Respublikos ir Kinijos Liaudies Respublikos ekstradicijos sutartis, *Valstybės žinios*, 4 December 2002, No. 115-5134.

73 Protokolas dėl Susitarimo tarp Europos Sąjungos ir Jungtinių Amerikos Valstijų dėl ekstradicijos taikymo Lietuvos Respublikos Vyriausybės ir Jungtinių Amerikos Valstijų Vyriausybės ekstradicijos sutarčiai, *Valstybės žinios*, 11 May 2006, No. 51-1860.

74 Lietuvos Respublikos ir Indijos Respublikos sutartis dėl ekstradicijos, *TAR*, 12 October 2018, No. 16158.

75 1957 m. gruodžio 13 d. Europos konvencija dėl ekstradicijos ir papildomi protokolai, *Valstybės žinios*, 26 April 1995, No. 34-819; *TAR*, 3 October 2016, No. 24427.

76 1959 m. Europos konvencija dėl savitarpio pagalbos baudžiamosiose bylose ir papildomi protokolai, *Valstybės žinios*, 21 April 1995, No. 33-762; 1996, No. 100-2278; 2004, No. 42-1370.

77 Europos sutartis dėl teisinės pagalbos prašymų perdavimo ir papildomas protokolai, *Valstybės žinios*, 28 February 1996, No. 18-459; 14 May 2004, No. 80-2837.

in Criminal Matters,⁷⁸ the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime,⁷⁹ the Agreement on Illicit Traffic by Sea, the Implementation of Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,⁸⁰ the United Nations Convention against Transnational Organised Crime and its additional protocols,⁸¹ and the United Nations Convention against illicit trafficking in narcotic drugs and psychotropic substances.⁸²

Art. 66 of the Code of Criminal Procedure states that requests from the courts and the prosecutor's office of the Republic of Lithuania to the competent institutions of foreign states are transmitted through the Ministry of Justice of the Republic of Lithuania or the Prosecutor's General Office of the Republic of Lithuania. In the cases provided for in the international treaties of the Republic of Lithuania, the courts and the prosecutor's office of the Republic of Lithuania may transmit their requests directly to appropriate law enforcement authorities of foreign states. It should be noted that a court or prosecutor's office of the Republic of Lithuania shall execute a request received directly from a law enforcement authority of a foreign state or international organisation only with the permission of the Ministry of Justice of the Republic of Lithuania or the Prosecutor General's Office of the Republic of Lithuania.

As foreseen in Art. 67 of the Code of Criminal Procedure, in carrying out requests for institutions of foreign law enforcement authorities and courts, the prosecutors and pre-trial investigation institutions of the Republic of Lithuania may take procedural coercion measures and investigative actions set out in the Code of Criminal Procedure. Despite this, procedural coercion measures and investigative actions, which are not specified in the Code of Criminal Procedure, may also be taken. However, this is permissible only if this does not contravene the Constitution and the laws of the Republic of Lithuania in addition to the fundamental principles of the criminal procedure of Lithuania. It is noteworthy that, in accordance with Art. 67 of the Code of Criminal Procedure, officers of the courts, the prosecution and pre-trial investigation institutions of the International Criminal Court are permitted to take procedural coercion measures and investigative actions in the territory of the Republic of Lithuania only in cases provided for in an international treaty, to which the

78 1972 m. Europos konvencija dėl baudžiamojo proceso perdavimo, *Valstybės žinios*, 30 January 1998, No. 10-241.

79 Europos konvencija dėl pinigų išplovimo ir nusikalstamu būdu įgytų pajamų paieškos, arešto bei konfiskavimo, *Valstybės žinios*, 8 February 1995, No. 12-263.

80 1995 m. Susitarimas dėl neteisėtos prekybos jūra, įgyvendinantis Jungtinių Tautų konvencijos dėl kovos su neteisėta narkotinių ir psichotropinių medžiagų apyvarta 17 straipsnį, *Valstybės žinios*, 28 August 2002, No. 83-3553.

81 2000 m. Jungtinių Tautų konvencija prieš tarptautinį organizuotą nusikalstamumą ir papildomi protokolai, *Valstybės žinios*, 22 May 2002, No. 51-1933.

82 1988 m. Jungtinių Tautų konvencija dėl kovos su neteisėta narkotinių ir psichotropinių medžiagų apyvarta, *Valstybės žinios*, 22 April 1998, No. 38-1004.

Republic of Lithuania is a party and with the participation of the officers of the Republic of Lithuania. According to Art. 67 of the Code of Criminal Procedure, in the cases provided for in the international treaties of the Republic of Lithuania, the courts and the prosecutor's office of the Republic of Lithuania may transmit their replies to the requests directly to appropriate law enforcement authorities of foreign states or international organisations.

4.2 Analysis of the practice of cooperation

The analysis of the legal regulation and the opinion of experts allows for the conclusion that, in general, cooperation between national law enforcement authorities and law enforcement authorities of foreign states may be considered to be traditional. It also allows the specific identification of the strengths and particular issues of the practical implementation of the cooperation between national law enforcement authorities and law enforcement authorities of foreign states.

In the opinion of experts, there is no doubt that cooperation with non-EU Member States is not as effective as cooperation between the EU Member States. There are objective reasons for that: for example, when the rules of cooperation are not detailed or the grounds for the refusal to provide the mutual legal assistance in criminal cases (requested information) are very broad. Moreover, in many cases cooperation is not direct, since the transmission of the requests and replies to the executed requests must be forwarded via the central institutions, the Ministries of Justice, and General Prosecutor's Office. However, such restrictive provisions of international treaties on mutual legal assistance in criminal matters are understandable, as they ensure the protection of the interests of states and their citizens. In addition, such international treaties are concluded between very different countries, so the need to cooperate and achieve common goals is often not as important or as clear as they are at a European Union level.

The most frequently mentioned problems of cooperation, indicated by experts, are the overly extended periods of the execution of requests, the inadequate quality of the replies to the requests (for example, from Belarus), or, in some cases, no response is received at all (for example, from the Virgin Islands and Israel). Additionally, experts noted that frequently other states (e.g., Belarus and Israel) do not provide legal assistance, if the request for legal assistance in any way affects (or may affect) the interests of that state. It should be noted that Lithuania also refuses to provide legal assistance when the execution of the request for legal assistance may infringe on the interests of Lithuania or violate human rights and freedoms.

4.3 Recommendation for improvement

Recommendations for the improvement of cooperation between national law enforcement authorities and their counterparts from non-EU Member States

may be linked to the identification of a common need and interest for more effective cooperation in a specific area with concrete countries and the involvement of Eurojust, which may sign cooperation agreements with third countries in order to address such issues at a European level.

5. Conclusions, general recommendations

In summary, the following essential conclusions can be drawn:

General assessment allows the statement that the legal framework related to the cooperation of the national law enforcement authorities, cooperation between national law enforcement authorities and EU institutions (*Eurojust*, *Eurojust*, *OLAF*, and *EPPO*), and cooperation between national law enforcement authorities and law enforcement authorities from other EU Member States is sufficiently smooth and effective and that there are no fundamental problems regarding its legal framework. Concurrently, cooperation between national law enforcement authorities and law enforcement authorities from non-EU Member States can be defined as traditional and assessed as adequate depending on the relations between Lithuania and other countries, with which there is a need for mutual legal assistance.

The main recommendations for the improvement of cooperation on a national level are:

- to unify (or harmonise) the legal framework for the national law enforcement institutions to provide information (including information of criminal intelligence) to other state institutions and promote (in various ways; for example, by training, joint seminars, exchange of “good practice”) law enforcement institutions and the cooperation of their criminal intelligence units, which should include the exchange of criminal intelligence information;
- to check and (if needed) to make the necessary corrections to the legal acts regulating the national system of whistle-blowing and whistle-blower protection, criminal intelligence activity, and questions of lifting the national or international privilege or immunity from criminal jurisdiction, which shall allow the European Prosecutor and the European Delegated Prosecutors to perform their functions properly;

Main recommendations for the improvement of cooperation on the European Union level are:

- to monitor and assess the possible disparities or competition between *EPPO* competence and the competence of national prosecution systems, in addition to the competence of specific EU institutions; for example, *Eurojust* and *OLAF*;
- to assess the efficiency of the Council Framework Decision 2006/960/JHA of 18 December 2006 on the simplification of the exchange of information

and intelligence between law enforcement authorities of the EU Member States and (if needed) to make the corrections the legal framework within the EU for a more effective exchange of the information (including information of criminal intelligence) between national law enforcement institutions of the EU Member States.

Main recommendations for the improvement of cooperation on both European Union and national level are:

- to monitor, analyse, identify, and summarise trends of fraud and organised fraud related to EU funds in separate EU Member States and across the European Union, and, on the basis of these findings, to create further strategies and actions for the prevention of organised fraud, in addition to the preparation of recommendations for their investigation and prosecution for each EU Member State and in a coordinated way at the EU level;
- to encourage the cooperation of law enforcement institutions and their criminal intelligence units of the EU Member States which should include the exchange of criminal intelligence information.

Lithuanian experts believe that, if the EPPO succeeds in gaining its leadership and implementing its competences, it will be an achievement for overall cooperation in combating organised fraud in the EU. It is obvious that the benefits would be even greater if those countries that are currently opting out became part of the European Public Prosecutor's Office.